



*On 17 August 2019, Dr Mubashir Ahmed Sheikh referred this decision to the Financial Markets Tribunal (FMT) (ref. FMT 19006).*

*On 20 October 2020, the FMT issued its decision in respect of the reference. The FMT's decision is published on the FMT section of the DFSA's website.*

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## DECISION NOTICE

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**To:** Dr Mubashir Ahmed Sheikh

**DFSA Reference No.:** I000155

**Date:** 18 July 2019

### 1. ACTION

1.1. For the reasons given in this Notice, the Dubai Financial Services Authority (**DFSA**) considers that Dr Mubashir Ahmed Sheikh (**Dr Sheikh**) contravened legislation administered by the DFSA and has decided to impose on Dr Sheikh:

- (a) a direction, pursuant to Article 90(2)(c) of the Regulatory Law 2004, requiring Dr Sheikh to pay MAS ClearSight Ltd (in liquidation) (**MAS**) the sum of USD614,228. This figure is comprised of USD512,457 of MAS' money which Dr Sheikh withdrew in May and June 2015, plus interest totalling USD101,771 (the **Restitution Direction**);
- (b) a fine, pursuant to Article 90(2)(a) of the Regulatory Law 2004, of USD400,000 (the **Fine**); and
- (c) a prohibition, pursuant to Article 90(2)(g) of the Regulatory Law 2004, from holding office in or being an employee of any Authorised Person, DNFBP, Reporting Entity or Domestic Fund (the **Prohibition**).

1.2. For the reasons given in this Notice, the DFSA has decided to also restrict Dr Sheikh, pursuant to Article 59(1) of the Regulatory Law 2004, from performing any functions in connection with the provision of Financial Services in or from the DIFC (the **Restriction**).

1.3. The Prohibition and the Restriction take effect from the date of this Notice.

*Note: This published version of the Decision Notice has been edited to correct some typographical/formatting errors and remove certain confidential, sensitive or personal information.*

## 2. DEFINITIONS

- 2.1. This Notice identifies defined terms by using an acronym or the capitalisation of the initial letter of a word, or of each word in a phrase. Defined terms are defined either in this Notice (including in Annex B), or in the Glossary Module of the DFSA Rulebook (**GLO**). Where a term is defined both in this Notice and in GLO, the definition in this Notice takes precedence. Unless the context otherwise requires, where a term is not defined, it has its natural or ordinary meaning.
- 2.2. Unless stated otherwise, references in this Notice to numbered “Articles” are to articles of the Regulatory Law 2004.

## 3. SUMMARY OF REASONS

- 3.1. In May and June 2015, Dr Sheikh was the chairman, Licensed Director, acting Senior Executive Officer (**SEO**) and the majority shareholder of MAS. Due to DFSA concerns regarding MAS’ weak financial position, MAS had been reporting its financial position to the DFSA each month since March 2013.
- 3.2. In early May 2015, Dr Sheikh arranged for almost all of MAS’ funds to be transferred from its USD account to its AED account. At the same time, Dr Sheikh took control of the chequebook for MAS’ AED account away from a MAS employee, and instructed that same employee not to use the online banking system for MAS’ bank accounts. In doing so, Dr Sheikh effectively gave himself exclusive day-to-day control or oversight of MAS’ bank accounts.
- 3.3. In May and June 2015, Dr Sheikh then withdrew the equivalent of USD512,457 in cash from MAS’ AED account using 15 cheques, at least 14 of which he had signed personally. Dr Sheikh deliberately concealed those withdrawals from others at MAS. Dr Sheikh’s withdrawals caused MAS’ Liquid Assets to fall significantly below the minimum amount required to be maintained under the DFSA’s prudential rules.
- 3.4. Further, Dr Sheikh caused MAS to misreport its financial position to the DFSA in its monthly financial report for May 2015 (the **May 2015 Financial Report**). In particular, on 7 June 2015, MAS submitted the May 2015 Financial Report to the DFSA which claimed, incorrectly, that MAS had complied with its obligation to maintain Liquid Assets of at least USD600,000 in May 2015. In fact, because of Dr Sheikh’s withdrawals, MAS did not comply with that obligation.
- 3.5. Dr Sheikh concealed the withdrawals from others at MAS and caused MAS to misreport its financial position to the DFSA by: (i) instructing a MAS employee to hand over to him MAS’ chequebook; (ii) directing the same MAS employee to not use MAS’ online banking system; (iii) refusing to provide bank statements to MAS staff involved in preparing the May 2015 Financial Report; and (iv) representing to those MAS staff that there had been no transactions on MAS’ accounts in May 2015. Dr Sheikh knew that his representations were false and that others would rely on them in preparing the May 2015 Financial Report.
- 3.6. Dr Sheikh made further representations in May 2015 to MAS’ senior management concerning payments received and revenue earned for that month. These representations were also false.

- 3.7. In July 2016, one year later, Dr Sheikh provided an explanation of events to the DFSA during the course of the DFSA's investigation. This explanation included alleged loans and transactions concerning potential MAS investors, namely Investors A and B. This version of events was inconsistent with facts inferred from contemporaneous evidence. Dr Sheikh's explanations were implausible and appear to have been fabricated after the event.
- 3.8. During October 2018 and March 2019, more than three years later, Dr Sheikh provided a further explanation of events through formal representations in response to the allegations raised in these proceedings. These representations included new witness statements and transactions. These representations were also implausible and not supported by any contemporaneous evidence.
- 3.9. The DFSA considers that Dr Sheikh's dishonest and deceptive conduct in connection with the withdrawal of MAS funds and subsequent implausible explanation of events given to the DFSA during the course of its investigation, demonstrates a lack of integrity. Therefore, as an Authorised Individual at the relevant time, Dr Sheikh contravened GEN Rule 4.4.1 (Authorised Individual Principle 1 – Integrity).
- 3.10. The DFSA also considers that as a result of causing MAS to misreport its financial position to the DFSA, Dr Sheikh provided information which was false, misleading or deceptive to the DFSA and concealed information where the concealment of such information was likely to mislead or deceive the DFSA, contrary to Article 66 of the Regulatory Law 2004.
- 3.11. The DFSA also considers that Dr Sheikh's withdrawals caused MAS' Liquid Assets to fall below the minimum amount required under the DFSA's prudential rules. As a result, Dr Sheikh was knowingly concerned in MAS' breach of PIB Rule 3.5.3(1) and GEN Rule 4.2.4 (Authorised Firm Principle 4 - Resources) which required MAS to maintain adequate financial resources.
- 3.12. In the circumstances, the DFSA considers it appropriate to take the action in this Notice to penalise Dr Sheikh for committing the contraventions, and repair some of the harm caused by his misconduct. This includes depriving Dr Sheikh of the economic benefits he derived from his contraventions.
- 3.13. Further, the DFSA considers that Dr Sheikh's conduct demonstrates a lack of integrity to the extent he is not fit and proper to perform any function in connection with Financial Services in or from the DIFC. It is therefore necessary and appropriate in the circumstances to impose the Restriction and the Prohibition in order to maintain the integrity and reputation, and to protect direct and indirect users, of the DIFC.

## 4. FACTS AND MATTERS RELIED ON

### Background

- 4.1. On 27 October 2009, the DFSA authorised MAS as a Category 4 Authorised Firm to provide the Financial Services of Arranging Credit or Deals in Investments, Advising on Financial Products or Credit, and Arranging Custody. MAS' status as an Authorised Firm was subsequently withdrawn on 18 January 2016 and it is currently in liquidation.
- 4.2. MAS marketed itself as an investment and corporate banking advisory business that specialised in developing multi-asset class investment strategies, feasibility and analysis, advisory and risk mitigation techniques. Part of its business included providing private banking advisory services and arranging investments for clients with third parties.
- 4.3. Dr Sheikh held the majority shareholding in MAS, with approximately 80% of shares. Dr Sheikh was authorised by the DFSA to perform the Licensed Function of SEO at MAS from 27 October 2009 until 1 May 2013.
- 4.4. At the time of his misconduct in May and June 2015, Dr Sheikh was a Licensed Director of MAS and chairman of its Board. At that time, Dr Sheikh was not authorised by the DFSA to perform the SEO function. However, in the absence of MAS' previous SEO, Dr Sheikh again performed the SEO role in an acting capacity from April 2015. Dr Sheikh's status as an Authorised Individual was withdrawn on 18 January 2016.
- 4.5. MAS outsourced both its Compliance Officer and Finance Officer functions to DIFC-registered consulting firms. The Finance Officer function was performed by Mr Prabhakar Kamath. Mr Kamath reported directly to Dr Sheikh and was responsible for MAS' compliance with the applicable DFSA prudential rules and the submission of monthly financial reports to the DFSA to monitor such compliance.

### MAS' Liquid Assets Requirement

- 4.6. As a Category 4 Authorised Firm which was a Domestic Firm, MAS was required to comply with the applicable Rules set out in the Prudential – Investment, Insurance Intermediation and Banking Module of the DFSA Rulebook (**PIB**).
- 4.7. Pursuant to PIB Rule 3.5.3(1), MAS was required to maintain, at all times, an amount which exceeded its Expenditure Based Capital Minimum (**EBCM**) of USD600,000 in the form of Liquid Assets (the **Liquid Assets Requirement**). The EBCM of MAS, calculated in accordance with PIB section 3.7, was USD600,000. Therefore, MAS' Liquid Assets Requirement was that it must at all times maintain Liquid Assets in excess of USD600,000.
- 4.8. Pursuant to PIB Rule 3.5.3(2), Liquid Assets include cash in hand and money deposited with a regulated bank or deposit-taker, but do not include cash held in Client Money accounts.

## **MAS' monthly financial reporting to the DFSA**

- 4.9. Since 31 March 2013, due to concerns of the DFSA's Supervision Division (**Supervision**) regarding MAS' weak financial position, MAS was required to submit a monthly financial report to the DFSA within seven days of the end of each month. Each monthly financial report was required to contain MAS' balance sheet, profit and loss statement, and calculation of PIB capital adequacy for that month, including whether MAS had met its Liquid Assets Requirement.
- 4.10. During the relevant period from May to June 2015, MAS' Finance Officer, Mr Kamath, was responsible for submitting MAS' monthly financial reports to the DFSA. In preparing MAS' monthly financial reports and to verify the information in them, Mr Kamath or his staff under his direction would obtain and refer to, among other things, MAS' bank account statements for the particular month. Generally, Mr Kamath or his staff would obtain from MAS the bank statements on the first day of the month in which the report was to be submitted, or shortly thereafter.
- 4.11. In April 2015, the MAS employee who previously had some day-to-day accounts and finance monitoring duties had departed from MAS. From around 5 April 2015, Dr Sheikh assigned those duties to another MAS employee (referred to in this Notice as "**Mr X**"). These duties primarily included liaising with MAS' auditors for the external audit for the financial year ending 31 December 2014, and providing documents to Mr Kamath (or Mr Kamath's staff) to assist their preparation of the DFSA monthly financial reports. In this role, Mr X reported directly to Dr Sheikh.
- 4.12. When Mr X received MAS bills or invoices that had to be paid, he would hand them to Mr Kamath or Mr Kamath's staff for processing and entry in MAS' accounting system. As part of his duties, Mr X was given temporary access to MAS' internal accounting system, the login details to the website for accessing MAS' bank accounts, and possession of the physical chequebook for MAS' AED account.
- 4.13. To assist in the preparation of MAS' monthly financial report for the month of April 2015, Mr X accessed MAS' bank account statements by logging in and downloading them from the bank's website.
- 4.14. On 7 May 2015, Mr Kamath submitted MAS' monthly financial report for April 2015 to the DFSA. The report showed that MAS' "cash on current account" was USD627,781 which, when combined with cash in hand of USD602, amounted to Liquid Assets of USD628,383. Therefore, because it held Liquid Assets in excess of its EBCM of USD600,000, MAS complied with its Liquid Assets Requirement in April 2015.

## **Dr Sheikh's signing authority for MAS' bank account**

- 4.15. Since 14 August 2014, Dr Sheikh had authority to withdraw up to AED183,500 at a time from MAS' bank account using his signature alone. Until 14 May 2015, amounts over AED183,500 required a second signature from an appropriately authorised signatory, such as the SEO, the Chief Operating Officer (COO), the Finance Officer or the Company Secretary. However, following a Board Resolution on 14 May 2015, Dr Sheikh became the sole signatory for MAS' bank accounts, with no limits.

## **MAS' deteriorating financial position**

- 4.16. On 1 December 2014, MAS' Board held a meeting, attended by Dr Sheikh, fellow Licensed Directors, and others. The discussion at the meeting included MAS' deteriorating financial position. Dr Sheikh prepared and circulated the minutes of that Board meeting.
- 4.17. The Board minutes record "*Dr Mubashir stated that the first two quarters [of the financial year ending 31 December 2014] were challenging and the revenues posted till the end of Quarter 3 were a little less than a million dollars while the costs incurred by the Company were USD 4.5million...*". Similarly, a MAS employee delivering the finance update stated that revenue for the period to 31 October 2014 was USD845,000, operating costs were USD4.3million, and the net loss was USD3.7million.
- 4.18. The Board minutes noted that "*Due to few [sic] struggling months and to support business continuity Mubashir had loaned USD 1.5million to the Company...*".
- 4.19. The Board minutes record that Dr Sheikh had asked the SEO at the time to step down from the role as part of restructuring the business. It is unclear whether any other MAS employee acted in the role of MAS' SEO from this point in December 2014 and until April 2015.
- 4.20. The Board minutes also recorded discussion about a receivable amount of USD4.7million due from a related party in Pakistan. Dr Sheikh said of that receivable he "*presumes before the audit cycle i.e. end of March 2015 the majority of the receivable shall be received. It is forecasted based on certain activities happening in the Pakistan business.*"
- 4.21. On 17 March 2015, MAS' auditors provided MAS (including Dr Sheikh) with its interim report on its audit for the financial year ending 31 December 2014. In the interim report, the auditors highlighted MAS' financial instability by suggesting that MAS needed to provide for negative adjustments of approximately USD3.3m. This included USD2.5m outstanding from the related party in Pakistan, for which Dr Sheikh was responsible. The auditors informed MAS that "*if these adjustments are passed, it may result in deficiency in meeting the company's minimum capital requirement as required by DFSA*".
- 4.22. At the meeting of MAS' Board on 26 April 2015, which Dr Sheikh attended, the Board again discussed MAS' ongoing deteriorating financial position. Dr Sheikh informed the Board that the SEO had agreed to step down as SEO and that Dr Sheikh would take over that role until MAS was able to find a suitable candidate for the position.
- 4.23. The minutes of the 26 April 2015 Board meeting also record that Dr Sheikh was given the authority to sell MAS, surrender its Licence to the DFSA, or place it into liquidation if MAS could not revive its capital or receivables. The minutes record that "*if all doesn't work in terms of solving the liquidity issues then it leaves no choice but to wind up the company*".
- 4.24. The minutes of the 26 April 2015 Board meeting do not contain any reference to an investment agreement, allegedly dated 20 April 2015, or a purported funding arrangement with Investor A and Investor B described later in paragraphs 4.60 to 4.72.

