

## DECISION NOTICE

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**To:** La Tresorerie Limited (**LT**)

**DFSA Ref:** F001507

**Address:** Level 23, Index Tower (West Entrance), DIFC, PO Box 506982, Dubai, UAE

**Date:** 9 April 2020

### ACTION

1. For the reasons given in this Notice and pursuant to Article 90(2)(a) of the Regulatory Law 2004 (the **Regulatory Law**), the Dubai Financial Services Authority (the **DFSA**) has decided to impose on LT a fine of USD 612,790 (the **Fine**). The Fine consists of the following elements:
  - a. USD 261,154 (USD 219,773 plus interest of USD 41,381) disgorgement of benefit; and
  - b. a penalty amount of USD 351,636.
2. LT agreed to settle this matter. However, consistent with its published policy, the DFSA has decided not to reduce the penalty element of the Fine by a 30% settlement discount because settlement was achieved after the period which the DFSA had set for the settlement discount to be available. If the settlement had been achieved within the required period, the DFSA would have imposed a penalty element of USD 246,145, resulting in a total fine of USD 507,299, a reduction of USD 105,491.
3. This notice is addressed to LT alone. Nothing in this notice constitutes a determination that any person other than LT breached any law or 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**

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 are defined in Annex B or in the DFSA Rulebook Glossary Module (**GLO**). Unless the context otherwise requires, where capitalisation of the initial letter is not used, an expression has its natural meaning.

## **SUMMARY OF REASONS**

5. The DFSA has decided to take this action as it considers that between the dates as specified below (each being the respective **Relevant Periods** and together the **Relevant Period**), LT:
  - a. between 19 February 2015 and 11 January 2017, provided a physical cash withdrawal service to its customers (**Cash Service**), and by doing so, carried on the Financial Service of Providing Money Services in or from the DIFC without a Licence authorising it to do so, contrary to Article 41(1) of the Regulatory Law;
  - b. between 13 November 2015 and 11 January 2017, used false invoices to facilitate the Cash Service, and by doing so, engaged in conduct in connection with a Financial Service that was dishonest, misleading and deceptive, contrary to Article 41B of the Regulatory Law;
  - c. between 17 September 2015 and 11 January 2017, in relation to Client Money paid out as part of the Cash Service, failed to hold certain amounts of Segregated Client's Client Money in a Client Bank Account, contrary to Rule A5.8.2 in the DFSA's Rulebook Conduct of Business Module (**COB**);
  - d. between 1 February 2016 and 11 January 2017, whilst holding or controlling Client Money, failed to comply with the Client Money Provisions and to have systems and controls in place to be able to evidence compliance with the same, contrary to COB Rule A5.2.2; and
  - e. between 1 February 2016 and 11 January 2017, whilst holding or controlling Client Investments, failed to comply with the Safe Custody Provisions and to have systems and

controls in place to be able to evidence compliance with the same, contrary to COB Rule A6.2.2.

6. Further, as an Authorised Firm, LT was at all times required to comply with the DFSA's Principles for Authorised Firms in GEN section 4.2. The conduct giving rise to the contraventions set out in paragraph 5 above also demonstrate that, during the Relevant Period, LT:
  - a. in conducting its business activities as an Authorised Firm, failed to act with integrity contrary to Authorised Firm Principle 1 (Integrity) in GEN Rule 4.2.1, by making payments from Client Money it held or controlled on the basis of invoices that it knew to be false, and in circumstances that gave rise to an increased risk of money laundering;
  - b. by acting outside the scope of its Licence in breach of the Regulatory Law, failed to ensure that its affairs were managed effectively and responsibly by its senior management and to have adequate systems and controls to ensure, so far as is reasonably practicable, that it complied with legislation applicable in the DIFC, contrary to Authorised Firm Principle 3 (Management, systems and controls) in GEN Rule 4.2.3; and
  - c. whilst controlling or otherwise being responsible for assets or money belonging to a customer which it was required to safeguard, failed to arrange proper protection for them in accordance with the responsibility it has accepted contrary to Authorised Firm Principle 9 (Customer assets and money) in GEN Rule 4.2.9. It did this by:
    - i. failing to hold amounts of Client Money in a Client Account at all times when required;
    - ii. making payments from its Client Accounts otherwise than in accordance with the client's instructions; and
    - iii. failing whilst holding or controlling Client Money and Client Investments, to comply with the Client Money Provisions and the Safe Custody Provisions.
7. Given the nature and seriousness of LT's contraventions, and the period of time over which they occurred, the DFSA considers it appropriate in the circumstances to impose the Fine on LT.

8. The DFSA notes that the contraventions referred to in this notice occurred during the Relevant Period at a time when LT was under the day-to-day control of a senior management team (the **Previous Management**) who left LT shortly before the end of the Relevant Period. Therefore, this notice should not be taken as a direct or implied criticism of the board of directors or senior management of LT (the **New Management**), who brought the matter to the DFSA's attention after 12 January 2017, when the New Management took control of LT.

## **FACTS AND MATTERS RELIED UPON**

### ***Background***

9. LT, a DIFC Company, was licensed by the DFSA on 4 February 2014 as a PIB Category 3C Authorised Firm to provide the following Financial Services:
  - a. Advising on Financial Products or Credit;
  - b. Arranging Credit or Deals in Investments;
  - c. Arranging Custody; and
  - d. Managing Assets.
10. LT was also granted a Licence Endorsement for Holding or Controlling Client Assets.
11. While LT was authorised by the DFSA and licensed to carry on certain Financial Services, the scope of its Licence did not include Providing Money Services, as defined in GEN Rule 2.2.2(c). Moreover, under GEN Rule 2.2.4, at the date of this notice, no Authorised Firm may carry on the Financial Service of Providing Money Services in or from the DIFC as a standalone activity.
12. In February 2015, a risk assessment carried out by the DFSA revealed a number of deficiencies within LT's compliance and anti-money laundering (**AML**) framework relating to rules around customer due diligence and on-boarding. In April 2015, the DFSA sent a letter to LT containing its key findings and the requirement to undertake a risk mitigation programme (**RMP**). The RMP included 29 different actions that LT was required to address by 31 July 2015 in the areas of compliance arrangements, financial crime related risks and corporate governance. On 31 July 2015, LT provided a letter to the DFSA detailing the

status in respect of the matters requiring action raised by the DFSA (seven of which remained incomplete) and an overview of the work completed by LT as at that date. On 19 and 20 October 2015 the DFSA conducted a targeted review of 25 client files in order to ascertain the level of progress by LT since the RMP.

