(2011) DFSARAC 6
Odhaid Saeed Al Mansouri

Notice of Decision

1. On 28 November 2011, the Panel heard the appeals of Capital Investment International ("CII" or the "Firm"), Mr Husam Al Ameri ("HAA") ((2011) DFSARAC 5) and Mr Odhaid Saeed Al Mansouri ("OAM") ((2011) DFSARAC 6) against the 26 June 2011 Notice of Decision ("Decision") of the Executive of the DFSA ("DFSA") to withdraw the Authorisation and Licence of CII and the Authorised Individual status of HAA and OAM (collectively the "Applicants"). Nicholas Alves, Matthew Shanahan and Adrian Bock appeared on behalf of the Executive. Lina Saheb ("LS") appeared as authorised representative for CII pursuant to a board resolution dated 3 July 2011. LS was also authorised on 3 July 2011 to represent HAA and OAM in regard to these proceedings. HAA appeared in person and also was authorised by OAM on 27 November 2011 to speak on behalf of OAM at the Hearing.

2. Having heard the representations of the parties and their representatives and having considered the documentation previously filed, the Panel, in the Chairman's Order of 29 November, instructed the parties to negotiate in good faith with a view to attempting to reach a mutually acceptable settlement. The Panel gave guidance on certain elements which it considered any such settlement should contain, which included a publishable acknowledgement by the Applicants that they had breached certain requirements and principles of the DFSA, accompanied by an appropriate Enforceable Undertaking or equivalent document. The Panel also, at the Hearing, described certain options which the settlement discussions might focus on in relation to the licence of CII.

3. The Panel allowed the parties until 21 December to conduct negotiations with a view to reaching a settlement. If no agreement was reached by that date, the Panel declared its intention to issue its decision in each of these cases.

4. The Panel has been informed that no agreement was reached by 21 December. Accordingly, the Panel hereby issues its decision in the case of OAM.

Decision

5. The Panel has unanimously decided that the Authorised Individual status of OAM should be withdrawn, based on the findings of fact set out below. Because the Applicant did not seek or obtain an order staying the Decision during the pendency of the appeal, the withdrawal shall continue to have effect as from 26 June 2011.

Background

6. The background to case is set out in paragraphs 6 and 11 of the Panel's Decision concerning CII.

7. The DFSA Decision being appealed against had concluded that OAM breached Principle 1 for Authorised Individuals (GEN Rule 4.4.1 concerning standards of integrity) and Principle 2 (GEN 4.4.2 concerning due skill, care and diligence). The DFSA also found that OAM played a central role in breaches by CII of various rules for Authorised Firms including PIB Rule 2.2.1 (which sets the basic capital requirements) and PIB 4.5.2 (which requires an Authorised Firm to ensure that exposures to connected counterparties do not exceed 25% of its capital resources).

Findings of the Panel

8. The Panel considered the DFSA's Notice of Decision, the Record (consisting of the documents which were reviewed by the Decision Maker who made the Decision against which the Applicants are appealing), the Statement of Appeal with its supporting documents, the DFSA's Statement of Response, the Applicants' reply to the Statement of Response, the Statement of Adrian Bock and the oral evidence presented at the Hearing on 28 November 2011. The findings of fact were determined on a balance of probabilities.

9. The Panel noted that OAM had informed the Panel at very short notice that he was unable to attend the Hearing due to a family emergency. The Panel regretted his inability to be present for a matter of this importance. The Panel also noted OAM's letter dated 27 November 2011 authorising HAA to represent him at the Hearing and approving all statements made by HAA on his behalf.

10. The Panel concluded that the governance of CII was effectively in the hands of OAM and HAA, who ran the firm as if it were a partnership of two. Although HAA played the more active role on a day-to-day basis, the Panel concluded that OAM was party to the material actions, decisions, omissions and failures of governance which gave rise to the breaches of DFSA rules which are the subject of this Decision. The rest of the Board played little role in the governance of the Firm.

11. The Panel focused its attention on whether the circumstances surrounding the April Transactions or the Term Deposit and Overdraft (which are summarized in Paragraph 11 of the Panel's Decision concerning CII as a firm) showed OAM to have breached GEN 4.4.1 or 4.4.2 or GEN 4.4.5 (general principle requiring an Authorised Individual to ensure that the business is organised so that it can be managed and controlled effectively) or GEN 4.4.6 (requirement to ensure that the Firm complies with applicable legislation).