- 4.25. Dr Sheikh's knowledge of MAS' deteriorating financial position since at least December 2014 led to his subsequent misconduct including his withdrawals of cash from MAS' bank account in May and June 2015, the concealment of those withdrawals including by failing to provide (or provide access to) the bank statements for May 2015 to staff, and his false statement to staff that there were no transactions during May 2015.

**Dr Sheikh's directions to Mr X on or around 3 May 2015 to transfer MAS' money, hand over MAS' chequebook, and stop using the online banking system**

- 4.26. On or around 3 May 2015, Dr Sheikh asked Mr X to transfer all funds (USD600,042 or around AED2,191,955) from MAS' USD account to its AED account, and Mr X did so. Upon completing the transfer, the AED account balance total was AED2,330,402. After that transfer, on around 4 or 5 May 2015, Dr Sheikh instructed Mr X to give him MAS' AED chequebook and not to use the online banking system for MAS' bank accounts. Mr X followed Dr Sheikh's instructions, handed over the AED chequebook to Dr Sheikh and did not use the online banking system after that date. From that point, Dr Sheikh was responsible for liaising with the external auditors, Mr Kamath or Mr Kamath's staff, including providing them with bank statements or anything regarding MAS' transactions.

**Dr Sheikh's concealed withdrawals and transactions in May 2015, causing MAS to breach its Liquid Assets Requirement**

- 4.27. In the period from 5 to 13 May 2015, Dr Sheikh withdrew AED1,697,000 (USD462,083) in cash from MAS' AED bank account by personally signing 12 different cheques using MAS' AED chequebook.
- 4.28. Dr Sheikh's withdrawals (coupled with MAS' lack of sufficient income) meant that, from 5 May 2015 onwards, MAS' Liquid Assets were significantly less than its EBCM of USD600,000. Therefore, from 5 May 2015, MAS was in breach of its Liquid Assets Requirement.
- 4.29. When Dr Sheikh made these cash withdrawals he either knew that, or was reckless as to whether, his actions would cause MAS to breach its Liquid Assets Requirement. This is because:
- (a) he should have been aware that MAS' Liquid Assets Requirement required it to hold Liquid Assets in excess of its EBCM, which was USD600,000;
  - (b) on around 3 May 2015, he caused Mr X to transfer almost all of MAS' funds in its USD account (USD600,042) to MAS' AED account. This represented approximately 94% of the total of MAS' funds in its bank accounts at that time (USD637,740);
  - (c) his 12 cash withdrawals in the period from 5 to 13 May 2015 amounted to AED1,697,000 (USD462,083), which was approximately 77% of the amount transferred on 3 May 2015;
  - (d) due to its ongoing financial difficulties, MAS was unlikely to have enough income coming in, which could make up the significant shortfall between its bank balance and its Liquid Assets Requirement;

- (e) as described above, from around 4 or 5 May 2015 Dr Sheikh had asked Mr X to stop using the online system for MAS' bank accounts and only Dr Sheikh had possession of MAS' chequebook, so Mr X was unable to monitor MAS' bank transactions or account balance; and
  - (f) even if he had been, as he later claimed, attempting to arrange for one or more investors to inject money into MAS, Dr Sheikh had not banked any cheques from those investors or received confirmation of any deposits which would have made up the significant shortfall between MAS' bank balance and its Liquid Assets Requirement.
- 4.30. Further, even if Dr Sheikh had not checked MAS' bank accounts to make himself aware of the balance, this demonstrates that he was reckless as to whether his actions would cause MAS to breach its Liquid Assets Requirement.
- 4.31. Dr Sheikh did not inform anyone at MAS of his cash withdrawals in May 2015 or the likely effect on MAS' Liquid Assets. Given the manner of Dr Sheikh's withdrawals, the DFSA considers that Dr Sheikh deliberately concealed them from MAS.
- 4.32. In a series of emails between 19 and 25 May 2015, certain members of MAS' Board of Directors asked questions of MAS' senior management, including Dr Sheikh, regarding MAS' financial stability. In particular, in an email dated 26 May 2015, one Licensed Director asked if any payments had been made to MAS by a related party in Pakistan since the last Board meeting on 26 April 2015 and, if not, why no provision for this had been made in MAS' April accounts. Further, if the payment from the related party was "doubtful", the Licensed Director asked whether the DFSA had been advised of the likely regulatory capital deficiency.
- 4.33. Dr Sheikh replied later in the day on 26 May 2015, stating that:
- (a) there had been a payment of USD425,500 received from the related party in Pakistan since the last Board meeting on 26 April 2015; and
  - (b) the receivables from the related party in Pakistan were not doubtful, and the *"DFSA is not required to be notified because we have earned revenue of USD576,000 in the current month. Hence, our capital resources for May end reporting will stand at approx. USD1,211,782 against the Regulatory minimum requirement of USD720,000"*.
- 4.34. Both of these statements were false. There was no such payment of USD425,500 from a related party in Pakistan since the last Board meeting and MAS had not earned revenue of USD576,000 in May 2015.

**Dr Sheikh's refusal to provide bank statements and false claim that there were no transactions in May 2015**

- 4.35. Dr Sheikh knew that Mr Kamath submitted monthly financial reports to the DFSA, which included a statement of the amount of cash in MAS' bank account and whether this, along with any cash on hand, satisfied MAS' Liquid Assets Requirement. Dr Sheikh also knew that Mr Kamath or his staff needed to see MAS' bank statements each month to verify transactions and the amount of cash in MAS' bank account and to complete the respective monthly financial report.



- 4.36. On 7 June 2015 a direct report of Mr Kamath, “**Mr Y**”, asked Mr X for the bank statements for the month of May 2015 so that they could prepare the monthly financial report for the DFSA. Mr X told Mr Y that he did not have access to the bank statements and that Dr Sheikh could provide the bank statements. The bank statements were not available to Mr X because, on or around 4 or 5 May 2015, Dr Sheikh had instructed Mr X not to use MAS’ online banking system and Mr X complied with that instruction.
- 4.37. That same day, Mr X called Dr Sheikh about the request from Mr Y for the bank statements. Mr X told Dr Sheikh that he needed to provide the bank statements to Mr Y to prepare the financial report for the DFSA. Dr Sheikh told Mr X that he was not in a position to give the bank statements, but assured Mr X that there had been no transactions in MAS’ bank account in the month of May 2015. Dr Sheikh told Mr X to tell Mr Y the same thing. Mr X subsequently told Mr Y what Dr Sheikh had told him; that is, the bank statements were not available but that there had been no transactions in May 2015. Mr Y told Mr X that he would speak to his boss, Mr Kamath.
- 4.38. Later on 7 June 2015, Mr Kamath spoke to Dr Sheikh. Dr Sheikh told Mr Kamath that he did not have online access to the bank account because it had not been given to him, but that there were no transactions in the bank account in May 2015. Mr Kamath initially refused to send the financial report to the DFSA without first seeing the bank statements. However, Mr Kamath then asked Dr Sheikh to send him an email confirming that there were no bank transactions in the month of May 2015. Subsequent to these events and during the DFSA’s investigation, Mr Kamath told the DFSA that “*I basically trusted [Dr Sheikh’s] words.*”
- 4.39. Later on 7 June 2015, Dr Sheikh spoke to Mr X over the phone. Dr Sheikh told Mr X that he had to leave Dubai because of an emergency. Mr X again told Dr Sheikh that he needed the bank statements to provide to Mr Kamath’s firm for the monthly financial report to be submitted to the DFSA. Dr Sheikh repeated what he told Mr Kamath and told Mr X that there had been no transactions in MAS’ bank account in May 2015 and instructed Mr X to tell Mr Kamath’s firm the same by email.
- 4.40. On the same day, and acting under the instruction of Dr Sheikh, Mr X then sent an email to Mr Kamath that was copied to Dr Sheikh and others. In the email, Mr X said “*I have been advised by Dr. Mubashir that there is no bank transaction in our company’s bank account in the month of May 2015*”. Dr Sheikh did not respond or reply to that email to Mr Kamath.
- 4.41. Dr Sheikh’s statements to Mr X and Mr Kamath on 7 June 2015 that there had been no transactions in MAS’ bank accounts in May 2015 were false. Further, Dr Sheikh knew these statements were false because he had personally instructed or carried out transactions in MAS’ bank accounts in May 2015, including:
- (a) instructing Mr X to transfer all funds from MAS’ USD account to its AED account; and
  - (b) subsequently signing and cashing 12 cheques during May 2015.
- 4.42. Subsequent to these events, Dr Sheikh admitted, in both an email to his employees and in a letter to the DFSA, that he had indeed withdrawn around USD600,000 during the month of May 2015.

4.43. Dr Sheikh knew the May 2015 bank statements were required for the purposes of completing the financial report for that month. He therefore knew, or was reckless as to whether, his false statement that there were no transactions in May 2015 would result in an incorrect and misleading financial report for May 2015 being submitted to the DFSA. The DFSA also considers that Dr Sheikh refused to provide the bank statements because he knew they would reveal his withdrawals in May 2015.

#### **Submission of inaccurate May 2015 Financial Report to the DFSA**

4.44. Having accepted Dr Sheikh's assertion that there were no transactions in May 2015, Mr Kamath subsequently submitted the May 2015 Financial Report to the DFSA on 7 June 2015.

4.45. The May 2015 Financial Report represented that MAS' current account balance as at 31 May 2015 was the same as the previous month (USD627,781) and that it was therefore meeting its Liquid Assets Requirement. In fact, MAS' current account balance as at 31 May 2015 was only USD8,442. Accordingly, its Liquid Assets were significantly less than the amount required by its Liquid Assets Requirement. Therefore, the May 2015 Financial Report incorrectly represented to the DFSA that MAS was meeting its Liquid Assets Requirement when, in fact, it was not.

#### **Dr Sheikh's further withdrawals in June 2015**

4.46. On 13 and 14 June 2015, Dr Sheikh withdrew a further AED185,000 (USD50,374) in cash from MAS' bank account using three different cheques, two of which he signed personally. At the time of these further withdrawals, relevant staff at MAS were still unaware of Dr Sheikh's withdrawals in May 2015 or that he had caused MAS to breach its Liquid Assets Requirement.

4.47. MAS continued to breach its Liquid Assets Requirement throughout June 2015 because its Liquid Assets were significantly less than the amount it was required to hold (i.e. USD600,000).

4.48. As with his cash withdrawals in May 2015, Dr Sheikh did not inform any relevant person at MAS of his cash withdrawals in June 2015 or the likely effect of those on MAS' Liquid Assets.

#### **MAS' disclosure to the DFSA which led to the commencement of the DFSA's investigation**

4.49. Over the course of 10 to 12 June 2015, there were a series of exchanges between Dr Sheikh, MAS' Chief Operating Officer (COO) and a senior representative from the consulting firm which employed MAS' outsourced Compliance Officer. The exchanges related to the May 2015 Financial Report and arranging a meeting to discuss MAS' financial position.

4.50. A meeting took place in the evening on 12 June 2015 (with Dr Sheikh attending by phone from London), during which Dr Sheikh revealed that "*there was no money in the company*". However, no-one other than Dr Sheikh was aware at this time that he was referring to there being no funds in MAS' bank account.

- 4.51. On 14 June 2015, MAS' Compliance Officer disclosed in an email to Supervision his concerns about the financial resources of MAS. The Compliance Officer's concerns arose following discussions with an independent Licensed Director. In particular, the Compliance Officer referred to receivables from a related Pakistan entity which were currently on MAS' books and which should be written off as bad debt. If this was done, it would mean that MAS was effectively insolvent. The Compliance Officer informed the DFSA that the decision had been made to liquidate MAS and, at its last meeting on 26 April 2015, MAS' Board of Directors had given Dr Sheikh authority to put MAS into liquidation.
- 4.52. On 14 June 2015, another meeting took place between Dr Sheikh, MAS' Compliance Officer as well as a senior representative from the consulting firm which employed him (together referred to as the **Compliance Function**), and MAS's COO. Dr Sheikh, again attending the meeting by phone from London, revealed for the first time that there was no money in MAS' bank account. Because MAS had reported to the DFSA that over USD600,000 was in its bank account as at 31 May 2015, MAS' Compliance Function took Dr Sheikh's representation to mean that all of MAS' money had been spent from 1 to 14 June 2015.
- 4.53. On 15 June 2015, a further meeting took place between Dr Sheikh and MAS' Compliance Function. During that meeting, which Dr Sheikh again attended by phone from London, Dr Sheikh revealed that, in fact, all of MAS' funds had been removed from its bank account during May 2015.
- 4.54. In the evening on Monday 15 June 2015, MAS' Compliance Officer sent a further email to Supervision, raising his concern from conversations with Dr Sheikh that there was no liquidity in MAS due to the withdrawal of all MAS' money from its bank accounts from May 2015 onwards. The Compliance Officer indicated that he wanted *"to understand how this can be possible as the Finance Officer had reported to the DFSA on 7<sup>th</sup> June 2015 that there was \$629,000 in the bank as at 30<sup>th</sup> May 2015"*. The Compliance Officer said that MAS' compliance team had *"inquired how can so much money have been spent in only 10 days"* and stated that Dr Sheikh revealed *"that actually the cash in the bank was zero from May on-wards"*. Further, the Compliance Officer stated in his email that Dr Sheikh *"admitted that MAS has misreported to the DFSA on 7<sup>th</sup> June 2015 the financials for the end of May 2015"*. The Compliance Officer said the Finance Officer had asked for bank statements for May 2015 but had not been provided with them.
- 4.55. The DFSA met with representatives of MAS on 16 and 17 June 2015. Given the concerns about MAS' financial stability, the DFSA conducted an inspection visit at MAS' offices on 18 June 2015. During the visit, the DFSA collected digital and physical documents related to MAS' financial position including copies of MAS' bank account statements.
- 4.56. It immediately became apparent to the DFSA that, due to the withdrawals from MAS' bank account, MAS had inadequate resources. Accordingly, on 18 June 2015, the DFSA suspended MAS' Licence and MAS subsequently applied to the DFSA on 2 July 2015 to withdraw its Licence permanently.
- 4.57. Following its decision to suspend MAS' Licence on 18 June 2015, the DFSA also commenced an investigation into suspected misconduct, including that described in this Notice.