13. In January 2016, the DFSA sent a letter to LT which set out the findings of a focused risk assessment, which had looked at on-boarding of clients in the wake of the work LT had undertaken under the RMP. The letter noted significant deficiencies in LT's approach to on-boarding clients in terms of general conduct of business and combatting financial crime. The letter required LT to take action by 31 March 2016 to ensure compliance with the DFSA's rules around AML and client classification. This led to ongoing work by LT and correspondence between the DFSA and LT, including letters from LT setting out work done to date on 21 March 2016 and 1 June 2016.
14. In and around November 2016, a shareholder dispute arose within LT and various concerns about governance and transparency were raised with the DFSA.. In late December 2016, the DFSA was informed that a resolution had been made to remove the DFSA authorised Senior Executive Officer (**SEO**) and a Licensed Director from the Board of LT. A change in the control of LT occurred on or around 12 January 2017, when a key shareholder took full control of the company, followed by the appointment of a new SEO and Compliance Officer and Money Laundering Reporting Officer.
15. On 19 February 2017, the DFSA sent a letter to the new Board of Licensed Directors of LT setting out various supervisory concerns arising from firm visits and interviews with staff of LT. Based on these concerns, the letter requested LT to voluntarily consent to restricting its business activities and transactions. The restriction required LT to refrain from soliciting, on-boarding or advising or dealing in any manner with new or prospective clients, as well as all dealings, transactions and business activities with existing clients (except for corporate actions or liquidating transactions where complete and accurate records and reconciliations are completed and approved by senior management), until such time as LT addressed the concerns set out in the letter to the satisfaction of the DFSA. LT indicated by letter on 27 February 2017 that it agreed to this voluntary restriction while it assessed the extent of issues caused by the Previous Management.
16. During the course of the following weeks, the New Management examined the extent of the issues at LT and decided that the firm was not salvageable. Consequently, LT informed the

DFSA of its intention to withdraw its licence and, on 2 August 2017, a written resolution of the Board of Licensed Directors of LT was made to commence the withdrawal of the Licence of LT.

#### ***DFSA Investigation***

17. On 8 February 2017, LT engaged a third-party service provider to conduct a business process review (**BPR**), i.e. an internal review/audit of LT's processes and Client Asset reconciliations. The scope of the BPR included a review of:
  - a. the client transactions process;
  - b. internal controls over investor/client accounts; and
  - c. the process of transaction recording, reconciliations and reporting.
18. Separately, on 1 May 2017, consistent with its regulatory obligations, LT notified the DFSA of suspicions it had regarding transactions indicating possible money laundering. LT's suspicions related to multiple withdrawals of large amounts of physical cash made by LT customers from LT's Client Money Account, rather than by electronic transfer, which was an unusual activity for a firm such as LT to provide. LT's notification to the DFSA of its suspicions (the **Suspicions Report**) detailed that it had identified 47 different customers who had received 81 physical cash withdrawals, between 13 November 2015 and 29 December 2016 to a total value of USD 5,890,826.
19. A report of the BPR was produced dated 11 May 2017 (the **BPR Report**) and provided by LT to the DFSA. The BPR Report covered a review period of February 2016 to 13 February 2017. Several areas of concern were noted, including:
  - a. Client Asset reconciliations;
  - b. client on-boarding process with regard to anti-money laundering requirements;
  - c. client transaction execution process;
  - d. inadequacies in back office controls; and
  - e. lack of effective controls in the finance function.

20. Following consideration of the Suspicions Report and the BPR Report, on 4 July 2017 the DFSA commenced an investigation pursuant to Article 78 of the Regulatory Law into suspected contraventions by LT of laws and Rules administered by the DFSA. LT was informed of the investigation in a meeting with the DFSA on 17 July 2017.
21. On 25 July 2017, a notification was sent to the DFSA by LT on the DFSA's complaints portal, concerning alleged misconduct by certain former Authorised Individuals of LT. This notification included an acknowledgement that "*DFSA rules concerning the Provision of Money Services... were contravened systematically in the past*".

### ***The Financial Services Prohibition – Providing Money Services***

22. Under Articles 41(1) and 42(3)(a) of the Regulatory Law in force at the relevant time, a person is prohibited from carrying on a Financial Service in from the DIFC unless it is an Authorised Firm whose Licence authorised it to carry on the relevant Financial Service.
23. Under GEN Rule 2.2.1 an activity constitutes a Financial Service if it is an activity specified in GEN Rule 2.2.2 and the activity is carried on by way of business in the manner described in GEN section 2.3.
24. Under GEN Rule 2.2.2(c) the definition of Financial Services includes Providing Money Services. Under GEN Rule 2.2.4, an Authorised Firm is permitted to carry on one or more Financial Service other than Providing Money Services. Hence, carrying on the Financial Service of Providing Money Services by way of business is prohibited in or from the DIFC.
25. Providing Money Services is defined in GEN Rule 2.6.1 as "...*providing currency exchange or money transmission*", by which the latter means:
  - a. "*selling or issuing payment instruments*;
  - b. *selling or issuing stored value*; or
  - c. *receiving money or monetary value for transmission, including electronic transmission, to a location within or outside the DIFC.*"
26. GEN Rule 2.2.4 provides that, "*an Authorised Firm may carry on one or more Financial Services other than Providing Money Services*".

27. The process for the Cash Service was that, on the instructions of the relevant customer, Client Money that was held on behalf of the customer would be transferred from the relevant LT Client Money account to one of a number of facilitator accounts, from which physical cash would then be provided to the customer by LT. The process by which the Cash Service was carried out evolved over the time it was offered by LT, as follows:

- a. The earliest evidenced cash withdrawal was completed on 19 February 2015. The DFSA investigation did not establish how this first cash withdrawal was provided by LT to its client.
- b. Around 17 September 2015, a non-Client Account bank account controlled by a member of LT's Previous Management (**Personal Bank Account**) was used to facilitate the Cash Service for two different customers. This process is also referred to in LT's "Transaction Monitoring Program" which is a policy/process document dated 28 September 2015 (**TMP**), where an instruction provides that:

*"Any physical cash withdrawal that does not have a client instruction in an acceptable format and which involves a transfer of funds from an LT custodian account to an account of an LT employee must be automatically escalated to Compliance."*

- c. From around 13 November 2015, cash withdrawals were made using the transfer of Client Money to one of two unregulated third-party companies based in Dubai outside the DIFC (**Company A** and **Company B**) to facilitate the Cash Service. This process (**Cash Process**, described in detail below at paragraph 28) was then employed by LT for the remainder of the Relevant Period. It is believed that Company A and Company B were connected via common ownership to a third company, which operated a regulated money exchange business in Dubai (**Company C**).

#### *Cash Process*

28. The Cash Process is described below at a) to k). Steps a) to d) are described in the TMP, and such steps were applicable in the case of any withdrawal or transfer of money out of a customer's account, including electronic withdrawals and third-party payments.

