

This published version of the Decision Notice contains minor amendments to reflect changes subsequently agreed to by Mr Bhandari and the DFSA following a settlement reached after the Decision Notice was originally given to Mr Bhandari.

---

## DECISION NOTICE

---

**To:** Mr Ashish Bhandari

**Date:** 17 September 2020

### 1. ACTION

- 1.1. For the reasons given in this Notice, the DFSA considers that Mr Ashish Bhandari (**Mr Bhandari**) contravened legislation administered by the DFSA. As a result, the DFSA has decided to impose on Mr Bhandari:
  - a. a financial penalty of USD 165,000 pursuant to Article 90(2) of the Regulatory Law 2004 (the **Regulatory Law**) (the **Fine**); and
  - b. a restriction, pursuant to Article 59(1) of the Regulatory Law, restricting Mr Bhandari from performing any function in connection with the provision of Financial Services in or from the DIFC (the **Restriction**).
- 1.2. This notice is addressed to Mr Bhandari alone. Apart from Mr Bhandari and his former employer, ABN AMRO Bank NV (DIFC Branch) (**ABN**), nothing in this notice constitutes a determination that any other person breached any legislation, and the findings expressed in this notice are without prejudice to the position of any third party, or of the DFSA in relation to any third party.

### 2. SUMMARY OF REASONS

- 2.1. In the period from February 2010 to January 2015, Mr Bhandari was employed by ABN as a relationship manager to carry out private banking and wealth management services

for ABN clients.

- 2.2. As an Authorised Firm, ABN was obliged to comply with the Customer Due Diligence (**CDD**) requirements under the Anti-Money Laundering, Counter Terrorist Financing and Sanctions module of the DFSA Rulebook (**AML**). In November 2015, the DFSA took enforcement action against ABN for failing to supervise its staff properly and for deficiencies in its anti-money laundering systems and controls.
- 2.3. As set out in this Notice, the DFSA has found that during his employment at ABN, Mr Bhandari was knowingly concerned in contraventions by ABN of certain DFSA administered laws or Rules, namely requirements under AML. The AML contraventions are:
  - a. failing to properly discharge ongoing due diligence on its business relationship with customers, including the monitoring of transactions undertaken by customers, between December 2011 and December 2012, contrary to AML Rule 3.4.4(1)(b)<sup>1</sup>; and
  - b. failing to conduct adequate CDD in accordance with AML requirements and failing to properly verify the identity of a customer and its Beneficial Owner, in December 2013, contrary to AML Rule 7.3.1(1)(a)<sup>2</sup>.
- 2.4. Given his involvement in the relevant facts and matters as set out in this Notice, the DFSA has found that Mr Bhandari was knowingly concerned in the AML contraventions by ABN, namely he aided, abetted and was knowingly involved in the AML contraventions. Accordingly, under Article 86(1) of the Regulatory Law, he committed contraventions of legislation administered by the DFSA.
- 2.5. The DFSA has also found that during the course of the DFSA's investigation into the matters set out in this Notice, Mr Bhandari committed further contraventions of the Regulatory Law. The further contraventions are:
  - a. providing information to the DFSA in a compulsory interview with the DFSA, on 12 and 13 December 2017 (the **DFSA Interview**), which was false, misleading or deceptive, and / or concealing information from the DFSA where the concealment of such information was likely to mislead the DFSA, contrary to Article 66 of the

---

<sup>1</sup> Versions AML/VER7/02-11 and AML/VER8/07-12.

<sup>2</sup> Version AML/VER9/07-13.

Regulatory Law;