- 4.58. MAS subsequently applied to the DIFC Courts on 1 November 2015 for a provisional liquidator to be appointed. On 19 November 2015, the DIFC Courts confirmed the appointment of the liquidator and ordered that MAS be wound up.
- 4.59. MAS' status as a DFSA Authorised Firm was withdrawn on 18 January 2016 and the company is now in liquidation.

**Dr Sheikh's claims that he attempted in April 2015 to secure funding for MAS from two investors**

- 4.60. During the DFSA's subsequent investigation, Dr Sheikh was required to explain and provide further information regarding his withdrawals in May and June 2015. In July 2016, Dr Sheikh claimed to the DFSA that his withdrawals over May and June 2015, which caused MAS' breach of its Liquid Assets Requirement, were part of a genuine, yet ultimately failed, attempt by him to secure funding for MAS from one or more investors.
- 4.61. Dr Sheikh claimed that, acting on behalf of MAS, he entered into an investment agreement with an investor (**Investor A**) on 20 April 2015, whereby Investor A agreed to invest USD2,000,000 in return for the option to acquire up to 51% ownership of MAS (**Investment A**). Under the purported agreement:
- (a) Investor A agreed to invest USD2,000,000 for a period of three years. In return, Investor A would receive interest at a rate of 10% per annum (i.e. USD200,000 per year for a total of USD600,000) paid in full at the time of executing the agreement;
  - (b) the interest payment was to be made to a company (**Company A**); and
  - (c) MAS was to pay 2.3% of the investment amount (USD46,000 or around AED168,935) to Company A within five days of signing the agreement.
- 4.62. Dr Sheikh claimed that his direction to Mr X on or around 3 May 2015 to transfer around USD600,000 from MAS' USD account to its AED account was for the purposes of paying the USD600,000 in interest to Investor A.
- 4.63. Dr Sheikh claimed that, in connection with Investment A, he received a cheque from Investor A dated 30 April 2015 for AED7,350,000 (equivalent to around USD2,000,000).
- 4.64. Dr Sheikh further claimed that, in connection with Investment A, he signed a cheque dated 3 May 2015 in the amount of AED2,200,000 (or around USD599,047) for the benefit of Company A. However, when that cheque was presented to the bank on 4 May 2015, it was returned because it required a second signature.
- 4.65. Dr Sheikh claimed that, because the cheque dated 3 May 2015 was returned, he instead went about attempting to provide Company A with USD600,000 in cash. However, Dr Sheikh also signed two cheques that appear to be payable to Company A dated 6 May 2015 in the amount of AED170,000 each.
- 4.66. Dr Sheikh claimed that, to ensure MAS did not breach its minimum capital requirements (by withdrawing the USD600,000 allegedly payable to Company A as interest), he had

already arranged a short term loan from a second investor (**Investor B**) for USD600,000 (**Investment B**).

- 4.67. Dr Sheikh claimed that Investment B was evidenced by a loan agreement between MAS and Investor B dated 25 April 2015. Dr Sheikh claimed that, under the agreement, Investor B agreed to invest USD600,000 in MAS for three months in return for 2% per month interest and a 5% ownership stake in MAS.
- 4.68. Dr Sheikh claimed that, in connection with Investment B, he received a cheque from Investor B dated 27 April 2015 for PKR61,110,000 (at the time, equivalent to around USD600,000).
- 4.69. Dr Sheikh claimed that, in light of purported Investment B, he believed that MAS had sufficient funds in its bank account and therefore that it would not breach its regulatory capital requirements. In response to a question from the DFSA whether he was aware that MAS had breached its Liquid Assets Requirement, Dr Sheikh said he "*was under the impression that the short term loan money would have been credited to the account*".
- 4.70. Dr Sheikh claimed that he was not aware that MAS had breached its Liquid Assets Requirement because he had no access to the online system to view MAS' bank balance, and he had assumed that Investor B had deposited the USD600,000 in MAS' bank account during the first week of June 2015. In response to a question from the DFSA whether he informed anyone at MAS or the DFSA of these transactions or the Liquid Assets Requirement breaches, Dr Sheikh said:

*"I did inform the management and the compliance officer when I heard from the lender that he did not make the deposit as committed during first week of June 2015. Until that day I was under the impression that the funds were deposited and I had no reason to doubt.*

*I had to leave for England as my mother was unwell and had no access to the account via internet so there was no way for me to know the debit or credit balances. Throughout this time, I was under the impression that the loan funds would have been in the account right from the get go."*

- 4.71. Dr Sheikh claimed that, when the funds did not materialise, he eventually used the withdrawn funds to pay MAS salaries, loan repayments, and other legitimate expenses. In internal emails dated 22 June 2015 and 2 July 2015, he stated: "*Additionally I have made payments from my personal account to some employees and creditors during the month of May 2015. Which are in access [sic] of USD250,000/- details are as follow [sic] ...*". Dr Sheikh went on to list USD100,524 in purported individual salary payments as well as a payment to an unnamed company creditor of USD150,000. At the end of this list, Dr Sheikh reiterates that these payments were "*from personal accounts*".
- 4.72. An email from Dr Sheikh on 2 July 2015 repeated some of the information set out in his email dated 22 June 2015. In contrast, Dr Sheikh stated in the email that the purpose of the cash withdrawals was "*...not to conduct any evil act but to use the capital to pay salaries, vendor payments and creditors loan principal/interests all for the greater good of the company.*" Further, the overwhelming theme running throughout the email was how much Dr Sheikh was owed by MAS; Dr Sheikh also stated that the cash he withdrew in May 2015 was "*...due to me as detailed above*".

## Summary of findings in respect of Dr Sheikh's claims

4.73. In the DFSA's view, Dr Sheikh's claims regarding Investor A, Investor B and their respective proposed investments, and the ultimate use of the funds withdrawn are implausible. Dr Sheikh's claims are not supported either directly or by facts inferred from other contemporaneous evidence or testimony from witnesses familiar with the events. The DFSA does not consider Dr Sheikh's account to be plausible for the following reasons:

- (a) If Investment A and Investment B were true, it is reasonable to expect these matters to have been discussed at the meeting of MAS' Board of Directors on 26 April 2015. That board meeting took place after the investment agreements were supposedly signed and included specific discussion on the "action plans for the company". However, there is no record in the minutes of these matters ever being raised;
- (b) There is no evidence to suggest that attempts were ever made to pay either of the relevant investment cheques into MAS' bank account. If Dr Sheikh's claims were true, it is reasonable to expect there to be contemporaneous evidence of Dr Sheikh seeking confirmation that the amounts payable to MAS under Investment A and Investment B at the end of April 2015 had been made at the time. However, there is no such evidence;
- (c) It is implausible that Dr Sheikh would take steps to make payment of the USD600,000 in interest purportedly due to Company A without first having satisfied himself that Investor A had, in fact, made the payment of USD2,000,000 under the terms of the agreement dated 20 April 2015;
- (d) Dr Sheikh did not give any satisfactory explanation as to why he did not seek or obtain a second signature for another cheque in the amount of USD600,000 so the alleged interest payment to Company A could be made by cheque. As set out in paragraph 4.15 above, Dr Sheikh's signing authority for MAS' bank accounts until 14 May 2015 was AED183,500. After that date, there was no limit. Accordingly, he could have either sought a second signatory to the cheque dated 3 May 2015 or simply issued a further cheque which only he needed to sign after 14 May 2015;
- (e) In paragraph 55 of his witness statement, Dr Sheikh claimed that "*due to quarrelling taking place amongst management and employees at this time, I was not confident that co-signatures on cheques for amounts greater than AED 183,500 would have been forthcoming*". In fact, until 14 May 2015, "**Mr W**" was one of the "Pool 2" signatories on MAS' bank account capable of authorising payments in excess of AED183,501 when combined with the approval of the "Pool 1" signatory, i.e. Dr Sheikh. Therefore, Dr Sheikh could have sought and obtained Mr W's signature for any cheque over AED183,501. Given this fact, and Mr W's claim that he held Dr Sheikh's business acumen and personal character in high regard, it is hard to understand why, if Dr Sheikh's claimed version of events were true, he seemingly failed to try to seek Mr W's approval;

- (f) Dr Sheikh has not given any explanation why the investment agreement in connection with Investment A was with Investor A, while payment of the interest allegedly due, and the further payment of 2.3%, was to be made to Company A;
- (g) Dr Sheikh has not given any explanation why MAS was required to make a payment of 2.3% of the investment amount to Company A. In the DFSA's view, this was invented in an attempt to justify the payment of AED170,000 (which is broadly equivalent to 2.3% of USD2,000,000) to Company A on 10 May 2015;
- (h) Dr Sheikh has not given any explanation why there were two cheques dated 6 May 2015, each for AED170,000, made payable to Company A (one of which was returned). These payments are inconsistent with Dr Sheikh's claim that Company A requested the payment of the interest allegedly due to it in cash, not by way of cheque;
- (i) Dr Sheikh has not given any explanation for the delay in attempting to make the alleged payment of interest to Company A. Under the terms of the purported agreement, the interest was due to be paid "*in full at the time of executing the agreement*" (i.e. 20 April 2015). However, the cheque was dated nearly two weeks later (i.e. 3 May 2015);
- (j) Similarly, under the terms of the purported agreement, the 2.3% (i.e. a further USD 46,000 or AED168,935) was due to be paid to Company A within five days of signing the agreement (i.e. by 25 April 2015). No such payment appears to have been made by the required date. However, as noted above, there were two payments of AED 170,000 to what appears to be Company A by way of cheques dated 6 May 2015;
- (k) Given the failure to pay the interest and the further payment of 2.3% by the dates specified in the investment agreement (which only Dr Sheikh seems to have been aware of), it appears that Dr Sheikh caused MAS to breach the terms of the claimed investment agreement with Investor A;
- (l) Dr Sheikh has not given any explanation why the "guarantee" cheque provided by Investor B dated 27 April 2015 was in Pakistani Rupees, and not US Dollars (being the currency set out in the Loan Agreement). He stated that the purpose of the cheque from Investor B was to show his commitment to the investment deal; if the investment deal was for an amount in USD, it did not make sense for this cheque to be in Pakistani Rupees;
- (m) Dr Sheikh has not given any explanation why he did not take steps to pay in the purported guarantee cheques from Investor A and Investor B, nor why he did not take any action to enforce the legally binding obligations set out in the respective investment and loan agreements;
- (n) There is evidence that the purported cheque Dr Sheikh claimed he received from Investor A dated 30 April 2015 for AED7,350,000 (equivalent to around USD2,000,000) was worthless because it related to a bank account that had been closed two years earlier. Investor A makes no reference of this in his witness statement. If Investor A's proposed investment had been true, it does not make

sense for Investor A to guarantee his commitment by giving a security cheque which was worthless;

- (o) Dr Sheikh claimed to have told MAS' Board on 14 and 15 June 2015 that the investments had not materialised and that he did so within 24 hours of becoming aware that the anticipated monies had not been deposited. However, the testimony from witnesses present makes no mention of Investor A or Investor B, and there are no contemporaneous records supporting this claim;
- (p) In an internal email on 22 June 2015, Dr Sheikh sought to justify his withdrawals over May and June 2015 on the basis that it was money owed to him. Dr Sheikh does not make any reference to the purported investments or the withdrawals in cash being required to pay the interest due to Company A;
- (q) Further, again with reference to his email on 22 June 2015, Dr Sheikh makes a reference to having "*arranged for additional funds of 600,000*" and claimed this was borrowed not from any investor, but from his personal account. However, this is inconsistent with the claimed investment agreement between MAS and Investor B dated 25 April 2015 and which contains the details for MAS' USD account. Accordingly, in the DFSA's view, this further undermines Dr Sheikh's claim that he had arranged Investment B at the end of April 2015;
- (r) Similarly, in an email to the DFSA on 25 August 2015 in which Dr Sheikh referred to the "disappointing" economic condition of MAS, Dr Sheikh did not make any reference to the purported investments. If they were true, it is reasonable to expect Dr Sheikh to have mentioned them in his email;
- (s) Dr Sheikh has not given any explanation as to how he came to be in possession of the cheques in connection with the two purported investments when the investment agreements both contain the relevant details for the respective amounts to be paid "*by wire transfer*" to MAS' USD bank account, not by cheque;
- (t) Dr Sheikh has failed to provide any contemporaneous evidence of communications with either Investor A or Investor B questioning why the proposed investment and loan amounts had not materialised around the time the purported agreements were executed. Specifically, Investor A was due to pay USD2,000,000 to MAS on or around 20 April 2015 and Investor B was due to pay AED 600,000 to MAS on or around 25 April 2015. Rather, Dr Sheikh claimed that he only became aware around 13 June 2015 that the investment and loan amounts had not been paid to MAS. If this were true, it is reasonable to expect there to have been contemporaneous correspondence between Dr Sheikh and Investor A and Investor B regarding the funding not being forthcoming;
- (u) Similarly, given the precarious financial position of MAS at the time, it is reasonable to expect Dr Sheikh to have informed MAS' senior management and other Board members of the arrangements he claimed to have put in place to resolve MAS' financial difficulties. For example, Dr Sheikh could have raised this in his email on 26 May 2015. However, there is no contemporaneous evidence that he did so; and



- (v) Further, Dr Sheikh claimed to have communicated the failure of Investment A and Investment B during the meetings on 14 and 15 June 2015 (see paragraphs 4.52 and 4.53 above), however there is no evidence to support this. In fact, none of the individuals interviewed by the DFSA in relation to the investigation mentioned ever being aware of either Investor A or Investor B or their alleged investments in April 2015.