- a. The customer would submit a request to LT by telephone, letter or email, for a withdrawal from their account to be made in cash. LT would generally require a signed instruction from the customer.
- b. A “Withdrawal Checklist” would be completed by the Client Management team. This was a template form appearing as Appendix 1 of the TMP.
- c. If necessary, the transaction would be referred to LT’s Compliance team for approval. The TMP sets out the circumstances in which such referral is required, including if the reason for withdrawal is not in line with the customer’s profile and if the withdrawal is greater than USD100,000. Although it is not stated in the TMP, the practice at LT was that all physical cash withdraws were referred to Compliance for approval.
- d. Compliance would then either approve the transaction and send to the Finance team for payment or refer back to the Client Management team if not approved.
- e. LT would then request a false invoice (described further below in paragraphs 30 to 32) be provided on behalf of Company A or Company B in the amount of cash requested by the customer. The request would be made via an external asset manager (**Individual A**) who introduced and acted on behalf of several customers of LT, and who was connected to Company A via a relative. Individual A would liaise with Company A or Company B and provide the relevant false invoice to LT via email.
- f. The false invoices would be addressed to the customer name or account number care of LT and an additional 2% would be added to the invoice, which represented the fee payable to Company A or B for its part in the Cash Service.
- g. LT would make an electronic transfer of the funds from the relevant Client Account to Company A or B, using the false invoice as the basis for the payment.
- h. Once the funds had been received by Company A or B, a staff member of LT would go to the currency exchange offices of Company C in Dubai (outside the DIFC) to collect the cash.
- i. LT would hold the cash at a safe within its office in the DIFC until the relevant customer attended the office to collect the cash, or other delivery arrangements were made.

- j. Once the cash was collected by, or delivered to, the customer, LT would issue a receipt to the client for signature, to confirm receipt of the cash. This receipt would be kept in a hard copy folder at LT (**Cash Withdrawal File**), which also contained other documents related to customer requests for cash withdrawals.
- k. Overall, LT charged its customers 5% of the value of the request for the Cash Service, of which LT retained 3%, after paying Company A or B its 2% fee, as described at f) above.

*Total Cash Amounts*

- 29. Based on a review of receipts in the Cash Withdrawal File and Appendix 1 to the Suspicions Report (which was itself produced by the New Management of LT from a review of its bank records for payments to Company A and Company B) the Cash Service during the Relevant Period at LT resulted in 122 transactions, ranging in value from €2,560 to €500,000. The total amount of physical cash provided by LT under the Cash Service has been calculated to be the equivalent of USD 7,325,767.28, over 122 transactions, and the fees it received were the equivalent of USD 219,773.02.

*Company A and Company B False Invoices*

- 30. Client Money held by LT on behalf of its customers was held in a number Client Accounts at various custodian banks, none of which provided LT with access to physical cash. The use of invoices from Company A and Company B was therefore integral to the Cash Process, in that it provided a route through which physical cash could be made available to LT's customers from LT's Client Account, as part of a documented transaction that could be entered into the books and records of LT and of Company A or B. However, the invoices were false, in that they did not reflect the true nature of the transaction to which they related.
- 31. The invoices of Company A contained a description of services, to which the invoice purportedly pertained. By way of example, an invoice dated 4 December 2015 for a total of €102,000 was issued by Company A addressed to a customer of LT, care of LT, referencing “Consulting services”, with the description for the amount of €92,800 being “Our services pertaining to investment in Dubai Real estate” and for the amount of €9,200 as “Travel”. The asset manager of this customer, who was involved in the Cash Process for this and numerous of his other LT customers, confirmed that the customer received no such

services, but instead received physical cash from LT as a result of the payment of this invoice, as that customer had instructed. The DFSA's Investigation found that this was a false invoice used to facilitate a physical cash withdrawal from LT.

32. The invoices of Company B were also addressed to the specific LT customer, care of LT, but differed in format to those of Company A and did not include a description of specific services, instead referring to "*our invoice as per our agreement*". In fact, there was no agreement between the LT customer and Company B. The use of Company A and Company B to facilitate the Cash Service was not even known to the customers of LT: the customer's instructions in each case were to receive an amount in physical cash, not for Company A or Company B to raise an invoice (false or otherwise) or for LT to make a payment to Company A or Company B.

*Misleading Statements made in Response to Bank Enquiries*

33. As part of the Cash Process, invoices from Company A and Company B were provided to the banks involved in the payment transaction from the Client Account of LT to the account of Company A or B, to support the banks' regular transaction monitoring and due diligence of its customers' account activity, including for the purposes of anti-money laundering requirements.
34. On one occasion, in December 2016 the bank of Company B raised a query in respect of a payment made as part of the Cash Process and requested additional details of the payment and a more detailed invoice. This request was relayed to LT by Individual A by email, with an invoice attached (**Invoice A**) that was in different format to that which has been seen for other Company B invoices under the Cash Process. Invoice A differed in that it was more detailed and included the following:
  - a. The address of the "*Buyer*", i.e. LT's address in the DIFC;
  - b. Company B is described as the "*Seller*";
  - c. Company B's logo;
  - d. A description of the services to which the invoice purported to relate, i.e. "*consultancy fees for introduction of clients in Africa*" and "*management fees & services charges*";

- e. A signature from an Authorised Signatory of Company B; and
  - f. Company B's stamp.
35. Invoice A was related to a physical cash withdrawal by an LT customer in November 2016, in the amount of €330,000. The description of services (at paragraph 34.d above) was incorrect as it was not a service that was provided to LT.
36. In January 2017, a further email was received by Company C from its bank raising queries in respect of Invoice A and asking for an explanation of:
- a. the profile of Company B;
  - b. the reason and purpose of the transaction;
  - c. the nature of the relationship of the originator of the payment (i.e. LT's Client Account) and the beneficiary (Company B); and
  - d. the reason why LT's Client Account had initiated three transactions to Company B for the total sum of €423,300 during the month of October 2016.
37. A response was provided to the bank's queries by the compliance officer of Company C, which was then forwarded on to LT by Individual A. In summary, this response included the claims that:
- a. the reason and purpose of the transaction related to Invoice A was "*consultancy services for introduction of new clients for La Tresorerie Limited in overseas Market and Management Fees*";
  - b. the nature of the relationship between LT's Client Account and Company B was "*Service Provider and Beneficiary (Service Receiver)*"; and
  - c. the reason for the three transactions between LT's Client Account and Company B was "*Consultancy services for introduction of clients for La Tresorerie Limited in overseas market and its Management Fees*".
38. The claims in Company C's response to its bank are incorrect in several material respects, as detailed below:

- a. The reason and purpose of the transaction related to Invoice A was to provide cash from LT's Client Account to the customer of LT who had given instructions for a physical cash withdrawal under LT's Cash Process. The payment did not relate to the services described, which were not in fact provided to LT.
  - b. The nature of the relationship claimed between LT's Client Account and Company B is misleading, in that the services purportedly being provided by Company B are described as being for the benefit of LT itself, not to one or more of LT's customers. It would be a breach of the DFSA's Client Asset Rules for an Authorised Firm to use funds from its Client Account to pay for services it had received and there is no suggestion that LT did this.
  - c. The reason for the three transactions between LT and Company B was to provide physical cash for LT's customers under the Cash Process. No services of the nature claimed in Company C's response were provided.
39. Also, in January 2017, LT received an email from one of its custodian banks (**Custodian**) concerning the same payment described above as related to Invoice A. The email stated that the correspondent bank of Company C's bank had contacted the Custodian and was "*requesting more information about the payment, such as the reason for it.*"
40. An LT employee provided a response to the Custodian, in which the claims set out above at paragraph 37 above were replicated. Therefore, LT had provided materially incorrect information to the Custodian in response to a query as to the nature and purpose of transactions it carried out.