12. The two main questions considered by the Panel were: (a) whether OAM deliberately sought to conceal or withhold from the senior management of CII information about facts which he knew or suspected would put CII in breach of DFSA rules and, if so, whether this demonstrated a lack of integrity, and (b) whether OAM had acted with due skill, care and diligence in carrying out his functions as a Licensed Director. The examination of

these questions centred on the April Transactions and CII's term deposit with the Abu Dhabi Commercial Bank (ADCB) and the overdraft in favour of OAM. The Panel focused more heavily on the deposit and overdraft, since the rule breach in this case was particularly serious and the evidence appeared more clear-cut of possible intention to conceal information from senior managers in the Firm.

13. The Panel noted that, in relation to the deposit and overdraft, both Ms X and Mr Y (respectively Senior Executive Officer and Financial Officer of the Firm) in their interviews with DFSA staff stated that they were not made aware at the relevant time of the request for an overdraft for OAM's benefit secured against CII's deposit. OAM was the party who benefitted from the overdraft and one of the parties who signed the pledge agreement on behalf of CII. He was aware that the deposit was held in the name of CII and must have known that it formed a large part of the Firm's capital resources. He failed to inform the management of CII who were responsible for submitting the Firm's capital adequacy returns to the DFSA about the existence of the pledge. This must either have been a deliberate omission or have been the result of OAM's failure to inform himself or heed advice about the impact which the pledge would have on CII's compliance with GEN 2.2.1.

14. The Panel also took note of the shareholders' resolution of 15 August 2010 passed by OAM and HAA (of which Ms X and Mr Y were not advised) which had the effect of preventing Ms X and Mr Y, at least for a period of several weeks, from gaining access to bank information which would have enabled them to find out about the overdraft and lien (the possible existence of which they had become aware of accidentally). The representations and evidence of HAA stressed that information about the overdraft was eventually made available to senior management of CII. However, the evidence indicated to the Panel that this only occurred after repeated pressure on HAA and OAM from CII management (who were concerned about the capital adequacy returns due to be made to the DFSA), including the presentation by Ms X and Mr Y to HAA and OAM for their signature of a draft letter to ADCB which sought confirmation of whether any lien or right of set-off existed in relation to CII's accounts with ADCB. The Panel noted that HAA and OAM did not send the letter in the form requested by Ms X but caused it to be amended in a manner that failed to seek confirmation concerning the lien.

15. The Panel also noted a further matter contained in Mr Bock's evidence, relating to the overdraft and lien. In May 2010, routine letters were sent by CII, signed by HAA and OAM, to three banks with whom CII had facilities, requesting confirmation (for presentation to CII's auditors) of various matters concerning CII's accounts as at 31 December 2009. The letters to two of these banks included requests for information concerning (i) any overdrafts granted (stating whether secured or not and, if secured, the nature of security held) and (ii) any rights of set-off granted in respect of accounts of third parties. The letter to the third bank (ADCB) omitted (in the view of the Panel significantly) these two requested confirmations.

16. In relation to the April Transactions, the DFSA submitted to the Panel that the purpose of these transactions must have been to give the impression to CII's management that the breach of PIB 4.5.2 had been corrected, when this was not the case. No convincing explanation was provided to the Panel of the purpose of the April Transactions. In their written representations, OAM and HAA maintained that these transactions were the result of

mistakes by an employee of another firm controlled by OAM and HAA (although this had been denied by the employee concerned when interviewed by the DFSA). Under questioning at the Hearing, HAA conceded that he and OAM had also made mistakes, as was evident to the Panel from the fact that all relevant transfer instructions had been signed by HAA and OAM. The Panel thus found that the allegations in the correspondence and proceedings preceding the Hearing, which had blamed all the mistakes in relation to the April Transactions on subordinate staff, were unfounded.

17. Whatever the purpose of the April Transactions, it was clear to the Panel that they were conducted by HAA and OAM without the knowledge of members of CII's senior management, who should have been made fully and promptly aware of such transactions to enable them to ensure compliance with DFSA rules. This was a serious failure in governance.

18. The Panel also considered relevant the interview by DFSA staff with Mr Z (Compliance and MLR Officer of CII from April to October 2010) and related documentation contained in the Record. Mr Z on at least two occasions wrote to Ms X expressing his concern over the lack of independence of the senior management of CII to conduct the activities of the Firm and particularly the lack of control over CII's bank accounts and financial management. He stated that he could not perform his duties as set out in his job description, the Firm's Compliance Manual and in DFSA Rules because of this lack of information and independence. As a Licensed Director of CII, OAM shared responsibility for the failure to provide sufficient information and authority to the senior management of the Firm to enable them to fulfil their regulatory responsibilities.