4.74. The first time the DFSA became aware of the alleged existence of Investment A and Investment B was in July 2016 during the course of the DFSA investigation. They were raised by Dr Sheikh in response to a DFSA requirement to provide further information and explanation of events relating to his withdrawals. Given the implausibility of Dr Sheikh's claims regarding Investment A and Investment B and the absence of any contemporaneous evidence (aside from that provided by Dr Sheikh) that they existed as alleged in April 2015, the DFSA considers that they did not exist at the relevant time. Rather, the DFSA considers that the more likely and plausible explanation is that Dr Sheikh invented the alleged investments in an attempt to legitimise his misconduct including his withdrawals from MAS' accounts in May and June 2015.

4.75. The DFSA also considers that Dr Sheikh's implausible explanation for his withdrawals in May and June 2015 demonstrates a propensity to engage in misleading conduct. In particular, the DFSA considers that Dr Sheikh invented the story regarding Investor A and Investor B and their respective investments in order to mislead or deceive the DFSA.

## **5. REPRESENTATIONS**

5.1. On or about 20 May 2018, the DFSA gave Dr Sheikh a written notice that it was considering taking regulatory action against him. Dr Sheikh submitted written representations, through his legal representatives, in response to that notice and written submissions made by DFSA Enforcement. Written representations were provided to the DFSA by Dr Sheikh on 11 October 2018 and 17 April 2019.

5.2. Dr Sheikh, with his legal representative, was also given the opportunity to attend a meeting with the DFSA to make oral representations and these were conducted by way of video-conference on 13 March 2019.

5.3. In making the decision which gave rise to the obligation to give this Notice, the DFSA has taken into account all of the representations made by Dr Sheikh, whether or not set out below.

5.4. In his representations, Dr Sheikh contends that he did not commit all of the contraventions on the basis that:

- (a) his actions and motivations were an attempt to save MAS, in light of its deteriorating financial position, by securing new funding from investors;
- (b) when the new funding did not materialise, he used the funds he withdrew from MAS to pay legitimate company invoices, salaries and debts and that he did not personally benefit from the withdrawals and never intended to personally benefit;

- (c) he placed reasonable reliance on relevant managers and officers of MAS to perform their functions appropriately while he was out of the UAE for an extended period of time; and
  - (d) he submitted witness statements which support his actions, motivations and good standing.
- 5.5. Dr Sheikh accepted his conduct caused MAS to fail to comply with regulatory obligations, namely the maintenance of minimum capital requirements under the DFSA prudential rules.
- 5.6. Dr Sheikh's key representations, and the DFSA's conclusions (*in italics*) in respect of them, are set out below.

### **New funding**

- 5.7. Dr Sheikh submitted that the DFSA failed to acknowledge that his actions were an attempt to save MAS, in light of its deteriorating financial position, by securing new funding from Investor A and Investor B.
- 5.8. Dr Sheikh stated he made the withdrawals in order to be in a position to ensure that MAS was ready to pay interest to Investor A in return for new funds whilst a short term loan from Investor B would be received before he withdrew any of the funds. The effect of this arrangement may have been that MAS would not have breached its obligations to the DFSA if Investor A and Investor B had not pulled out of their respective committed investments.
- 5.9. The withdrawals were made in the context of the deteriorating financial position of MAS and were attempts by him to secure critical capital support from new investors. The board of MAS had given him full and extraordinary authority to urgently secure new capital investment for the company.
- 5.10. *As outlined in paragraph 4.73, the DFSA is of the view that Dr Sheikh's claim that he withdrew the funds from MAS in an attempt to secure new funding for MAS was invented for the purposes of justifying in hindsight his actions during the time of the relevant events in April, May and June 2015. The first time that the DFSA became aware of the alleged existence of Investor A and Investor B was in July 2016, more than a year after the funds were withdrawn from MAS. Further, Dr Sheikh's claims are not supported by any independent evidence or facts inferred from other contemporaneous evidence or reliable testimony from witnesses familiar with the events.*
- 5.11. *Dr Sheikh has not provided any contemporaneous evidence to support the existence of Investors A and B and their respective alleged investments, at the relevant time. For example, if true, it is reasonable to expect the investments to have been discussed at, and referred to in the minutes of, the MAS Board meeting held on 26 April 2015. The investment agreements were allegedly signed by Dr Sheikh on 20 April 2015 and 25 April 2015, 5 days and 1 day before the MAS Board meeting. There was no such discussion or record.*
- 5.12. *None of the individuals interviewed by the DFSA as part of the investigation mentioned that they were aware of either Investor A or Investor B or their alleged investments in April 2015.*

- 5.13. *Hard copy evidence, digital evidence and other material gathered as part of the investigation was analysed in the DFSA's digital evidence review platform. The DFSA performed key word searches for all available evidence relating to Investor A and Investor B. The search revealed no evidence relating to these two individuals other than that provided by Dr Sheikh in and since July 2016.*
- 5.14. *In regard to the authority given to Dr Sheikh by the Board of MAS to take the necessary actions to sell MAS or surrender its licence and liquidate the company, the consent did not extend to the actions Dr Sheikh took in April, May and June 2015. This was evident from the reaction of the Board members upon their discovery in June 2015 of the withdrawals.*

#### **The use of funds withdrawn by Dr Sheikh**

- 5.15. Dr Sheikh submitted that the DFSA failed to acknowledge that when the new funds did not materialise, Dr Sheikh used the funds withdrawn in May and June 2015 from MAS to pay legitimate company invoices, salaries and debts. He further stated that he did not personally benefit from the withdrawals and never intended to personally benefit.
- 5.16. In his oral and written representations in April 2019, Dr Sheikh placed significant reliance on an email dated 2 July 2015 to MAS staff in which, among other things, he disclosed the reasons why he withdrew the funds from MAS were to pay salaries, rent, and certain creditors, and attempted to keep MAS solvent by trying to find a new investor. In the email, he explained that he had paid through his personal account approximately USD100,524 towards salary payments and USD150,000 to a creditor.
- 5.17. In his oral representations and written representations in April 2019, Dr Sheikh referred to a completely new agreement, and other documents, between MAS and "**Mr Z**" dated 6 August 2011 in which MAS was to pay Mr Z a fee of USD450,000 for consultancy services rendered. The agreement records that MAS was to pay Mr Z a fixed amount of USD450,000 "*as per the instructions of the Consultant*" and the payment was due "*at maturity*". The agreement further provided that the term of the agreement was the earlier of Mr Z becoming a 10% shareholder of MAS or the fourth anniversary from the date of agreement (i.e. 6 August 2015), at which point Mr Z was to be "*paid his fix term Consulting Agreement Fees in full*".
- 5.18. In an alleged written statement from Mr Z dated 10 February 2019, Mr Z claimed:
- (a) he found out in June 2015 that MAS was in financial difficulty so he contacted Dr Sheikh to request payment of his fee which, according to the agreement, was due in August 2015;
  - (b) to have met Dr Sheikh in London and Dr Sheikh agreed to pay the fees "based on the funds he had left from the Company";
  - (c) that "[Dr Sheikh] advised me that the company funds are in cash with his colleague and he will pay me on his instructions"; and
  - (d) he (Mr Z) agreed to accept USD350,000 (instead of the original contracted amount of USD450,000) and the equivalent amount in AED was paid in Dubai to settle the fee due.

- 5.19. *As outlined in paragraph 4.73, the DFSA is of the view that Dr Sheikh withdrew the funds in May and June 2015 because he believed the funds were owed to him. As outlined in paragraph 5.11, Dr Sheikh has not provided any independent or contemporaneous evidence supporting his claim that he eventually used the funds he withdrew in May and June 2015 to pay legitimate company expenses.*
- 5.20. *In the DFSA's view, the email dated 2 July 2015 (which was similar to an earlier email sent by Dr Sheikh dated 22 June 2015) is relevant for different reasons. It failed to mention that the purpose of his withdrawals in May 2015 was to pay upfront interest to Investor A in respect of his investment. The investment agreement between Dr Sheikh and Investor A was allegedly signed on 20 April 2015, sometime before 2 July 2015. The email contained no mention of the investment commitment and of the fact that it failed to materialise. In contrast, Dr Sheikh stated that he used the capital to pay salaries, vendor payments and a creditor's loan. The email also included poignant references to the fact that MAS owed him a considerable sum of money and that the amount he withdrew was due to him.*
- 5.21. *In relation to the agreement with Mr Z dated 6 August 2011 there is no mention of Mr Z or his agreement in Dr Sheikh's Witness statements or his various written submissions. If the agreement was genuine, the size of the obligation appeared significant to warrant a provision in MAS' financial statements. No provision or disclosure was made in the financial statements. MAS' auditors at the relevant time were not aware of the agreement purportedly dated 6 August 2011, although they were aware of other agreements with related entities to Mr Z. In addition, the same financial statements did not reflect any alleged expense due to Mr Z, if it existed.*
- 5.22. *If the agreement was genuine, the DFSA has a concern that the alleged payment of USD350,000 to Mr Z may have been in breach of insolvency law and therefore his fiduciary duties to MAS. Dr Sheikh was aware that MAS was in the process of petitioning the court for it to be wound up as he had signed the resolution for MAS to be wound up.*
- 5.23. *Hard copy evidence, digital evidence and other material gathered as part of the investigation was analysed in the DFSA's digital evidence review platform. The DFSA performed key word searches on all available evidence for an agreement between MAS and Mr Z dated 6 August 2011. The search revealed no evidence of the purported agreement nor any references to such a document. The DFSA did find many emails and other documents involving Mr Z and MAS around this period.*

#### **Witness statements**

- 5.24. Dr Sheikh submitted that the DFSA failed to place sufficient reliance on witness statements presented by Dr Sheikh. Dr Sheikh presented a number of witness statements to support his claim that he made the cash withdrawals to secure new funding.
- 5.25. For example, Dr Sheikh submitted that the witness statements of Investor A and Investor B independently confirmed that they each committed to invest in MAS and had not informed Dr Sheikh of any intention to pull out of the deal at the time. It was on the basis of their promised investments that Dr Sheikh withdrew the funds in May and June 2015.

- 5.26. *The DFSA is of the view that the witness statements lack veracity and were more likely fabricated in order to support Dr Sheikh's claims and hide the true circumstances of his conduct.*
- 5.27. *The form of the witness statements is irregular. In contrast with all of the witness testimony obtained and relied upon by the DFSA, none of the witness statements presented by Dr Sheikh as evidence are witnessed by any person. Nor do they contain any swearing of an oath or affirmation that the contents therein are true. Instead, the witness statements are purported to be signed by the witness only, and include a non-committal statement that the facts stated are true.*
- 5.28. *None of the witnesses exhibit any contemporaneous evidence to support their versions of events. For example, the claimed investment agreements by Investor A and Investor B and the two respective cheques previously provided by Dr Sheikh are not verified by either witness. The DFSA considers that it is reasonable for there to have been evidence of meetings between Investors A, Investor B, and Dr Sheikh; communications e.g. emails from Dr Sheikh to Investor A and Investor B regarding the outstanding payment of money; Investor A's request for payment of interest upfront in cash prior to making his investment; and Investor B instructing his banker on or around 28<sup>th</sup> or 29<sup>th</sup> April 2015 to transfer funds to MAS.*
- 5.29. *All of the witnesses are based overseas. None of the witnesses (including Investor A and Investor B) indicated a willingness to be interviewed in Dubai to test and verify their testimonies. The DFSA attempted to communicate with Investor A and Investor B on a number of occasions but failed to communicate with them directly. The position remains that the DFSA has not been able to interview either Investor A or Investor B and they appear unwilling to be interviewed in Dubai.*
- 5.30. *None of the witnesses have explained why Investor A and Investor B and their respective alleged investments, or even their names, are not mentioned at all in MAS' communications, books and records, around the time of the relevant events in April, May and June 2015.*

#### **Reliance on others**

- 5.31. Dr Sheikh submitted that the DFSA did not give due and proper weight to the reasonable reliance by Dr Sheikh on the conduct by relevant managers and officers of their duties of due diligence and of their regulatory compliance function especially in circumstances where he was out of the UAE during the period in question.
- 5.32. *The DFSA is of the view that there is sufficient evidence to suggest that Dr Sheikh was the acting or interim SEO of MAS during April, May and June 2015. For example, the minutes of the April 2015 board meeting record that Dr Sheikh would perform the role of SEO until a suitable candidate for the post is found. Key senior management staff interviewed confirmed Dr Sheikh was SEO.*

#### **The accepted contraventions**

- 5.33. Dr Sheikh accepts his conduct in the withdrawal of a significant amount of cash from MAS in May and June 2015:

- (a) caused MAS to fail in its regulatory obligation to maintain an amount of Liquid Assets that exceeded its EBCM;
- (b) caused MAS to fail in its regulatory obligation to maintain adequate financial resources to conduct and manage its affairs; and
- (c) caused MAS to file its May 2015 Financial Report to the DFSA containing materially inaccurate information.

5.34. Dr Sheikh caveats his conduct on the understanding that he was not aware and that his conduct was not intentional or driven by selfish financial gains.