#### *Transportation and Delivery of Cash*

41. There were a number of ways in which physical cash was delivered to the relevant LT customers in connection with the Cash Service. These included:
- a. the customer attended the offices of Company C with a staff member of LT to collect the money;
  - b. delivery to the customer to a location in Dubai (either inside, or outside, the DIFC) or at LT's office in the DIFC;

- c. physical cash being transported from the UAE to a foreign country for delivery to the customer by an employee or a member of the Previous Management of LT.
- 42. To facilitate the transportation of a large amount of physical cash from Dubai to Switzerland, a template letter (**Cash Letter**) was drafted on the headed paper of LT and signed by a former member of LT's senior management (**Senior Manager A**). The Cash Letter was taken by the individual carrying the cash to provide to the customs authorities in the case of query.
- 43. On an occasion in September 2016, the Cash Letter was taken by an employee of LT who was carrying €716,000 which represented several physical cash withdrawals which had been obtained via the Cash Process through Dubai International Airport to Switzerland. The Cash Letter incorrectly stated that the cash funds being carried were beneficially owned by LT: as Client Money, the funds were in fact beneficially owned by LT's customers.
- 44. On another occasion, in November 2016, the Cash Letter was used by Senior Manager A when they were stopped by a customs official at Dubai International Airport on their way to Switzerland, to support their explanation as to why they were carrying a large amount of cash. In interview, Senior Manager A identified that the template letter was incorrect on the point of beneficial ownership of the cash, and claimed that they would have amended this part of the letter, but did not appear to remember doing so.

#### ***Control of Client Assets***

- 45. Under COB Rule A5.8.2, Client Money must remain in a Client Account and can only be paid out in the circumstances prescribed under the Rule, which are that it is:
  - a. due and payable to the Authorised Firm;
  - b. paid to the Client on whose behalf the Client Money is held;
  - c. paid in accordance with a Client instruction on whose behalf the Client Money is held;
  - d. required to meet the payment obligations of the Client on whose behalf the Client Money is held; or
  - e. paid out in circumstances that are otherwise authorised by the DFSA.

46. Under COB Rule A5.4.1, a “*Client Account* in relation to Client Money is an account which:
- a. *is held with a Third Party Agent;*
  - b. *is established to hold Client Assets;*
  - c. *is maintained in the name of;*
    - i. *if a Domestic Firm, the Authorised Firm; or*
    - ii. *if a non-Domestic Firm, a Nominee Company controlled by the Authorised Firm; and*
  - d. *includes the words ‘Client Account’ in its title.”*
47. The term “Third Party Agent” is defined in the DFSA’s Rulebook Glossary Module (**GLO**) as:
- “...an Authorised Firm or Regulated Financial Institution (including a bank, custodian, an intermediate broker, a settlement agent, a clearing house, an exchange and ‘over the counter’ counterparty) that is a separate legal entity from the Authorised Firm that is required under COB to establish the Client Account.”
48. Under COB Rule A5.2.2, “*An Authorised Firm which holds or controls Client Money for a Segregated Client must*
- a. *comply with the Client Money Provisions in relation to that Client Money; and*
  - b. *have systems and controls in place to be able to evidence compliance with the Client Money Provisions.”*
49. Under COB Rule A6.2.2, “*an Authorised Firm must:*
- a. *comply with the Safe Custody Provisions; and*
  - b. *have adequate systems and controls in place to be able to evidence compliance with the Safe Custody Provisions”.*

*Payments to Company A and Company B*

50. As detailed above, during the Relevant Period LT made payments of Client Money to Company A and Company B from its Client Account as part of the Cash Process without instructions from the Client to make such payments (which instructions were rather to make cash withdrawals), and with no underlying payment obligation of the Client to Company A or Company B.

*Use of Safe in Switzerland*

51. LT had a large number of customers who were based in Western Europe and to facilitate the delivery of physical cash to those customers as part of the Cash Process, it hired a physical safe that was located in Locarno in Switzerland (**Swiss Safe**). The Swiss Safe was also used by customers who wished to deposit physical cash with LT, since the custodians which held LT's Client Accounts would not accept physical cash.
52. The Swiss Safe was used to store Client Money in the form of physical cash, either as a result of a deposit by a customer, or after the Cash Process had been used and the cash transported from the UAE to Switzerland by Senior Manager A or Individual A. In order for a customer to deposit into, or obtain physical cash from a withdrawal out of, the Swiss Safe, he or she would attend the office where the Swiss Safe was located with Senior Manager A who was the authorised signatory for the safe.
53. In order to account for the Client Money in the Swiss Safe, LT created an entity in its accounting system that was treated in the same way as its custodian banks. In this way, LT treated the money in the Swiss Safe as being part of the pooled Client Money resource of LT up until the point at which it was received by a customer who had made a request to receive physical cash to be delivered in Switzerland from the UAE, and a signed receipt had been obtained.

*Client Asset Systems and Controls*

54. As referred to at paragraph 17 above, the New Management's BPR Report noted some key issues with regard to the safeguarding and management of Client Assets at LT. In particular, there were unreconciled differences in the cash and securities balances, whereby the balances in LT's own books and records did not match those of the custodian banks'

positions. As at the date of the reconciliation (13 February 2017), the BPR Report states that:

- a. there was a shortfall of \$6,857,894 in respect of Client Money;
  - b. 4.83 million quantity of securities reported in LT's books and records did not appear in the custodians' positions;
  - c. 1.96 million quantity of securities appeared in the custodians' bank statements, but not in the books and records of LT;
  - d. some balances could not be verified due to a lack of bank statements or information within the back office of LT;
  - e. Client Money was being held in a safe in Switzerland (i.e. the Swiss Safe), the balance of which could not be verified; and
  - f. the portfolio with the highest AUM at LT had no client file or account opening documents and appeared to have had other client portfolios transferred into it, without the underlying documents being found.
55. With regard to the issues around reconciliation of Client Assets at a) to c) above, explanations provided in the BPR Report state that the discrepancies were based on:
- a. accounting misalignment as between the internal books and records of LT; and
  - b. the execution of transactions (which had been requested by Clients) at the custodian banks, due to a lack of management/compliance approval within LT. There was no suggestion that any Client Assets were missing or had been misappropriated.
56. In August 2017, at the request of LT, an update to the BPR Report was produced by the BPR service provider (**BPR Update Report**) to assess the implementation of the recommendations identified in the Report. The BPR Update Report stated that the discrepancies in relation to Client Assets and the lack of information/bank statements, as referred to above at paragraph 54.a to 54.d, had been resolved as of 29 June 2017. The lack of client file and account opening documents for LT's largest portfolio had also been resolved.