- b. providing information to the DFSA in the DFSA Interview which was false or misleading, without reasonable excuse, that was intended to obstruct the DFSA in the exercise of its powers of investigation, contrary to Article 83 of the Regulatory Law;
  - c. failing to comply, without reasonable excuse, with DFSA written requirements to produce information and documents to the DFSA, under notice dated 14 December 2017, contrary to Article 69 of the Regulatory Law;
  - d. failing to comply, without reasonable excuse, with DFSA written requirements to produce information and documents to the DFSA, under notice dated 24 January 2018, contrary to Article 69 of the Regulatory Law; and
  - e. failing to give or produce information or documents specified by the DFSA, in the notice dated 24 January 2018, without reasonable excuse, with the intention of obstructing the DFSA in the exercise of its powers to conduct an investigation, contrary to Article 83 of the Regulatory Law.
- 2.6. The DFSA considers Mr Bhandari's contraventions to be serious. As a relationship manager, Mr Bhandari played a key role in ABN's compliance with its anti-money laundering obligations. Further, Mr Bhandari misled the DFSA about his knowledge and involvement in specific activities and obstructed the DFSA from carrying out its investigation. The DFSA considers it appropriate in the circumstances to impose the Fine on Mr Bhandari to demonstrate the importance of open and transparent conduct of employees of DFSA Authorised Firms and full and honest cooperation with the DFSA.
- 2.7. Furthermore, the DFSA also considers that the contraventions and conduct of Mr Bhandari demonstrate a serious lack of integrity and therefore Mr Bhandari is not fit and proper to perform any function in connection with the provision of Financial Services in or from the DIFC. The DFSA considers it appropriate to impose the Restriction to maintain the integrity and reputation of the DIFC, and to protect direct and indirect users of the DIFC.

### **3. DEFINITIONS**

- 3.1. Defined terms are identified in this Notice by the capitalisation of the initial letter of a word, or of each word in a phrase, and are defined either in this Notice or in the DFSA

Rulebook, Glossary Module (GLO). Some of these defined terms are set out in the glossary in Annex B.

#### **4. FACTS AND MATTERS RELIED ON**

##### ***Background to the Investigation***

- 4.1. ABN was a branch of ABN AMRO Bank N.V., the Netherlands, which is regulated by De Nederlandsche Bank N.V. Until its License was withdrawn at its request on 22 November 2018, ABN was licensed by the DFSA to provide certain Financial Services in or from the DIFC. These services included investment management and advising on and arranging financial products for high-net worth individuals and professional customers.
- 4.2. On 2 November 2015, the DFSA imposed on ABN a fine of USD 640,000 following an investigation by the DFSA's Enforcement Division (**Enforcement**) which found that ABN contravened a number of the DFSA's Rules requiring it to implement appropriate safeguards to prevent money laundering. The DFSA further directed ABN to take and complete remedial steps in relation to its anti-money laundering related systems and controls.
- 4.3. Following the closure of the investigation into ABN, Enforcement continued its investigation into the conduct of certain relationship managers at ABN in connection with compliance with AML and other DFSA requirements.

##### ***Mr Bhandari's role and the introducer agreement***

- 4.4. Mr Bhandari was employed by ABN as a relationship manager from February 2010 to January 2015 to carry out private banking and wealth management services for ABN clients.
- 4.5. During the period of Mr Bhandari's employment, ABN had a referral policy in place whereby 'introducers' could refer clients to ABN in return for 10% to 50% of the applicable revenue generated by ABN on certain products and services from the referred clients.
- 4.6. In or around July 2011, ABN signed on an individual (**Individual A**) as an introducer and agreed to pay him a commission of 20% of the applicable revenue generated by ABN for each introduced client account.
- 4.7. The relationships with clients referred by Individual A to ABN under the introducer agreement were managed at ABN by Mr Bhandari.

### ***The BVI Arrangement***

- 4.8. In July 2011, Mr Bhandari set up an off-shore entity in the British Virgin Islands (**BVI Company**), which would become the recipient of the introducer fees paid by ABN under the introducer agreement with Individual A. In setting up BVI Company, Mr Bhandari:
  - a. made arrangements for a corporate nominee shareholder to be the 100% shareholder of BVI Company and for him, Mr Bhandari, to be the Beneficial Owner under the nominee arrangement; and
  - b. established himself, Individual H and Individual A as the registered directors of BVI Company.
- 4.9. Around the same time, Mr Bhandari opened a bank account for BVI Company at a bank in Mauritius (**Mauritius Bank**). As part of the Mauritius Bank account opening and Know Your Customer (**KYC**) documentation completed and signed by Mr Bhandari, he declared himself as the 100% Ultimate Beneficial Owner (**UBO**) of BVI Company, the single signatory on the bank account, and described the purpose of the account as being for receiving salaries, savings, and bonuses.
- 4.10. Mr Bhandari and Individual H were the registered directors of BVI Company recorded as attendees at the board meeting that approved to open a bank account for BVI Company at Mauritius Bank.
- 4.11. Such outside activities and arrangements described in paragraphs 4.8 to 4.10 were not permitted in the ordinary course of employment with ABN, unless prior approval was given. The BVI Company arrangement was a reportable outside activity under ABN policies and procedures; non-ABN directorships, authority over money or assets of third parties, and shareholdings of 10% or more in companies of third parties were outside activities that must always be reported beforehand and require prior approval under ABN policies and procedures. By engaging in unauthorised outside activities, a relationship manager can put himself in a position that could create a conflict of interest. Mr Bhandari did not have prior approval and did not report his involvement and role in BVI Company to ABN.
- 4.12. During the DFSA Interview, Mr Bhandari stated he did not inform Mauritius Bank that, as he submits, Individual A was the true UBO of BVI Company. Mr Bhandari acknowledged that banks placed reliance on signed declarations in application forms to the effect that the information provided was correct, in order to conduct proper KYC checks.