5.35. *The DFSA accepts that his actions led to MAS' resources falling below the required minimum. The DFSA considers that his conduct in all circumstances fell below the standard reasonably expected of him and he failed to act with due skill, care and diligence in carrying out his licenced functions.*

## **6. CONTRAVENTIONS**

### **Failure to act with integrity (GEN Rule 4.4.1)**

6.1 As an Authorised Individual, Dr Sheikh was at all times required to comply with the DFSA's Principles for Authorised Individuals. This includes the requirement in GEN Rule 4.4.1 (Principle 1 – Integrity) that an Authorised Individual must observe high standards of integrity and fair dealing in carrying out every Licensed Function.

6.2 The DFSA considers that, as a Licensed Director, Dr Sheikh failed to act with integrity in May and June 2015. In particular, Dr Sheikh:

- (a) concealed his 15 withdrawals of cash from MAS' bank account in May and June 2015 by:
  - (i) directing Mr X, on or around 3 May 2015, to transfer all funds (USD600,042 or around AED2,191,955) from MAS' USD account to its AED account, in order to enable Dr Sheikh to make AED cash withdrawals of MAS' money and there appears to be no other legitimate reason for the transfer;
  - (ii) directing Mr X, on or around 3 May 2015, to stop using MAS' online banking system and to hand over MAS' chequebook to Dr Sheikh. Mr X was the person previously responsible for obtaining bank statements for the purposes of assisting MAS' auditors and providing monthly financial reports to the DFSA. The DFSA considers that Dr Sheikh removed Mr X's access to the online system so that his subsequent withdrawals would not be monitored;
  - (iii) refusing to provide Mr X with MAS' bank statements on 7 June 2015, which Dr Sheikh knew were required for the purposes of preparing the May 2015 Financial Report;
  - (iv) not informing Mr Kamath, Mr X or any members of MAS' senior management of his withdrawals over May and June 2015;

- (v) representing to Mr X that there were no transactions in MAS' bank account during May 2015, which he knew to be false, and instructing Mr X to provide this information to Mr Kamath. Dr Sheikh was copied in on Mr X's email to Mr Kamath in which Mr X provided this information; and
  - (vi) representing to Mr Kamath that there were no transactions in MAS' bank account during May 2015, which he knew to be false;
- (b) sent an email on 26 May 2015 to MAS' senior management including Licensed Directors falsely stating that:
- (i) there had been a payment of USD425,500 received from a related party in Pakistan since the Board meeting on 26 April 2015; and
  - (ii) the receivables from the related party in Pakistan are not doubtful, and the DFSA is not required to be advised because *"we have earned revenue of USD576,000 in the current month. Hence, our capital resources for May end reporting will stand at approx. USD1,211,782 against the Regulatory minimum requirement of USD720,000"*; and
- (c) during the DFSA's investigation, provided the DFSA with an implausible version of events in an apparent attempt to explain or legitimise his actions and withdrawals from MAS' accounts in May and June 2015. Dr Sheikh's explanation included claims relating to loans, agreements and transactions regarding potential investors and third parties which are not supported by any contemporaneous evidence (aside from that provided by Dr Sheikh). Accordingly, in the DFSA's view, Dr Sheikh invented the circumstances and events regarding Investment A and Investment B.

### **Providing false or misleading information to the DFSA**

6.3 Article 66 of the Regulatory Law 2004 states that a person shall not:

- (a) provide information which is false, misleading or deceptive to the DFSA; or
- (b) conceal information where the concealment of such information is likely to mislead or deceive the DFSA.

6.4 Dr Sheikh was aware that MAS had been reporting its financial position to the DFSA on a monthly basis since March 2013. Dr Sheikh also knew that the bank statements for May 2015 were required for the purposes of enabling Mr Kamath to verify information in the MAS financial report to be prepared and submitted to the DFSA for that month. However, Dr Sheikh told both Mr Kamath and Mr X that there had been no transactions in MAS' bank account in May 2015, which was false, and refused to provide the bank statements.

6.5 Mr Kamath relied on Dr Sheikh's representation that there had been no transactions in May 2015 when finalising the May 2015 Financial Report which was submitted to the DFSA on 7 June 2015. The May 2015 Financial Report was materially inaccurate in that it represented, incorrectly, that MAS was complying with the Liquid Assets Requirement in May 2015. In fact, because of Dr Sheikh's withdrawals, MAS' Liquid Assets were significantly less than the amount required under applicable DFSA Rules.

6.6 The DFSA therefore considers that Dr Sheikh contravened Article 66 of the Regulatory Law 2004 because he provided information which was false, misleading and deceptive and concealed information which resulted in the DFSA being misled.

### **Knowingly concerned in MAS' contraventions**

6.7 Under PIB Rule 3.5.3(1), MAS was required at all times to maintain an amount of Liquid Assets in excess of USD600,000. However, Dr Sheikh's withdrawals in May and June 2015 caused MAS' Liquid Assets to fall significantly below the amount it was required to hold. In particular, Dr Sheikh:

(a) withdrew AED1,697,000 (or around USD462,083) in cash from MAS' bank account in May 2015 by using (or directing the use of) 12 cheques which he had signed personally; and

(b) withdrew a further AED185,000 (or around USD50,374) in cash from MAS' bank account in June 2015 by using (or directing the use of) three cheques, at least two of which he had signed personally.

6.8 Therefore, beginning on 5 May 2015, Dr Sheikh's withdrawals caused MAS to breach the Liquid Assets Requirement and contravene PIB Rule 3.5.3(1).

6.9 The DFSA also considers that MAS contravened Principle 4 of the DFSA's Principles for Authorised Firms (GEN Rule 4.2.4 - Resources) which requires MAS to maintain adequate financial resources. This is because MAS failed to maintain and demonstrate the existence of adequate resources, including financial resources, to conduct and manage its affairs.

6.10 The Regulatory Law 2004 provides that a person commits a contravention if they are knowingly concerned in a contravention committed by another person. Given that Dr Sheikh was directly and knowingly involved in the events that caused MAS to contravene PIB Rule 3.5.3(1) and GEN Rule 4.2.4, by reason of Article 86 of the Regulatory Law 2004, Dr Sheikh also committed contraventions.

## **7. ACTION**

7.1. In deciding to take the action 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**).

7.2. 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) of the Regulatory Law 2004);

(b) the deterrent effect of the action, including the importance of deterring Dr Sheikh and others from committing further or similar contraventions;

(c) the seriousness of the contraventions, as demonstrated by their nature and impact (see paragraph 7.7 below); and



- (d) Dr Sheikh's position and responsibilities. As a Licensed Director as well as the chairman of the Board and acting CEO, Dr Sheikh held the most senior position in MAS and was ultimately responsible for the day-to-day management, supervision and control of MAS.

7.3. The DFSA has also taken into consideration the fact that Dr Sheikh is no longer employed in the DIFC or resident in the U.A.E.

7.4. The DFSA has considered the sanctions and other options available to it and has concluded that a fine, rather than a public censure, is the most appropriate action given the circumstances of this matter.

### **The Fine**

7.5. In determining the appropriate level of fine to impose in this matter, the DFSA has taken into account the factors and considerations set out in sections 6-4 and 6-6 of the RPP as follows.

#### *Step 1 – Disgorgement*

7.6. This step is relevant, because Dr Sheikh gained a clear and quantifiable economic benefit as a result of his conduct. However, this is dealt with in the DFSA's consideration of the Restitution Direction (see below from paragraph 7.20). Accordingly, the amount of the fine after Step 1 is USD0. Were it not for the Restitution Direction, the DFSA would have sought to deprive Dr Sheikh of the economic benefits he derived from his contraventions.

#### *Step 2 – The seriousness of the contraventions*

7.7. The DFSA considers Dr Sheikh's contraventions to be particularly serious because:

(a) of the impact of the contravention, in particular:

- (i) Dr Sheikh benefitted directly as a result of his contraventions. He withdrew the equivalent of USD512,457 in cash from MAS' bank account in May and June 2015;
- (ii) MAS' shareholders, and other creditors, have suffered a corresponding loss which was caused or contributed to by Dr Sheikh's contraventions;
- (iii) Dr Sheikh's misconduct occurred at a time when MAS' financial position was deteriorating, and was a significant factor which ultimately led to MAS being put into liquidation and its DFSA Licence being withdrawn;

(b) of the nature of the contravention, in particular:

- (i) the DFSA considers that Dr Sheikh engaged in a systematic and deceptive pattern of conduct over May and June 2015 that appears to have been carried out with the intention of concealing his withdrawals, misleading others and putting his own interests ahead of others;

- (ii) Dr Sheikh's conduct caused MAS to mis-state its financial position for May 2015 and, therefore, mislead the DFSA when the May 2015 Financial Report was submitted to the DFSA on 7 June 2015;
  - (iii) Dr Sheikh's contraventions were repeated (RPP 6-6-4(b)). Over May and June 2015, Dr Sheikh made 15 cash withdrawals using cheques, at least 14 of which he signed personally. He then told two people, Mr X (on at least two occasions) and Mr Kamath, that there were no transactions during May 2015;
  - (iv) Dr Sheikh's conduct was dishonest and demonstrates a serious failure to act with integrity (RPP 6-6-4(e)) (see paragraph 6.2);
  - (v) Dr Sheikh abused a position of trust and held the most senior position with MAS (RPP 6-6-4(f) and (k)). Since 2009, Dr Sheikh held at various times the positions of CEO, chairman and Licensed Director of MAS, as well as being its founder and largest shareholder. As the CEO, Dr Sheikh occupied the most senior executive position in MAS. By making the withdrawals as he did in May and June 2015, Dr Sheikh took advantage of his seniority and the trust others placed in him. He knew his actions and instructions were unlikely to be challenged by others;
  - (vi) Dr Sheikh caused others to commit contraventions (RPP 6-6-4(h)) including a breach of applicable prudential requirements by MAS and caused Mr Kamath to submit an inaccurate monthly financial report to the DFSA;
  - (vii) Dr Sheikh had significant financial services industry experience (RPP 6-6-4(j)). Prior to joining MAS in 2009, Dr Sheikh had over 11 years' experience of working in senior positions in other financial institutions. Given his experience, Dr Sheikh should have understood the high standards expected of him and realised that his conduct fell significantly short of those;
- (c) Dr Sheikh's contraventions were deliberate (RPP 6-6-5). Factors which demonstrate that his contraventions were deliberate include:
- (i) The contravention was intentional in that Dr Sheikh intended to make, and conceal, the withdrawals in May and June 2015 and could reasonably have foreseen that the likely consequences of his actions described in this Notice would result in the contraventions (RPP 6-6-5(a));
  - (ii) Dr Sheikh intended to, and did in fact, personally benefit directly from his contraventions (RPP 6-6-5(b)). Knowing that he was about to take action to place MAS into liquidation, he pre-empted that by withdrawing MAS' money, for his own personal use;
  - (iii) Dr Sheikh sought to conceal his misconduct and otherwise acted in such a way as to avoid or reduce the risk it would be discovered, influenced by the belief that it would be difficult to detect (RPP 6-6-5(d), (e) and (f)). This is evident from his instruction to Mr X in early May 2015 not to use the online banking system, Dr Sheikh's assertion that there had been no transactions in May 2015 and his refusal to provide the bank statements; and

- (iv) Dr Sheikh's contraventions were repeated (RPP6-6-5(h)). See subparagraph 7.7(b)(i). Further, after Dr Sheikh's false representations on 7 June 2015 that there had been no transactions in May 2015, he then wrote a further three cheques to withdraw the remaining funds in MAS' bank account on 13 and 14 June 2105.

7.8. Taking the above factors into account, the DFSA is of the opinion that Dr Sheikh's contraventions are particularly serious. Accordingly, the DFSA considers that a fine of USD150,000 appropriately reflects the seriousness of the contraventions.

*Step 3 – Mitigating and aggravating factors*

7.9. In considering the appropriate level of the fine, the DFSA had regard to the circumstances of this matter and mitigating and aggravating factors, including those set out in RPP 6-6-8.

7.10. The DFSA considers that Dr Sheikh's contraventions are aggravated by the following factors:

- (a) Dr Sheikh failed to bring the relevant contraventions to the DFSA's attention; and
- (b) More than one year after the relevant events, and in response to a notice under Article 80 of the Regulatory Law 2004 requiring him to provide further information about his conduct in May and June 2015, Dr Sheikh provided the DFSA with an implausible version of events. Dr Sheikh's claims include alleged investments and agreements that are not supported either directly or by facts inferred from contemporaneous evidence (aside from that provided by Dr Sheikh). The DFSA considers that, instead of being truthful, Dr Sheikh invented the story regarding Investor A and Investor B and their respective proposed investments (Investment A and Investment B) in an apparent attempt to explain or legitimise his misconduct.

7.11. The DFSA considers that Dr Sheikh's implausible explanation for his withdrawals in May and June 2015, referred to in paragraph 7.10(b) above, demonstrates a propensity to engage in misleading conduct. These factors are relevant to the DFSA's decision to impose the Restriction and the Prohibition described later in this Notice.

7.12. Accordingly, the figure after Step 3 is increased to USD200,000.

*Step 4 – Adjustment for deterrence*

7.13. If the DFSA considers that the level of the fine which it has arrived at after Step 3 is insufficient to deter the individual who committed the contravention, or others, from committing further or similar contraventions, the DFSA may increase the fine. RPP 6-6-9 sets out some circumstances where the DFSA may do this.

7.14. The DFSA considers it necessary to impose an upward adjustment to the fine due to the following:

- (a) To achieve an appropriate and credible deterrent effect against Dr Sheikh from committing further or similar contraventions;

- (b) There is the likelihood that similar contraventions will be committed by other individuals in the future (RPP 6-6-9 (c)), in particular GEN Rule 4.4.1 (Principle 1 – Integrity) and Article 66 of the Regulatory Law (Providing false or misleading information to the DFSA); and
- (c) The likelihood of timely detection of such contraventions in small to medium owner controlled firms is low (RPP 6-6-9 (d)).