## **SUMMARY OF CONTRAVENTIONS**

57. Having regard to the facts and matters set out above, the DFSA considers that, during the Relevant Periods, LT contravened the following DFSA administered laws and Rules.

### **Unauthorised Activity**

58. By providing the Cash Service to its customers as set out in paragraphs 22 to 29 above, LT was carrying on the Financial Service of Providing Money Services in or from the DIFC.

59. For the purposes of GEN Rule 2.3.1, LT carried on the Cash Service in a manner which in itself constituted the carrying on of a business, as follows:

- a. the Cash Service was regularly and repeatedly provided by LT to its customers, 122 times;
- b. the Cash Service was operated by LT for a substantial duration: over the course of almost two years;
- c. the amounts of physical cash provided were significant and in many cases, substantial: amounts ranged from €2,560 to €500,000, with the average value being over USD 60,000;
- d. a separate and substantial fee (compared to other fees) was charged for the Cash Service: 5% of the cash withdrawal amount; and
- e. the Cash Service was embedded in the business operations of LT: it developed the Cash Process in order to carry on the Cash Service and involved many, if not all, of its management and employees.

60. The DFSA therefore considers that, in the period 19 February 2015 to 11 January 2017, LT contravened Article 41(1) of the Regulatory Law as it carried on this Financial Service when it was not an Authorised Firm with a Licence authorising it to do so and furthermore because all Authorised Firms are prohibited by GEN Rule 2.2.4 from carrying on this particular Financial Service.

61. An exclusion to the definition of Providing Money Services is provided at GEN Rule 2.6.2 that:

*“A Person who is an Authorised Firm does not Provide Money Services if it does so in relation to the carrying on of another Financial Service where Providing Money Services is in connection with and a necessary part of that other Financial Service.”*

62. This exclusion is not relevant in the case of LT, since Providing Money Services was not in connection with, nor a necessary part of, any other Financial Service it provided. As LT itself noted in the Suspicions Report, “*the provision of [physical] cash withdrawal services is an unusual activity for a wealth management firm to provide*”.

#### **Misleading, Deceptive and Dishonest Conduct**

63. Article 41B of the Regulatory Law (in force from 21 August 2014 onwards) prohibits a person from, in or from the DIFC, engaging in conduct in connection with a Financial Product or a Financial Service that is:
- misleading or deceptive or likely to mislead or deceive;
  - fraudulent; or
  - dishonest.
64. A Financial Service includes the activities listed in GEN Rule 2.2.2. As stated in paragraph 24, these activities include Providing Money Services.
65. In relation to the conduct as described in paragraphs 27 to 44 above, namely:
- the intentional and prolonged use of false invoices as part of the Cash Process;
  - failing to disclose to clients that Company A and Company B were in receipt of their Client Money as part of the Cash Process;
  - the provision of information known to be false to a bank in response to enquiries regarding the nature and purpose of a transaction; and
  - the use of a letter known to provide false information as to beneficial ownership to support the transportation from the UAE to a foreign country of large amounts of physical cash,

LT engaged in conduct in connection with a Financial Service that was dishonest, and misleading or deceptive or likely to mislead or deceive. In so doing, LT contravened Article 41B of the Regulatory Law.

66. The DFSA's finding that, during the Relevant Period, LT's conduct was dishonest was reached after applying the relevant legal test, that is, that LT's conduct was dishonest by the objective standards of ordinary, reasonable and honest persons. Such persons would consider it dishonest to:
  - a. use false invoices;
  - b. provide false information to a bank in response to compliance enquiries; and
  - c. use a letter containing false information as to the beneficial ownership of client money to enable the transportation of physical cash across international borders.
67. The DFSA's finding that LT's conduct was misleading or deceptive, or likely to mislead or deceive, is based on the same reasons for its findings with regard to its findings that the conduct was dishonest.
68. In addition, the DFSA considers it more likely than not that LT's conduct caused its customers to be misled or deceived into believing that LT had regulatory approval to provide the Cash Service, and that the customers' money would not be transferred to third parties that are unknown to them (particularly via the use of false invoices).

### **Breach of Client Asset Requirements**

69. In relation to the conduct described in paragraphs 27 to 30 and 45 to 53 above and under the provisions of Rule A5.4.1 of COB, none of:
  - a. the Personal Bank Account;
  - b. the bank account of Company A;
  - c. the bank account of Company B; or
  - d. the arrangements around monies that were held by LT in the Swiss Safe;constituted a Client Account as required when dealing with Client Money.

70. Furthermore, payments to Company A and Company B did not constitute Client Money being paid to the Client on whose behalf the Client Money was held, nor in accordance with a Client instruction on whose behalf the Client Money was held.
71. Therefore, in the period from 17 September 2015 to 11 January 2017, the DFSA considers that LT contravened COB Rule A5.8.2, by not holding amounts of Client Money in a Client Account at all times when it was required to do so.
72. In relation to the conduct and circumstances described in paragraphs 54 to 56 above, between 1 February 2016 and 11 January 2017, LT failed to fully comply with:
  - a. the Client Money Provisions and to have systems and controls in place to be able to evidence compliance with the same. In doing so, LT contravened COB Rule A5.2.2; and
  - b. the Safe Custody Provisions and to have systems and controls in place to be able to evidence compliance with the same. In doing so, LT contravened COB Rule A6.2.2.

### **Breach of DFSA Principles for Authorised Firms**

73. The conduct giving rise to the contraventions summarised in paragraphs 58 to 72 above also demonstrate that, during the Relevant Period, LT contravened the following Rules:
  - a. GEN Rule 4.2.2 (Authorised Firm Principle 1 – Integrity) – in that LT made payments from Client Money it held or controlled on the basis of invoices that it knew to be false and in circumstances that gave rise to an increased risk of money laundering;
  - b. GEN Rule 4.2.3 (Authorised Firm Principle 3 – Management, systems and controls) – in that LT failed to ensure that its affairs were managed effectively and responsibly by its senior management and to have adequate systems and controls to ensure, so far as is reasonably practicable, that it complies with legislation applicable in the DIFC, contrary to Authorised Firm Principle 3. It did this by carrying on the prohibited Financial Service of Providing Money Services, which was acting outside the terms of its Licence in breach of the Regulatory Law; and
  - c. GEN Rule 4.2.9 (Authorised Firm Principle 9 – Customer assets and money) – in that LT failed to arrange proper protection for Client Assets (including Client Money and Client

Investments) and made payments from its Client Accounts otherwise than in accordance with the client's instructions.