- 4.13. Mr Bhandari provided the finance function at ABN with BVI Company's Mauritius Bank account details in order for ABN to pay the introducer fees that it owed to Individual A into that account. Mr Bhandari did not disclose to the finance function that he was in fact at the time the Beneficial Owner of BVI Company, a director of BVI Company and controlled the accounts of BVI Company.
- 4.14. Mr Bhandari subsequently coordinated cash transfers from ABN client accounts he managed and introducer fee payments for Individual A via the BVI Company entity to Mr Bhandari's personal accounts outside the UAE (the **BVI Arrangement**).
- 4.15. From August 2011 to December 2013, approximately USD 2.1 million was transferred into the BVI Company's Mauritius Bank account. Of this, payments totaling USD 111,457 were the introducer fees paid by ABN under the introducer's agreement with Individual A. Approximately USD 1.53 million was transferred directly from ABN client accounts, largely described as 'consulting' or 'structuring' fees. The majority of the remaining balance of approximately USD 500,000 was linked indirectly to activities on ABN client accounts managed by Mr Bhandari.
- 4.16. Approximately USD 1 million was transferred out from the BVI Company's Mauritius Bank account into Mr Bhandari's personal bank accounts outside the DIFC. The remaining balance was transferred back to ABN client accounts or provided as loans to third party individuals or to cover expenses owed to various third parties.
- 4.17. Of the USD 1 million transferred from BVI Company to Mr Bhandari's personal bank accounts, Mr Bhandari only provided to the DFSA some of his bank statements showing receipt of approximately USD 96,000. Those bank statements show that the majority of the funds from BVI Company were transferred to a number of connected persons in smaller denominations within days of receiving the money from BVI Company.
- 4.18. At the end of 2013, Mr Bhandari closed BVI Company and its Mauritius Bank account, because ABN was raising with him numerous queries and requests for documentation concerning the transactions so, in Mr Bhandari's words:

*"I realized it's becoming a very painful exercise for me to be doing this for him [Individual A] and I had a discussion with him that I cannot do this any longer and I want to be free of this rubbish now, and why don't you take it away yourself, and you do – do what you want, but I want to be out of this. And hence he decided to open his own company somewhere else..."*

### ***The RAK Arrangement***

- 4.19. In August 2014, a new entity was set up in Ras Al Khaimah (**RAK Company**). Mr Bhandari assisted Individual A in setting up RAK Company by using a service provider (**Individual B**) and assisted in the opening of an RAK Company bank account. Individual B was the registered 100% shareholder and director of RAK Company, with a declaration of trust agreement in place in favour of Individual A.
  - 4.20. Mr Bhandari provided the RAK Company bank details to ABN's finance function in order for ABN to make payments of future and owed introducer fees to Individual A.
  - 4.21. RAK Company subsequently became the recipient of the ABN introducer fees. In and around October 2014, ABN paid introducer fees of USD 85,757 into a RAK Company bank account.
  - 4.22. Using an arrangement involving RAK Company- and Individual B-controlled bank accounts, at least USD 2.4 million was transferred to Mr Bhandari's personal accounts outside the DIFC between 2015 and 2017 (the **RAK Arrangement**).
- ### ***The DFSA investigation***
- 4.23. In May 2016, the DFSA commenced an investigation into Mr Bhandari. By written notice dated 6 December 2017, the DFSA exercised its power under Article 80 of the Regulatory Law to compel Mr Bhandari to attend an interview and answer questions. Mr Bhandari complied by attending DFSA Interview.
  - 4.24. In the DFSA Interview, Mr Bhandari stated that the true UBO of BVI Company and all the transactions flowing through the associated Mauritius Bank account was, at all times, Individual A.
  - 4.25. Mr Bhandari further stated that all funds transferred to his personal accounts outside the DIFC were transferred for the benefit of Individual A and subsequently provided to Individual A outside the DIFC in cash, by Mr Bhandari himself or connected persons.
  - 4.26. Mr Bhandari further stated that he did not receive a direct financial benefit from the BVI Arrangement. Mr Bhandari stated that he agreed to put in place and participate in the BVI Arrangement at the request of Individual A and that his motivation in doing so was to obtain and retain the clients referred by Individual A to ABN.
  - 4.27. In the DFSA Interview, Mr Bhandari stated that he made the decision to end his