7.15. Accordingly, in respect of the fine imposed on Dr Sheikh referred to after Step 3, the DFSA has decided to increase this figure by 100% (an amount of USD200,000), to deter Dr Sheikh or any other person from engaging in the same or similar conduct.

7.16. Accordingly, the figure after step 4 is USD400,000.

#### *Step 5 – Settlement discount*

7.17. RPP 6-6-10 states that, where the DFSA and the person on whom the fine is to be imposed agree on the amount and other terms, the amount of the fine which might otherwise have been payable will be reduced to reflect the stage at which agreement was reached.

7.18. No settlement agreement has been reached. Accordingly, the DFSA has not applied any settlement discount after Step 5, and the figure remains at USD400,000.

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

7.19. Given the factors and considerations set out in paragraphs 7.5 to 7.18 above and the circumstances of this matter, the DFSA has determined that it is proportionate and appropriate to impose on Dr Sheikh a fine of USD400,000.

#### **The Restitution Direction**

7.20. Article 90(2)(c) of the Regulatory Law 2004 allows the DFSA to make a direction requiring a person to effect restitution or compensate any other person in respect of a contravention within such period and on such terms as the DFSA may direct. The DFSA may do so where it considers that the first person has contravened a provision of any legislation administered by the DFSA.

7.21. The DFSA recognises that MAS' lack of revenue may have been due to circumstances beyond the control of Dr Sheikh. However, the DFSA considers that, were it not for Dr Sheikh's cash withdrawals and the contraventions set out in this Notice, MAS is likely to have met its Liquid Assets Requirement in May 2015.

7.22. The DFSA considers that Dr Sheikh was solely responsible for the withdrawals in May and June 2015. Accordingly, the DFSA considers Dr Sheikh responsible for the losses suffered by MAS and its creditors which followed his cash withdrawals in May and June 2015. Although the DFSA recognises that Dr Sheikh was the majority shareholder in MAS, he was not entitled to withdraw as he did almost the entirety of MAS' financial resources from its bank account. In so doing, Dr Sheikh caused MAS to breach fundamental prudential requirements as a DFSA Authorised Firm and ultimately led to MAS being put into liquidation.

7.23. Accordingly, the DFSA considers it appropriate in the circumstances to direct Dr Sheikh to pay restitution to MAS equal to the amount of the economic benefits he derived directly or indirectly from his contraventions. The economic benefits amount to USD512,457, the amount which he withdrew in May and June 2015. The DFSA also considers it appropriate to charge interest on the benefit, in this case USD101,771 as at the date of this Notice.<sup>1</sup> The total amount payable under the Restitution Direction is therefore USD614,228.

7.24. Nothing in this Notice affects the rights and powers that any person, including MAS or its creditors in liquidation, may have under Article 94 of the Regulatory Law 2004, or otherwise, to seek orders for the recovery of damages or compensation against Dr Sheikh.

### **The Restriction**

7.25. The DFSA considers it appropriate and proportionate in the circumstances to restrict Dr Sheikh from performing any function in connection with the provision of Financial Services in or from the DIFC.

7.26. The DFSA's policy in relation to its exercise of the restriction power under Article 59(1) of the Regulatory Law 2004 is set out in section 4-10 of RPP.

7.27. In determining whether to exercise its power under Article 59(1) of the Regulatory Law 2004, the DFSA may have regard to all relevant matters including, but not limited to, the criteria for assessing the fitness and propriety of Authorised Individuals as set out in GEN Chapter 7 and section 2-3 of RPP (RPP 4-10-3).

7.28. In deciding to impose the Restriction, the DFSA has considered the:

- (a) issues giving rise to concerns about Dr Sheikh's fitness and propriety and, in particular, whether those concerns are such as to affect all possible functions in connection with the provision of Financial Services in or from the DIFC which a person may perform;
- (b) materiality of the issue giving rise to concerns as to Dr Sheikh's fitness and propriety; namely, the dishonest and deceitful way in which he personally withdrew MAS' funds from its bank account, concealed those withdrawals, caused MAS to breach its prudential obligations and submit a false monthly financial report to the DFSA. Dr Sheikh then compounded his earlier misconduct by providing the DFSA with an implausible explanation in an apparent attempt to justify his earlier actions and mislead the DFSA;
- (c) nature of the function Dr Sheikh was performing; namely, that he was the acting CEO of MAS, the most senior executive position, as well as the chairman and a Licensed Director. Dr Sheikh was responsible for managing the day-to-day affairs of MAS, and MAS relied on him to ensure its affairs were managed effectively and responsibly, which he failed to do; and

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<sup>1</sup> Calculated using a simple (non-compounding) interest rate of 4% over the 3-month Emirates Interbank Offer Rate (EIBOR), calculated daily from the date of the relevant cash withdrawal until the date of this Notice. This results in an interest rate of 4.73857% applied to the 12 cash withdrawals in May 2015, and 4.74571% applied to the three cash withdrawals in June 2015.

(d) level of risk which Dr Sheikh currently poses, and may pose in the future, to regulated entities, customers and the integrity of the DIFC.

7.29. Dr Sheikh does not currently hold any Authorised Individual status or other known position in the DIFC.

7.30. However, given the seriousness of Dr Sheikh's misconduct and the steps he appears to have taken to subordinate the interests of others to his own, the DFSA considers the Restriction necessary and appropriate to protect direct and indirect users and prospective users of the Financial Services industry in the DIFC. This is particularly the case should Dr Sheikh in the future seek to perform any functions in connection with the provision of Financial Services (e.g. by seeking employment with an Authorised Firm to perform such functions) in the DIFC.

### **The Prohibition**

7.31. The DFSA also considers it appropriate and proportionate in the circumstances to prohibit Dr Sheikh from holding office in or being an employee of any Authorised Person, DNFBP, Reporting Entity or Domestic Fund in the DIFC.

7.32. Article 90(2)(g) of the Regulatory Law 2004 provides that the DFSA may impose such a prohibition when a person has contravened legislation administered by the DFSA.

7.33. When considering whether to impose the Prohibition, the DFSA has taken into consideration the other powers it has available to penalise Dr Sheikh for his misconduct as well as the other powers to protect direct and indirect users and prospective users of the Financial Services industry in the DIFC. Noting the Restriction on Dr Sheikh and the potential overlap with the Prohibition, the DFSA considers that such further protection is required to address the serious risk Dr Sheikh presents to the Financial Services industry in the DIFC.

7.34. Accordingly, given the seriousness and scale of Dr Sheikh's misconduct, the DFSA considers it necessary and appropriate in the circumstances to impose the Prohibition on Dr Sheikh to protect users of the Financial Services industry in the DIFC should Dr Sheikh seek to hold office in or be an employee of any Authorised Person, DNFBP, Reporting Entity or Domestic Fund in the DIFC in the future.

## **8. PROCEDURAL MATTERS**

### **Decision Making Committee**

8.1. The decision which gave rise to the obligation to give this Notice was made by the Decision Making Committee of the DFSA.

8.2. This Notice is given to Dr Sheikh under Paragraph 5 of Schedule 3 to the Regulatory Law 2004.

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

8.3. The Fine must be paid by Dr Sheikh by no later than 60 days from the date of this Notice.

- 8.4. The total amount to be paid under the Restitution Direction must be paid by Dr Sheikh no later than 90 days from the date of this Notice.

**If the payments are not paid**

- 8.5. If any or all of the Fine is outstanding after the due date, the DFSA may seek to recover the outstanding amount as a debt owed by Dr Sheikh and due to the DFSA.
- 8.6. If any or all of the total amount payable under the Restitution Direction is outstanding after the due date, or arrangements to effect repayment of the amount have not been made by the due date, the DFSA may proceed to take action in the DIFC Court to enforce compliance with this Notice.
- 8.7. Nothing in this Notice affects the rights and powers that any person may have under Article 94 of the Regulatory Law, or otherwise, to seek orders for the recovery of damages or compensation against Dr Sheikh.

**Evidence and other material considered**

- 8.8. Annex A sets out extracts from some statutory and regulatory provisions and guidance relevant to this Notice.
- 8.9. In accordance with paragraph 5(2) of Schedule 3 to the Regulatory Law 2004, the DFSA provided Dr Sheikh a copy, or access to a copy, of the relevant materials that were considered in making the decision in this Notice.

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

- 8.10. Under Articles 29, 59(6) and 90(5) of the Regulatory Law 2004, Dr Sheikh has the right to refer this matter to the FMT for review.
- 8.11. The FMT is operationally independent of the DFSA and has the power to conduct a full merits review of the DFSA's decision. After review of the DFSA's decision, the FMT has the power to make a new decision using the powers available to the DFSA. This could involve:
- a. confirming the decision set out in this 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.
- 8.12. Should Dr Sheikh wish to have this matter reviewed by the FMT, Dr Sheikh must exercise that right within 30 days of the decision. Any reference made after that date will have to be approved by the FMT where it is satisfied that such approval is appropriate in the circumstances, pursuant to Article 29(3)(b) of the Regulatory Law. Proceedings before the FMT are commenced by submitting a Notice of Appeal ("Form FMT 1") to the Registrar of the FMT.
- 8.13. 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:

8.14. Under paragraph 26 of the FMT Rules of Procedure, Dr Sheikh 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.

**Publicity**

8.15. Under Article 116(2) of the Regulatory Law 2004, 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.

8.16. RPP 5-17-8 to 5-17-10 is relevant to the publication of information about the matter to which this Notice relates. Under 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.

8.17. In the event that Dr Sheikh refers 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**

8.18. For more information concerning this matter generally, please contact the Administrator to the DMC on +971 4 362 1580 or by email at [DMC@dfs.ae](mailto:DMC@dfs.ae).

Signed:

.....  
Brad Douglas  
On behalf of the Decision Making Committee of the DFSA



## **ANNEX A - RELEVANT STATUTORY AND REGULATORY PROVISIONS**

### **1. STATUTORY PROVISIONS**

#### **Regulatory Law 2004 - DIFC Law No. 1 of 2004**

### **PART 3: LICENCES, AUTHORISATION AND REGISTRATION**

#### **Chapter 7 – Restriction, Suspension and Withdrawal of Authorised Individual or Key Individual Status**

##### **59. Restricting persons from performing functions in the DIFC**

- (1) If the DFSA believes on reasonable grounds that a person is not a fit and proper person to perform any functions in connection with the provision of Financial Services in or from the DIFC, it may restrict the person from performing all or any such functions.
- (2) A restriction under this Article may relate to a function whether or not it is a Licensed Function.
- (3) The DFSA may vary or withdraw a restriction imposed under this Article.
- (4) A person who performs a function in breach of a restriction under this Article commits a contravention.
- (5) The procedures in Schedule 3 apply to a decision of the DFSA under Article 59(1).
- (6) If the DFSA decides to exercise its power under Article 59(1), the person may refer the matter to the FMT for review.

### **PART 4: GENERAL REGULATION AND ANTI-MONEY LAUNDERING PROVISIONS**

#### **Chapter 1 – General Provisions**

##### **66. False or Misleading Information**

A person shall not:

- (a) provide information which is false, misleading or deceptive to the DFSA; or
- (b) conceal information where the concealment of such information is likely to mislead or deceive the DFSA.

### **PART 6: CONTRAVENTIONS AND FINES**

##### **85. General Contravention Provision**

- (1) A person who:
  - (a) does an act or thing that the person is prohibited from doing by or under the Law, Rules or other legislation administered by the DFSA;
  - (b) does not do an act or thing that the person is required or directed to do by or under the Law, Rules or other legislation administered by the DFSA; or

- (c) otherwise contravenes a provision of the Law, Rules or other legislation administered by the DFSA;

commits a contravention of the Law, Rules or other legislation, as the case may be, by virtue of Article 85 unless another provision of the Law, Rules or other legislation administered by the DFSA provides that the person commits, or does not commit, a contravention.

- (2) In Article 85, 'person' does not include the DFSA or the President.

## **86. Involvement in contraventions**

- (1) If a person is knowingly concerned in a contravention of the Law or Rules or other legislation administered by the DFSA committed by another person, the aforementioned person as well as the other person commits a contravention and is liable to be proceeded against and dealt with accordingly.
- (2) If an officer of a body corporate is knowingly concerned in a contravention of the Law or Rules or other legislation administered by the DFSA committed by a body corporate, the officer as well as the body corporate commits a contravention and is liable to be proceeded against and dealt with accordingly.
- (3) If the affairs of a body corporate are managed by its members, Article 86(2) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (4) If a partner (or a person purporting to act as a partner) is knowingly concerned in a contravention of the Law or Rules or other legislation administered by the DFSA committed by a partnership or by all or some of its constituent partners, he as well as the partnership or its constituent partners as the case may be commits a contravention and is liable to be proceeded against and dealt with accordingly.

## **PART 7: ENFORCEMENT**

### **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.

## **PART 10: MISCELLANEOUS**

### **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**

### **4. Opportunity to make representations before a decision**

- (1) If the DFSA proposes to make a decision to which this Schedule applies, it must first give the Relevant Person:
  - (a) a written notice (a "Preliminary Notice") containing the information in subparagraph (2); and
  - (b) an opportunity to make representations to the DFSA in person and in writing concerning the decision the DFSA proposes to take.
- (2) The Preliminary Notice must:
  - (a) specify the proposed decision;
  - (b) specify the reasons for that proposed decision, including any proposed findings of fact;
  - (c) include a copy of the relevant materials which were considered in making the proposed decision;
  - (d) inform the person that they may make representations to the DFSA concerning the proposed decision; and

- (e) specify how and by when any representations may be made.
- (3) For the purposes of sub-paragraph (2)(c), the DFSA:
- (a) may refer to materials (instead of providing a copy) if they are already held by the Relevant Person or are publicly available; and
  - (b) is not required to provide material that is the subject of legal professional privilege.
- (4) If the DFSA does not receive any representations within the period specified in the Preliminary Notice, it may proceed to make the proposed decision and give the person a Decision Notice in accordance with paragraph 5.
- (5) If the DFSA receives representations within the period specified in the Preliminary Notice, it must consider the representations in making the decision.
- (6) If, after considering the representations, the DFSA decides:
- (a) to make the proposed decision (either as proposed or with variations), then it must give the person a Decision Notice under paragraph 5; or
  - (b) not to make the proposed decision, then it must as soon as practicable notify the person in writing that it has decided not to make the decision.
- (7) If the DFSA concludes that any delay likely to arise as a result of complying with the procedures in this paragraph would be prejudicial to the interests of direct or indirect users of financial services in the DIFC or otherwise prejudicial to the interests of the DIFC:
- (a) the requirements in sub-paragraphs (1) to (6) do not apply; and
  - (b) instead the DFSA must provide the person with an opportunity to make representations in accordance with the procedures in paragraph 6 after it has made the decision.