## ACTION

74. In deciding to take 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**).
75. The DFSA considers the following factors to be of particular relevance in this matter:
  - a. the DFSA's objectives, in particular 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));
  - b. the nature and seriousness of the contraventions, as summarised in paragraph 5 above;
  - c. the compliance history of LT, as set out above at paragraphs 12 and 13;
  - d. the deterrent effect of the action and the importance of deterring LT and others from committing further or similar contraventions;
  - e. the fact that the contraventions, as summarised in paragraph 5, were committed prior to the time at which LT's New Management became responsible for managing LT; and
  - f. LT has wound down its business and is in the process of withdrawing its Licence.
76. 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

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

*Step 1 – Disgorgement*

78. LT earned the equivalent of USD 219,773 in fees for the 122 transactions it facilitated under the Cash Service.
79. The DFSA considers the fees earned by LT to be an economic benefit gained directly from its contraventions and, to deprive LT of those economic benefits, accordingly disgorges this amount.
80. With reference to RPP 6-5-1, the DFSA ordinarily charges interest on such a benefit. In this particular matter, this interest was calculated using a simple (non-compounding) annual interest rate of 4% over the particular 3-month Emirates Interbank Offer Rate (EIBOR) applicable on the date of the relevant transaction or when the customer confirmed receipt of the funds, calculated daily from that date until the date of this Notice. This results in various interest rates of between 4.69143% and 5.71250% applied to the 122 cash withdrawal fees received by LT in 2015, 2016 and 2017, respectively. This resulted in an interest amount (as at the date hereof) of USD 41,381.
81. The figure after Step 1 is therefore USD 261,154, comprising USD 219,773 in fees plus USD 41,381 in interest.

*Step 2 – The seriousness of the contraventions*

82. The DFSA considers LT's contraventions to be particularly serious because LT:
- engaged in activity beyond the scope of its Licence, which was also a Financial Service which no firm in the DIFC could provide;
  - carried out the Cash Service through the deliberate use of false invoices and the transportation of large amounts of physical cash from the UAE to a foreign country (which practice is associated with a high risk in relation to money laundering), all of which was done with the full knowledge and involvement of the Previous Management;
  - through its actions in carrying on the Cash Service, acted in a way that was likely to mislead clients as to the services LT was authorised to provide to its clients, because it represented that it could provide the Cash Service when in fact it was not authorised to do so;

- d. systemically executed large transfers of Client Money to unregulated companies outside the DIFC without the consent or knowledge of its clients;
- e. misled another DFSA Authorised Firm (the Custodian) and a UAE bank which was making enquiries on the basis of AML due diligence checks regarding certain Cash Service transactions;
- f. demonstrated a fundamental failure to conduct its business with integrity; and
- g. failed to ensure that its affairs were managed effectively and responsibly by its senior management, and to have adequate systems and controls to prevent LT from facilitating the Cash Service transactions.

83. Taking the above factors into account the DFSA considers that a penalty element of USD 439,546 (representing twice the amount of Cash Service fees LT received) appropriately reflects the seriousness of the contravention.

84. Therefore, after this step, the total financial penalty amount (including the disgorged benefit of USD 261,154) is USD 700,700.

*Step 3 – Mitigating and aggravating factors*

- 85. In considering the appropriate level of the financial penalty, the DFSA had regard to the circumstances of this matter and the factors set out in RPP 6-5-8.
- 86. The DFSA has taken into account the following mitigating factors in determining the appropriate level of fine:
  - a. almost the contraventions were committed prior to the time at which LT's New Management became responsible for managing LT;
  - b. the Cash Service ceased at the time that LT's New Management became responsible for managing LT;
  - c. following the change in control in January 2017 and the commencement of the BPR in February 2017, LT complied with its regulatory obligations in bringing the contraventions regarding the Cash Service to the attention of the DFSA in an effective and complete manner in May 2017; and

- d. LT also, for example as part of the BPR process, took proactive steps to identify and mitigate certain regulatory failings.
87. The DFSA has also taken into consideration that LT has expressed an intention and taken steps to withdraw its Licence, and that, since February 2017, LT has been carrying on only very restricted business operations by agreement with the DFSA.
88. The DFSA has taken these factors into account and considers that the figure after Step 2 (excluding the disgorged benefits) should be reduced by 20%. This results in the penalty element figure reducing from USD 439,546 to USD 351,636 (a reduction of USD 87,910). Accordingly, and including the disgorged benefits of USD 261,154 from Step 1, the figure after Step 3 is reduced to USD 612,790.

*Step 4 – Adjustment for deterrence*

89. Pursuant to RPP 6-5-9, if the DFSA considers that the level of the financial penalty which it has arrived at after Step 3 is insufficient to deter the firm who committed the contravention, or others, from committing further or similar contraventions, then the DFSA may increase it. RPP 6-5-9 sets out the circumstances where the DFSA may do this.
90. The DFSA considers that the figure after Step 3 is sufficient for the purposes of deterring LT and others from committing further or similar contraventions. Accordingly, the DFSA does not consider it appropriate to adjust the amount of the financial penalty arrived at after Step 3 for the purposes of deterrence.
91. Accordingly, the figure after Step 4 remains at USD 612,790.

*Step 5 – Settlement discount*

92. Where the DFSA and the person on whom the financial penalty is to be imposed agree on the amount and other terms, RPP 6-5-10 provides that the amount of the financial penalty (excluding any disgorged benefits) which might otherwise have been payable will be reduced to reflect the stage at which agreement is reached.
93. The DFSA and LT have reached agreement on the relevant facts and matters relied on and the amount of fine that would be imposed. Consistent with its policy in RPP 6-8, and because this agreement was reached after the period which the DFSA had set for the

settlement discount to be available, the DFSA has not applied the 30% discount to the penalty.

94. Accordingly, and including the disgorged benefits of USD 261,154 from Step 1, the figure after Step 5 remains USD 612,790.

#### **The level of the Fine imposed**

95. Given the factors and considerations set out in paragraphs 77 to 94 above and the circumstances of this matter, the DFSA has determined that it is proportionate and appropriate to impose on LT the Fine of USD 612,790 comprising:

- a. disgorgement of USD 261,154, made up of USD 219.773 in fees for the Cash Service transactions it facilitated, plus USD 41,381 in interest; and
  - b. a penalty amount of USD 351,636.
96. In deciding to impose the Fine in the amount above, the DFSA acknowledges the following:
- a. LT is currently winding down its business and intends to withdraw its Licence; and
  - b. the impact that the imposition of a significantly large fine may have on LT's winding down of its business, including a possible delay in the return of Client Money belonging to LT's clients.
97. Notwithstanding these factors, the DFSA considers LT's contraventions to be so serious that it is not appropriate to further reduce the Fine. Further, the DFSA considers it appropriate to impose the Fine of the amount set out above in order to deter others from committing further or similar contraventions to those committed by LT.

#### **PROCEDURAL MATTERS**

##### **Decision Making Committee**

98. The decision which gave rise to the obligation to give this Notice was made by the Decision Making Committee of the DFSA.
99. This Notice is given to LT under paragraph 3(2) of Schedule 3 to the Regulatory Law.