19. The Panel concluded from the circumstances summarised above that there was ample and conclusive evidence that OAM had breached GEN 4.4.2 by failing to act with due skill, care and diligence. Whether OAM had deliberately sought to conceal information from CII's management because he knew that it would show a breach of either or both PIB 4.5.2 and 2.2.1, or whether, through ignorance or disregard of basic elements of the regulatory regime governing CII's operations, he omitted to keep senior management informed of matters they needed to know about in order to ensure compliance with DFSA rules, in either case it was clear to the Panel that OAM's actions displayed a lack of due skill, care and diligence.

20. For the same reasons, the Panel found that OAM had breached GEN 4.4.5 (despite the fact that the DFSA had not made such a finding in its Decision), in that he had failed to take reasonable care to ensure that the business of CII was organised so that it could be managed and controlled effectively. As already noted, the governance of CII was effectively in the hands of OAM and HAA. It is not in dispute that the Firm breached a number of DFSA rules, including PIB 4.5.2 and 2.2.1.

21. For the same reasons (and despite this not having been a conclusion in the DFSA's Decision), the Panel considered that OAM breached GEN 4.4.6 by failing to take reasonable care to ensure that the Firm complied with relevant legislation.

22. The Panel also found that OAM carried a major part of the responsibility for breaches by the Firm of GEN 4.2.3 (general adequacy of management systems and controls), GEN 5.3.1 (1) (maintaining adequate systems and controls, including financial and risk controls, to ensure that the Firm's affairs are managed effectively and responsibly) and 5.3.7 (establishment and maintenance of effective compliance arrangements).

23. In relation to GEN 4.4.1 (integrity), the Panel concluded that there was evidence which might well justify a conclusion that OAM breached General Principle 1. However, the Panel decided to leave this matter in abeyance, for the following reasons. There is ample and conclusive evidence that OAM had breached several other general principles. The Panel's decision on the basis of those findings is that his authorised status should therefore be removed. It follows that a positive finding in relation to integrity and GEN 4.4.1, which would in any event have required a further hearing, attended by OAM, as well as a higher standard of proof, would in practice have added nothing to the result. The Panel has concluded accordingly that the case can be fairly disposed of on the basis of the Hearing in November 2011 and that the allegation of lack of integrity can be left on one side.

24. The conclusion of the Panel, based on the above findings, was thus that OAM is unfit to carry on a licensed function in an Authorized Firm and that his Appeal should therefore be rejected.

Costs

25. On 24 August 2011, the Panel ordered that the ultimate decision on payment of filing fees by HAA and OAM and payment, waiver, allocation, and reimbursement of other costs would be reserved until the conclusion of these proceedings.

26. No Order as to costs is made at this stage. However, the Panel's rejection of the Appeal leads the Panel to leave the way open for the DFSA to make an application as to fees and costs. If such an application is made, the Panel will expect to see a quantified statement of out-of-pocket costs incurred, and will expect to be able to deal with the matter by correspondence, giving the Applicants an opportunity to comment on the DFSA's claim before making its Order, which will also deal with the matter of filing fees.

Publicity

27. The Panel will make a further Order in due course, without a further Hearing, concerning the placing of this Decision on the DFSA's website, as envisaged in Procedural Rule 53 of the Regulatory Appeals Committee. Until such further Order, this Notice of Decision shall not be disclosed publicly.

Supplementary Comments

28. Although not related to its Decision, the Panel considers it appropriate to comment on one other circumstance in this case, which came to its attention as a result of the attempted settlement negotiations mentioned in paragraph 2 above. The Panel became aware that OAM was party to the sending of several letters and meeting requests by the Firm to the Governor of the DIFC and other senior DIFC officers, both during and after the attempted

settlement discussions with the DFSA in May-July 2011 and most recently (and most seriously) in November-December, while the settlement negotiations mandated by the Panel were taking place. The relevant letters included requests to the Governor to intervene personally in the case and to cancel the Decision of the DFSA of 26 June 2011.

29. The sending of such letters and seeking of meetings was, in the view of the Panel, a highly improper attempt to bring extraneous pressure to bear on a regulatory decision-making process. The regulatory independence of the DFSA (which is enshrined in Dubai Law) means that conduct of this kind is reprehensible at any time. But it is particularly to be deplored that the most recent approach to the Governor took place at a time when CII and OAM were involved in a formal and structured appeal process provided for by law. Surprising as it may seem, it appears that OAM must have been unaware of the regulatory independence of the DFSA. If so, that constitutes further evidence that he did not understand the regulatory framework which governs DFSA-authorised firms. The only alternative interpretation would be that OAM was aware of the relevant law and procedures, and yet took a thoroughly reprehensible (and predictably futile) decision to try to circumvent the due process.

18 January 2012
For the Regulatory Appeals Committee

[redacted]

Robert Owen
Chairman