## **5. Decision Notice**

- (1) If the DFSA decides to make a decision to which this Schedule applies, it must, as soon as practicable, give the Relevant Person a written notice (a "Decision Notice") specifying:
- (a) the decision;
  - (b) the reasons for the decision, including its findings of fact;
  - (c) the date on which the decision is to take effect;
  - (d) if applicable, the date by which any relevant action must be taken by the person; and
  - (e) the person's right to seek review of the decision by the FMT (where applicable).

- (2) The Decision Notice must include a copy of the relevant materials which were considered in making the decision.
- (3) For the purposes of sub-paragraph (2), the DFSA:
  - (a) may refer to materials (instead of providing a copy) if they are already held by the Relevant Person or are publicly available; and
  - (b) is not required to provide material that is the subject of legal professional privilege.

## **2. REGULATORY PROVISIONS (DFSA RULEBOOK AND SOURCEBOOK)**

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

#### **Chapter 4 – Core Principles**

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

###### **Principle 4 – Resources (Rule 4.2.4)**

An Authorised Firm must maintain and be able to demonstrate the existence of adequate resources to conduct and manage its affairs. These include adequate financial and system resources as well as adequate and competent human resources.

##### **4.4 The Principles for Authorised Individuals**

###### **Principle 1 – Integrity (Rule 4.4.1)**

An Authorised Individual must observe high standards of integrity and fair dealing in carrying out every Licensed Function.

### **Prudential – Investment, Insurance Intermediation and Banking (PIB)**

#### **Chapter 3 – Capital**

##### **Part 3 – Calculating the Capital Requirement**

###### **3.5 Capital Requirements for Categories 3B, 3C and 4**

###### **3.5.1**

This section applies to an Authorised Firm in Category 3B, 3C or 4.

###### **3.5.2**

The Capital Requirement for such an Authorised Firm is calculated as the higher of:

- (a) the applicable Base Capital Requirement as set out in section 3.6; or
- (b) the Expenditure Based Capital Minimum as set out in section 3.7.

###### **3.5.3**

- (1) An Authorised Firm to which this section applies must, at all times, maintain an amount which exceeds its Expenditure Based Capital Minimum in the form of liquid assets.
- (2) For the purpose of this Rule, and subject to (3), liquid assets comprise any of the following:
  - (a) cash in hand;
  - (b) money deposited with a regulated bank or deposit-taker which has a short-term credit rating of A1 or P1 (or equivalent) and above from an ECAI;
  - (c) demand deposits with a tenor of 1 year or less with a bank or deposit-taker in (b);

- (d) time deposits with a tenor of 1 year or less which have an option to redeem the deposit at any time. In such cases, the deposit amount eligible to be included as liquid assets must be calculated as net of any costs associated with such early redemption;
  - (e) cash receivable from a regulated clearing house and cash deposits with such clearing houses, other than any fees or contributions to guarantee or reserve funds of such clearing houses; or
  - (f) any other asset which may be approved by the DFSA as comprising a liquid asset for the purpose of this Rule.
- (3) For the purpose of this Rule, liquid assets do not include:
- (a) any investment, asset or deposit which has been pledged as security or Collateral for any obligations or liabilities assumed by it or by any other third party; or
  - (b) cash held in Client Money or Insurance Money accounts.

**Regulatory Policy and Process Sourcebook Module (RPP) (February 2017 Edition)**

**Chapter 2 – Authorisation – Becoming Regulated**

**Section 2-3 – Assessing the Fitness and Propriety of Authorised Individuals, Principal Representatives and Key Individuals**

**Introduction**

**2-3-1** This section sets out the matters which the DFSA takes into consideration when assessing the fitness and propriety of:

- (a) in the case of an Authorised Firm, an Authorised Individual or Principal Representative under section 7.6 of the GEN module and section 4.2 of the REP module, respectively; and
- (b) in the case of an Authorised Market Institution, a Key Individual under chapter 5 of the AMI module.

**Integrity**

**2-3-5**

In determining whether an individual has satisfied the DFSA as to his integrity, the DFSA may have regard to matters including, but not limited to, the following:

- (a) the propriety of an individual's conduct whether or not such conduct may have resulted in the commission of a criminal offence, the contravention of a law or the institution of legal or disciplinary proceedings of whatever nature;
- (...)
- (d) a contravention of any provision of financial services legislation or of rules, regulations, statements of principle or codes of practice made under or by a recognised self-regulatory organisation, Authorised Market Institution, regulated exchange or regulated clearing house or Financial Services Regulator;

(...)

- (f) a dismissal or a request to resign from any office or employment;
- (g) whether an individual has been or is currently the subject of or has been concerned with the management of a Body Corporate which has been or is currently the subject of an investigation into an allegation of misconduct or malpractice;

(...)

- (n) whether the individual has been censured, disciplined, publicly criticised by, or has been the subject of a court order at the instigation of, the DFSA, or any officially appointed inquiry, or Financial Services Regulator; and
- (o) whether the individual has been candid and truthful in all his dealings with the DFSA.

## **Chapter 4 - Supervisory and Enforcement Powers**

### **4-10 Power to Restrict Individuals**

#### **4-10-1**

Under Article 59(1), if the DFSA reasonably believes that a natural person is not fit and proper to perform any functions in connection with the provision of Financial Services, it may restrict that Person from performing any or all such functions.

#### **4-10-2**

Article 59 enables the DFSA to impose a restriction in respect of all functions or in respect of specific functions. The restriction may also apply to functions whether or not they are Licensed Functions. Whether a general restriction, or a more specific restriction, is imposed by the DFSA may depend on the facts of the matter, including:

- (a) the concerns upon which the DFSA determines that a natural person is not fit and proper to perform any functions; and
- (b) the need to protect the integrity of the DIFC and ensure the confidence of participants in the market.

#### **4-10-3**

In determining whether to exercise its power under Article 59(1), the DFSA may have regard to all relevant matters including, but not limited to, the criteria for assessing the fitness and propriety of Authorised Individuals as set out in chapter 7 of GEN, for Key Individuals the criteria set out in chapter 3 of AMI and section 2-3 of this Sourcebook.

## **Chapter 5 - Enforcement**

### **5-8 Fines**

#### **5-8-1**



The DFSA may seek to impose a fine under Article 90 on a Person whom it considers has contravened a provision of the Law. The DFSA may impose a fine in any amount considered appropriate.

#### **5-8-2**

In determining whether to impose a fine and the quantum of the fine, the DFSA will take into consideration the circumstances of the conduct and will be guided by the penalty guidance set out in chapter 6 of the RPP.

#### **5-8-3**

The decision to impose a fine on a Person will be made by the DMC.

#### **5-8-4**

Prior to making a decision, the DMC will follow the procedures set out in Schedule 3 of the Regulatory Law (see also chapter 7 of the RPP).

#### **5-8-5**

If a Person receives a notice imposing a fine and does not pay the full amount of the fine, the DFSA may recover so much of the fine as remains outstanding as a debt due, together with costs incurred by the DFSA in recovering such amount.

### **5-17 Publicity**

#### **General policy on publicity of enforcement actions**

##### **5-17-2**

The DFSA will generally publish, in such form and manner as it regards appropriate, information and statements relating to enforcement actions, including censures and any other matters which the DFSA considers relevant to the conduct. The publication of enforcement outcomes is consistent with the DFSA's commitment to open and transparent processes and its objectives.

##### **5-17-3**

In all cases the DFSA retains the discretion to take a different course of action, where it furthers the DFSA's achievement of its objectives or is otherwise in the public interest to do so. For example, the DFSA may decide to publish at an earlier stage than suggested by the general policy, where circumstances justify this.

(...)

## **6-2 DECIDING TO TAKE ACTION**

### **6-2-1**

When determining a penalty, the DFSA will consider all relevant facts and circumstances. Set out below is a list of factors that may be relevant for this purpose. The list is not exhaustive:

not all of these factors may be applicable in a particular case, and there may be other factors, not listed, that are relevant. The factors include:

- (a) the DFSA's objectives;
- (b) the deterrent effect of the penalty on:
  - (i) Persons that have committed or may commit the contraventions; and
  - (ii) other Persons that have committed or may commit similar contraventions;
- (c) the nature, seriousness and impact of the contravention, including whether the contravention was deliberate or reckless;
- (d) if the contravention involved a number of Persons, the degree of involvement and specific role of each Person;
- (e) the benefit gained (whether direct or indirect, pecuniary or non-pecuniary) or loss avoided as a result of the contravention;
- (f) the conduct of the Person after the contravention;
- (g) the difficulty in detecting and investigating the contravention that is the subject of the penalty;
- (h) whether the Person committed the contravention in such a way as to avoid or reduce the risk that the contravention would be discovered. A Person's incentive to commit a contravention may be greater where the contravention is, by its nature, harder to detect. The DFSA may impose a more significant penalty where it considers that a Person committed a contravention in such a way as to avoid or reduce the risk that the contravention would be discovered;
- (i) the disciplinary record and compliance history of the Person on whom the penalty is imposed;
- (j) whether the Person acted in accordance with DFSA guidance and other published materials. The DFSA will not take action against a Person for behaviour that it considers to be in line with guidance or other materials published by the DFSA in support of its Rulebook and Sourcebook which were current at the time of the behaviour in question;
- (k) action taken by the DFSA in previous similar cases; and
- (l) action taken by other domestic or international regulatory authorities. Where other regulatory authorities propose to take action in respect of the contravention which is under consideration by the DFSA, or one similar to it, the DFSA will consider whether the other authority's action would be adequate to address the DFSA's concerns, or whether it would be appropriate for the DFSA to take its own action.

## **Actions against Key Persons**

### **6-2-2**

In addition to the general factors in paragraph 6-2-1, there are some additional considerations that may be relevant when the DFSA decides whether to take action against a Key Person. The list is not exhaustive: not all of these factors may be applicable in a particular case, and there may be other factors, not listed that are relevant. The factors include:

- (a) the Key Person's position and responsibilities. The more senior the Key Person responsible for the misconduct, the more seriously the DFSA is likely to view the misconduct, and the more likely it is to take action against the Key Person; and
- (b) whether disciplinary action against the firm rather than the Key Person would be a more appropriate regulatory response.

## **6-3 FINANCIAL PENALTY OR PUBLIC CENSURE**

### **6-3-1**

The DFSA will consider all the relevant circumstances of the case when deciding whether to impose a financial penalty or issue a public censure. As such, the factors set out in section 6-2 are not exhaustive. Not all of the factors may be relevant in a particular case and there may be other factors, not listed, that are relevant.

### **6-3-2**

The criteria for determining whether it is appropriate to issue a public censure rather than impose a financial penalty include those factors that the DFSA will consider in determining the amount of a financial penalty set out in sections 6-5 to 6-7. Some particular considerations that may be relevant when the DFSA determines whether to issue a public censure rather than impose a financial penalty are:

- (a) whether or not deterrence may be effectively achieved by issuing a public censure;
- (b) depending upon the nature and seriousness of the contravention:
  - (i) whether the Person has brought the contravention to the attention of the DFSA;
  - (ii) whether the Person has admitted the contravention and provides full and immediate co-operation to the DFSA, and takes steps to ensure that those who have suffered loss due to the contravention are fully compensated for those losses;
- (c) the DFSA's approach in similar previous cases: the DFSA will seek to achieve a consistent approach to its decisions on whether to impose a financial penalty or issue a public censure; and
- (d) the impact on the Person concerned. It would only be in an exceptional case that the DFSA would be prepared to agree to issue a public censure rather than impose a financial penalty if a financial penalty would otherwise be the appropriate sanction. Examples of such exceptional cases could include:
  - (i) where the application of the DFSA's policy on serious financial hardship (set out in section 6-7) results in a financial penalty being reduced to zero;
  - (ii) where there is verifiable evidence that the Person would be unable to meet other regulatory requirements, particularly financial resource requirements, if the DFSA imposed a financial penalty at an appropriate level; or

- (iii) where there is the likelihood of a severe adverse impact on a Person's shareholders or a consequential impact on market confidence or market stability if a financial penalty were imposed. However, this does not exclude the imposition of a financial penalty even though this may have an impact on a Person's shareholders.