##### **Manner and time for payment**

100. The Fine must be paid no later than 28 days from the date on which this Notice is given to LT.
101. If all or any part of the Fine remains outstanding on the date by which it must be paid, the DFSA may recover the outstanding amount as a debt owed by LT and due to the DFSA. Before taking any action to recover any outstanding amount, the DFSA will consider LT's circumstances at that time and the corresponding implications of enforcing the Fine for LT's creditors.

#### **Evidence and other material considered**

102. Annex A sets out extracts from some statutory and regulatory provisions and guidance relevant to this Notice.
103. The DFSA made available a copy of the relevant materials that were considered in making the decision which gave rise to the obligation to give this Notice.

#### **Right of review by the Financial Markets Tribunal (FMT)**

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

#### **Publicity**

105. 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.
106. In accordance with Article 116(2), the DFSA will publicise the action taken in this Notice and the reasons for that action. This may include publishing the Notice itself, in whole or in part.
107. LT will be notified of the date on which the DFSA intends to publish information about this decision.

### **DFSA contacts**

108. For more information concerning this matter generally, please contact the Administrator to the DMC on +971 4 362 1681 or by email at DMC@dfsae.ae.

Signed:

A handwritten signature in blue ink, appearing to read "LJ Paramasivam".

Lawrence Paramasivam  
On behalf of the Decision Making Committee of the DFSA

## ANNEX A – RELEVANT STATUTORY AND REGULATORY PROVISIONS

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### **1. RELEVANT LEGISLATION**

#### **Regulatory Law No. 1 of 2004 (Regulatory Law 2004)**

Article 8(3) of the Regulatory Law 2004 sets out the DFSA's objectives.

#### ***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:*

(...)

(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;*

(...)

#### ***41. The Financial Services Prohibition***

(1) *Subject to Article 41(9) and Article 42(3), a person shall not carry on a Financial Service in or from the DIFC.*

(2) *The DFSA shall make Rules prescribing the activities which constitute a Financial Service.*

(3) *The prohibition in Article 41(1) is referred to in the Law as the "Financial Services Prohibition".*

(4) *The DFSA may make Rules adding to, removing activities from, or otherwise modifying the list of Financial Services made under Article 41(2).*

(5) *A person shall, in engaging in activity constituting a Financial Service, or in engaging in any like activity that may constitute a Financial Service except for the form and manner in which the activity is carried out, comply with Federal Law to the extent that such law applies in the DIFC.*

(6) *DELETED*

(7) *DELETED*

(8) *DELETED*

(9) A Fund is exempt from the Financial Services Prohibition with respect to any Financial Service which is carried on for the purposes of, or in connection with, the Fund if the Fund has a Fund Manager or External Fund Manager that falls within Article 42(3) (a) or (b). This exemption applies to a Fund even where it does not have legal personality.

#### **41B. General prohibition against misconduct**

(1) A person must not, in or from the DIFC, engage in conduct in connection with a Financial Product or a Financial Service that is:

- (a) misleading or deceptive or likely to mislead or deceive;
- (b) fraudulent; or
- (c) dishonest.

(2) The DFSA shall make Rules prescribing what constitutes a Financial Product for the purposes of Article 41B(1).

(3) Nothing in this Article limits the scope or application of any other provision in legislation administered by the DFSA.

#### **42. Authorised Firms, Authorised Market Institutions and Financial Services**

(...)

(3) A person may carry on one or more Financial Services in or from the DIFC if such person is:

- (a) an Authorised Firm whose Licence authorises it to carry on the relevant Financial Services;

(...)

#### **78. Power of the DFSA to conduct an investigation**

(1) The DFSA may conduct such investigation as it considers appropriate and expedient under Chapter 2 of Part 5:

(a) where it has reason to suspect that a contravention of the Law or of the Rules or of any other legislation administered by the DFSA is being or may have been committed; or

(b) further to a request made under Article 39.

(2) A person is entitled to legal representation during the course of an investigation.

#### **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;*
  - (b) *censure the person in respect of the contravention;*
  - (c) *make a direction requiring the person to effect restitution or compensate any other person in respect of the contravention within such period and on such terms as the DFSA may direct;*
  - (d) *make a direction requiring the person to account for, in such form and on such terms as the DFSA may direct, such amounts as the DFSA determines to be profits or unjust enrichment arising from the contravention;*
  - (e) *make a direction requiring the person to cease and desist from such activity constituting or connected to the contravention as the DFSA may stipulate;*
  - (f) *make a direction requiring the person to do an act or thing to remedy the contravention or matters arising from the contravention; or*
  - (g) *make a direction prohibiting the person from holding office in or being an employee of any Authorised Person, DNFBP, Reporting Entity or Domestic Fund.*
- (...)

(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.*

## **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 and of the Court, censures, and any other matters which the DFSA considers relevant to the conduct of affairs in the DIFC.*

### **Schedule 3 – Decision Making Procedures**

#### **3. Decisions to which procedures do not apply**

(1) *The procedures in this Schedule (other than sub-paragraph (2) of this paragraph) do not apply to a decision by the DFSA:*

- (a) *to withdraw a direction, requirement, restriction or prohibition;*
- (b) *to withdraw a condition or restriction imposed in relation to a Licence, Licence Endorsement, registration, authorisation or approval; or*
- (c) *in relation to a person, if the person has requested, or consented in writing to, the making of the decision.*

(2) *In the cases referred to in sub-paragraph (1), the DFSA must notify the person in writing of the decision and the date on which it is to take effect.*

## **2. RELEVANT DFSA RULEBOOK PROVISIONS**

### **Conduct of Business (COB)**

#### **A5.2.1**

(1) *The provisions of this appendix [App5 of COB] are referred to as the Client Money Provisions.*

#### **A5.2.2**

*An Authorised Firm which holds or controls Client Money for a Segregated Client must:*

- (a) comply with the Client Money Provisions in relation to that Client Money; and*
- (b) have systems and controls in place to be able to evidence compliance with the Client Money Provisions.*

#### **A5.4.1**

*A Client Account in relation to Client Money is an account which:*

- (a) is held with a Third Party Agent;*
- (b) is established to hold Client Assets;*
- (c) is maintained in the name of;*
  - (i) if a Domestic Firm, the Authorised Firm; or*
  - (ii) if a non-Domestic Firm, a Nominee Company controlled by the Authorised Firm; and*
- (d) includes the words 'Client Account' in its title.*

#### **A5.8.2**

*Subject to Rule A5.8.3, a Segregated Client's Client Money must remain in a Client Account until it is:*

- (a) due and payable to the Authorised Firm;*
- (b) paid to the Client on whose behalf the Client Money is held;*
- (c) paid in accordance with a Client instruction on whose behalf the Client Money is held;*
- (d) required to meet the payment obligations of the Client on whose behalf the Client Money is held; or*
- (e) paid out in circumstances that are otherwise authorised by the DFSA.*

#### **A6.2.1**

(1) *The provisions of this appendix [App6 of COB] are referred to as the Safe Custody Provisions.*

#### **A6.2.2**

*An Authorised Firm must:*

- (a) *comply with the Safe Custody Provisions; and*
- (b) *have adequate systems and controls in place to be able to evidence compliance with the Safe Custody Provisions.*

### **General Module (GEN)**

#### **2.2 Financial Service Activities**

**2.2.1** *An activity constitutes a Financial Service under the Regulatory Law and these Rules where:*

- (a) *it is an activity specified in Rule 2.2.2; and*
- (b) *such activity is carried on by way of business in the manner described in section 2.3.*

**2.2.2** *The following activities are specified for the purposes of Rule 2.2.1:*

- (...)
- (c) *Providing Money Services;*
- (...)