### 6-3-3

Some particular considerations that may be relevant when the DFSA determines whether to issue a financial penalty rather than impose a public censure are:

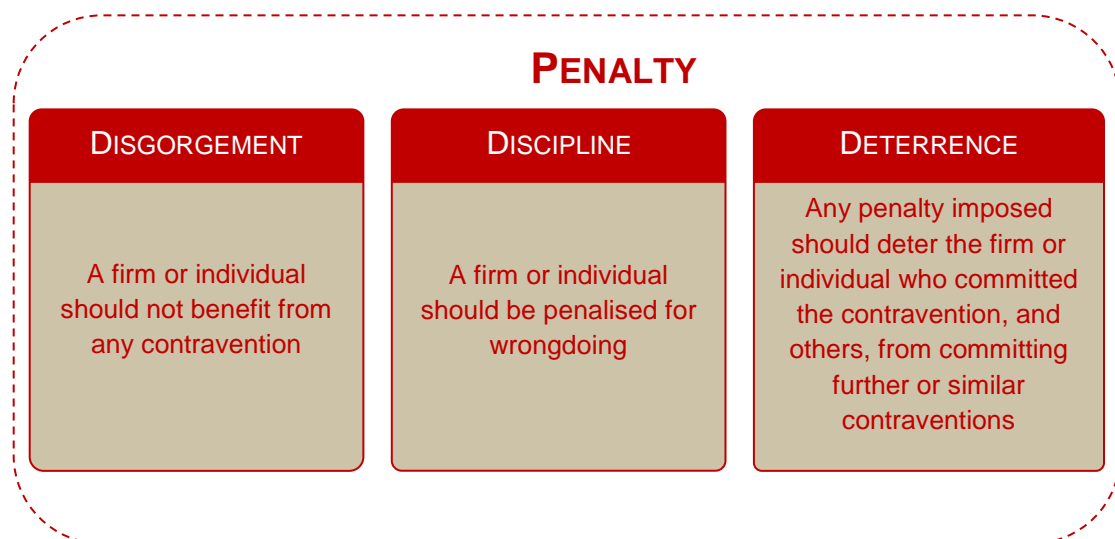
- (a) if the Person has made a profit or avoided a loss as a result of the contravention, on the basis that a Person should not be permitted to benefit from its contravention;
- (b) if the contravention is more serious in nature or degree, on the basis that the sanction should reflect the seriousness of the contravention; other things being equal, the more serious the contravention, the more likely the DFSA is to impose a financial penalty; and
- (c) if the Person has a poor disciplinary record or compliance history, on the basis that it may be particularly important to deter future cases.

## Chapter 6 – Penalty Guidance

### 6-4 Determining the Appropriate Level of Financial Penalty

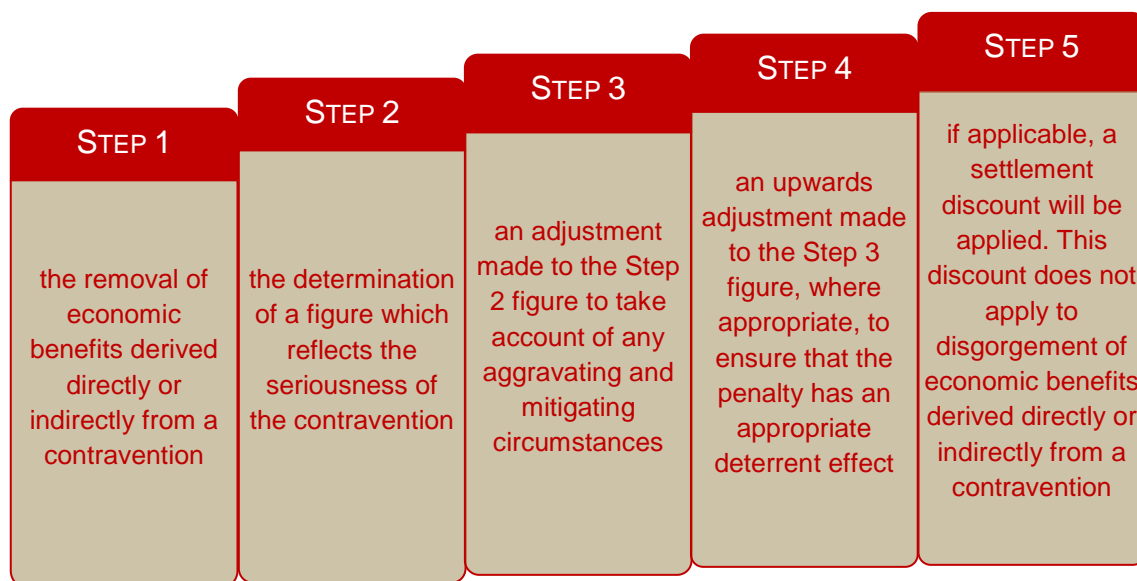
#### 6-4-1

The DFSA's penalty-setting regime is based on three principles:



## 6-4-2

The total amount payable by a Person subject to enforcement action may be made up of two elements: (i) disgorgement of the benefit received as a result of the contravention; and (ii) a financial penalty reflecting the seriousness of the contravention. These elements are incorporated in a five-step framework, which can be summarised as follows:



## 6-4-3

The DFSA recognises that a penalty must be proportionate to the contravention. These steps will apply in all cases, although the details of Steps 1 to 4 will differ for cases against firms (section 6-5), and cases against individuals (section 6-6).

## 6-4-5

The lists of factors and circumstances in sections 6-5 and 6-6 are not exhaustive. Not all of the factors or circumstances listed will necessarily be relevant in a particular case and there may be other factors or circumstances not listed which are relevant.

## 6-4-6

The DFSA will not, in determining its policy with respect to the amount of penalties, take account of expenses which it incurs, or expects to incur, in discharging its functions.

## 6-6 Financial Penalties Imposed on an individual

### Step 1: Disgorgement

#### 6-6-1

The DFSA will seek to deprive an individual of the economic benefits derived directly or indirectly from the contravention (which may include the profit made or loss avoided) where it is possible to quantify this. The DFSA will ordinarily also charge interest on the benefit.

### Step 2: The seriousness of the contravention

### **6-6-2**

The DFSA will determine a financial penalty figure that reflects the seriousness of the contravention. In determining such a figure, the DFSA will take into account various factors, which will usually fall into the following four categories:

- (a) factors relating to the impact of the contravention;
- (b) factors relating to the nature of the contravention;
- (c) factors tending to show whether the contravention was deliberate; and
- (d) factors tending to show whether the contravention was reckless.

### **6-6-3**

Factors relating to the impact of a contravention committed by an individual include:

- (a) the level of benefit gained or loss avoided, or intended to be gained or avoided, by the individual from the contravention, either directly or indirectly;
- (b) the loss or risk of loss, as a whole, caused to consumers, investors or other market users in general;
- (c) the loss or risk of loss caused to individual consumers, investors or other market users;
- (d) whether the contravention had an effect on particularly vulnerable people, whether intentionally or otherwise;
- (e) the inconvenience or distress caused to consumers; and
- (f) whether the contravention had an adverse effect on markets and, if so, how serious that effect was. This may include having regard to whether the orderliness of, or confidence in, the markets in question has been damaged or put at risk.

### **6-6-4**

Factors relating to the nature of a contravention by an individual include:

- (a) the nature of the Laws or Rules contravened;
- (b) the frequency of the contravention;
- (c) the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the contravention;
- (d) the scope for any potential financial crime to be facilitated, occasioned or otherwise occur as a result of the contravention;
- (e) whether the individual failed to act with integrity;
- (f) whether the individual abused a position of trust;
- (g) whether the individual committed a contravention of any professional code of conduct;
- (h) whether the individual caused or encouraged other individuals to commit contraventions;
- (i) whether the individual held a prominent position within the industry;
- (j) whether the individual is an experienced industry professional;

- (k) whether the individual held a senior position with the firm;
- (l) the extent of the responsibility of the individual for the product or business areas affected by the contravention, and for the particular matter that was the subject of the contravention;
- (m) whether the individual acted under duress; and
- (n) whether the individual took any steps to comply with DFSA rules, and the adequacy of those steps.

#### **6-6-5**

Factors tending to show the contravention was deliberate include:

- (a) the contravention was intentional, in that the individual intended, could reasonably have foreseen or foresaw that the likely or actual consequences of his actions or inaction would result in a contravention;
- (b) the individual intended to benefit financially from the contravention, either directly or indirectly;
- (c) the individual knew that his actions were not in accordance with his firm's internal procedures;
- (d) the individual sought to conceal his misconduct;
- (e) the individual committed the contravention in such a way as to avoid or reduce the risk that the contravention would be discovered;
- (f) the individual was influenced to commit the contravention by the belief that it would be difficult to detect;
- (g) the individual knowingly took decisions relating to the contravention beyond his field of competence; and
- (h) the individual's actions were repeated.

#### **6-6-6**

Factors tending to show the contravention was reckless include:

- (a) the individual appreciated there was a risk that his actions or inaction could result in a contravention and failed adequately to mitigate that risk; and
- (b) the individual was aware there was a risk that his actions or inaction could result in a contravention but failed to check if he was acting in accordance with internal procedures.

### **Step 3: Mitigating and aggravating factors**

#### **6-6-7**

The DFSA may increase or decrease the amount of the financial penalty arrived at after Step 2 (excluding any amount to be disgorged as set out in Step 1), to take into account factors which aggravate or mitigate the contravention. Any such adjustments will be made by way of a percentage adjustment to the figure determined at Step 2.

#### **6-6-8**

The following list of factors may have the effect of aggravating or mitigating the contravention:

- (a) the conduct of the individual in bringing (or failing to bring) quickly, effectively and completely the contravention to the DFSA's attention (or the attention of other regulatory authorities, where relevant);
- (b) the degree of cooperation the individual showed during the investigation of the contravention by the DFSA, or any other regulatory authority allowed to share information with the DFSA;
- (c) whether the individual took any steps to stop the contravention, and when these steps were taken;
- (d) any remedial steps taken since the contravention was identified, including whether these were taken on the individual's own initiative or that of the DFSA or another regulatory authority;
- (e) whether the individual has arranged his resources in such a way as to allow or avoid disgorgement and/or payment of a financial penalty;
- (f) whether the individual had previously been told about the DFSA's concerns in relation to the issue, either by means of a private warning or in supervisory correspondence;
- (g) whether the individual had previously undertaken not to perform a particular act or engage in particular behaviour;
- (h) whether the individual has complied with any requirements or rulings of another regulatory authority relating to the contravention;
- (i) the previous disciplinary record and general compliance history of the individual;
- (j) action taken against the individual by other domestic or international regulatory authorities that is relevant to the contravention in question;
- (k) whether DFSA guidance or other published materials had already raised relevant concerns, and the nature and accessibility of such materials;
- (l) whether the DFSA publicly called for an improvement in standards in relation to the behaviour constituting the contravention or similar behaviour before or during the occurrence of the contravention; and
- (m) whether the individual agreed to undertake training subsequent to the contravention.

#### **Step 4: Adjustment for deterrence**

##### **6-6-9**

If the DFSA considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the contravention, or others, from committing further or similar contraventions then the DFSA may increase the financial penalty. Circumstances where the DFSA may do this include:

- (a) where the DFSA considers the absolute value of the penalty too small in relation to the contravention to meet its objective of credible deterrence;
- (b) where previous DFSA action in respect of similar contraventions has failed to improve industry standards. This may include similar contraventions relating to different products;
- (c) where the DFSA considers it is likely that similar contraventions will be committed by the individual or by other individuals in the future; and



- (d) where the DFSA considers that the likelihood of the detection of such a contravention is low.

**Step 5: Settlement discount**

**6-6-10**

The DFSA and the individual on whom a penalty is to be imposed may seek to agree on the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, section 6-8 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the DFSA and the individual concerned reached an agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

## ANNEX B - DEFINITIONS

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<b>Company A</b>	A Company involved in Investment A and referred to in paragraph 4.61 (b) of this Notice.
<b>Compliance Function</b>	MAS's outsourced Compliance Officer, along with a senior representative of the consulting firm from which he was employed.
<b>COO</b>	MAS' Chief Operating Officer
<b>DMC</b>	The DFSA's Decision Making Committee described in section 7-7 of RPP.
<b>Dr Sheikh</b>	Dr Mubashir Ahmed Sheikh.
<b>EBCM</b>	Expenditure Based Capital Minimum, a Capital Requirement calculated in accordance with PIB section 3.7.
<b>Fine</b>	The fine referred to in paragraph 1.1(b).
<b>GEN</b>	The DFSA Rulebook, General Module (VER34/06-14, in force from 21 August 2014 until 1 February 2016).
<b>Investment A</b>	The alleged funding arrangement described in paragraph 4.61 of this Notice.
<b>Investment B</b>	The alleged short-term loan arrangement described in paragraph 4.66 of this Notice.
<b>Investor A</b>	The other party to an alleged investment agreement with MAS dated 20 April 2015, described in paragraph 4.61 of this Notice.
<b>Investor B</b>	The other party to an alleged investment agreement with MAS dated 25 April 2015, described in paragraph 4.66 of this Notice.
<b>Liquid Assets</b>	As set out in paragraph 4.8 of this Notice, and pursuant to PIB Rule 3.5.3(2), Liquid Assets include cash in hand and money deposited with a regulated bank or deposit-taker, but do not include cash held in Client Money accounts.
<b>Liquid Assets Requirement</b>	The requirement, imposed by PIB Rule 3.5.3(1) and as set out in paragraph 4.7 of this Notice, that MAS maintained an amount of Liquid Assets which exceeded its EBCM of USD600,000.
<b>MAS</b>	MAS ClearSight Limited (in liquidation).
<b>Mr W</b>	The pseudonym for the MAS employee, first referred to in paragraph 4.73(e) of this Notice.
<b>Mr X</b>	The pseudonym for the MAS employee, first referred to in paragraph 4.11 of this Notice.

<b>Mr Y</b>	The pseudonym for a direct report of Mr Kamath, first referred to in paragraph 4.36 of this Notice.
<b>Mr Z</b>	The pseudonym for a third party consultant, first referred to in paragraph 5.17 of this Notice.
<b>Notice</b>	This Notice.
<b>PIB</b>	The DFSA Rulebook, Prudential – Investment, Insurance Intermediation and Banking Module (VER23/01-15, in force from 1 January 2015 until 1 February 2016).
<b>Prohibition</b>	The prohibition direction set out in paragraph 1.1(c) of this Notice.
<b>Regulatory Law 2004</b>	DIFC Law No. 1 of 2004 (as amended by the DIFC Laws Amendment Law (DIFC Law No. 1 of 2014) and in force from 21 August 2014).
<b>Restitution Direction</b>	The restitution direction set out in paragraph 1.1(a) of this Notice.
<b>Restriction</b>	The restriction set out in paragraph 1.1(b) of this Notice.
<b>RPP</b>	The DFSA Regulatory Policy and Process Sourcebook, February 2017 edition.
<b>Supervision</b>	The Supervision Division of the DFSA.
<b>SEO</b>	Senior Executive Officer, the Licensed Function described in GEN Rule 7.4.2.