**2.2.3** *Each activity specified in Rule 2.2.2:*

- (a) *is to be construed in the manner provided under these Rules; and*
- (b) *is subject to exclusions under these Rules which may apply to such an activity.*

**2.2.4** *Pursuant to Article 42(1)(a) of the Regulatory Law 2004 an Authorised Firm, subject to the Rules, may carry on any one or more Financial Services other than Providing Money Services.*

#### **2.3 By way of business**

**2.3.1** *Subject to Rules 2.3.2 and 2.3.3, for the purpose of these Rules a Person carries on an activity by way of business if the Person:*

- (a) *engages in the activity in a manner which in itself constitutes the carrying on of a business;*
- (b) *holds himself out as willing and able to engage in that activity; or*

(c) regularly solicits other Persons to engage with him in transactions constituting that activity.

## **2.6 Providing money services**

### **2.6.1**

(1) In Rule 2.2.2, *Providing Money Services* means providing currency exchange or money transmission.

(2) In (1) ‘money transmission’ means:

(a) selling or issuing payment instruments;

(b) selling or issuing stored value; or

(c) receiving money or monetary value for transmission, including electronic transmission, to a location within or outside the DIFC.

### ***Exclusions***

**2.6.2** A Person who is an Authorised Firm does not Provide Money Services if it does so in relation to the carrying on of another Financial Service where Providing Money Services is in connection with and a necessary part of that other Financial Service.

## **Chapter 4 – Core Principles**

(...)

### **4.2 The Principles for Authorised Firms**

#### ***Principle 1 - Integrity***

**4.2.1** An Authorised Firm must observe high standards of integrity and fair dealing.

(...)

#### ***Principle 3 - Management, systems and controls***

**4.2.3** An Authorised Firm must ensure that its affairs are managed effectively and responsibly by its senior management. An Authorised Firm must have adequate systems and controls to ensure, as far as is reasonably practical, that it complies with legislation applicable in the DIFC.

(...)

#### ***Principle 9 - Customer assets and money***

**4.2.9** Where an Authorised Firm has control of or is otherwise responsible for assets or money belonging to a customer which it is required to safeguard, it must arrange proper protection for them in accordance with the responsibility it has accepted.

### **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) (February 2017 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 B – DEFINITIONS**

<b>Defined Term</b>	<b>As Defined in the Draft Decision Notice</b>
<i>AML</i>	Anti-money laundering requirements (in a general sense)
<i>BPR</i>	The business process review (or internal audit) carried out on behalf of LT in February 2017, as described at paragraph 17 of the Notice.
<i>BPR Report</i>	The report dated 11 May 2017 resulting from the BPR, as described at paragraph 19 of the Notice
<i>BPR Update Report</i>	The update to the BPR Report in August 2017, as described at paragraph 56 of the Notice
<i>Cash Letter</i>	The template letter that was used by LT employees and management when large amounts of physical cash were being transported from Dubai to Switzerland as part of the Cash Process
<i>Cash Process</i>	The process that was used by LT to provide the Cash Service from around 13 November 2015 to 11 January 2017, as described at paragraph 28 of the Notice
<i>Cash Service</i>	The physical cash withdrawal service provided by LT to certain of its customers
<i>Cash Withdrawal File</i>	The hard copy folder of documents where LT kept receipts and other documents related to the Cash Service
<i>Company A</i>	The unregulated third-party company based in Dubai, which was used by LT to facilitate the Cash Service from around 13 November 2015 to 27 October 2016

<b>Defined Term</b>	<b>As Defined in the Draft Decision Notice</b>
<i>Company B</i>	The unregulated third-party company based in Dubai, which was used by LT to facilitate the Cash Service from around 27 October 2016 to 11 January 2017
<i>Company C</i>	The company connected via common ownership to Company A and Company B, and which operated a regulated money exchange business in Dubai, from whose offices the physical cash was collected as part of the Cash Process
<i>Custodian</i>	The custodian bank of LT, from which an email was received in January 2017, which contained queries concerning LT's payment related to Invoice A
<i>Fine</i>	The financial penalty imposed on LT, as described in paragraph 1 of the Notice
<i>Individual A</i>	The external asset manager of LT who was connected to Company A via a relative and liaised with Company A or Company B to provide the false invoices to LT via email
<i>Invoice A</i>	An invoice from Company B dated 3 December 2016 for €351,900, which differed in format from other invoices used as part of the cash process, as described at paragraph 34 of the Notice
<i>LT</i>	La Tresorerie Limited
<i>Notice</i>	The Draft Decision Notice dated 28 November 2019 addressed to LT
<i>Personal Bank Account</i>	The bank account controlled by a member of LT's Previous Management in place at that time, which was used to facilitate the Cash Service for two different customers
<i>Relevant Period</i>	Each period of time described in sub-paragraphs a. to e. of paragraph 5 of the Notice, being the duration over which each contravention respectively persisted
<i>RMP</i>	The risk mitigation programme LT was required by the DFSA to carry out between April and July 2015, to address deficiencies identified by the

<b>Defined Term</b>	<b>As Defined in the Draft Decision Notice</b>
	DFSA within LT's compliance and AML framework relating to rules around customer due diligence and on-boarding
<i>Senior Manager A</i>	The member of LT's Previous Management who, as part of the Cash Process: <ul style="list-style-type: none"> <li>• signed the Cash Letter;</li> <li>• used the Cash Letter in November 2016 when they were carrying a large amount of cash and had been stopped by a customs official at Dubai International Airport; and</li> <li>• was the authorised signatory and facilitated the use of the Swiss Safe</li> </ul>
<i>SEO</i>	The Senior Executive Officer, as defined in GLO
<i>Suspicions Report</i>	The report made on 1 May 2017 to the DFSA by LT, in line with its regulatory obligations, concerning suspicions about transactions that indicated potential money laundering
<i>Swiss Safe</i>	The physical safe located in Locarno Switzerland that was used by LT as part of the Cash Process
<i>TMP</i>	LT's transaction monitoring process document dated 28 September 2015