involvement in the BVI Arrangement at the end of 2013, because it was becoming administratively “*painful*” for him and he wanted Individual A to make his own arrangements. However, an alternative arrangement was put in place in 2014 (i.e. the RAK Arrangement), that continued the transfer of large sums of money to Mr Bhandari’s personal accounts outside the DIFC.

- 4.28. On 22 July 2018, Mr Bhandari provided the DFSA with a letter from Mr Bhandari’s supervisor at ABN (**Individual C**), in which Individual C claimed that ABN had approved a ‘temporary arrangement’ for Mr Bhandari to become the shareholder of BVI Company.
- 4.29. In a DFSA interview with Individual C, Individual C stated that at some time between March 2011 and August 2011, Mr Bhandari informed him that Individual A had proposed Mr Bhandari to ‘hold’ the company which would receive the introducer payments. Individual C told Mr Bhandari that this was not acceptable, created a conflict of interest and that ABN would not allow it. Individual C stated that both he and Mr Bhandari went to see a member of senior management (**Individual D**), where it was concluded that Mr Bhandari could propose it to the panel responsible for signing off new introducers.
- 4.30. At the August 2011 ABN panel meeting, Mr Bhandari presented a due diligence form for a prospective introducer for Individual A in his personal capacity. The form did not mention BVI Company or any other entity. Nor did it mention Mr Bhandari acting in any capacity on behalf of Individual A.
- 4.31. Based on a review of the email communications, and the approvals for Individual A as a prospective introducer taking place on 14 August 2011, Individual A’s referral agreement was approved and back-dated to 1 March 2011.
- 4.32. The ABN panel which signed off the due diligence and approved Individual A as an introducer consisted of Mr Bhandari, Individual D and another member of senior management (**Individual E**). The referral agreement was signed by Individual D and another member of senior management (**Individual G**) from ABN. Individual E has stated that he was not aware of Mr Bhandari’s ownership or directorship of BVI Company or his control of the Mauritius Bank account. Individual D and Individual G have stated that they could not recall such specifics.
- 4.33. Individual C stated in his DFSA interview that, at some time after the panel meeting in August 2011, which Individual C was not present for, Mr Bhandari informed him that the panel had approved the structure where he would be the nominee shareholder for a

period of six months. Individual C stated that he had not seen any written evidence of this arrangement and was not informed of this arrangement from any other ABN staff member. The only source of this information came from a single verbal conversation with Mr Bhandari.

- 4.34. Subsequently, Individual C did not have any discussion regarding this ‘temporary arrangement’ with Mr Bhandari nor anyone else in ABN.
- 4.35. Mr Bhandari did not raise or produce any evidence to the DFSA concerning the approved ‘temporary arrangement’ until after the DFSA Interview. Throughout the DFSA Interview, Mr Bhandari maintained that no-one at ABN was aware of his outside activities and involvement in the BVI Arrangement, adding that if compliance had found out, they would have put an end to it and he would have lost the clients Individual A referred to him. Even after the DFSA Interview, when Mr Bhandari provided the DFSA with his affidavit dated 12 January 2018 (**Affidavit**), he did not state he had informed anyone at ABN of his involvement in BVI Company. Furthermore, contemporaneous documentary evidence, including evidence from ABN, fails to support a claim that any approval was given.
- 4.36. With respect to the RAK Arrangement, in the DFSA Interview Mr Bhandari stated that, similar to the BVI Arrangement, under the RAK Arrangement he continued to receive monies into his personal accounts outside the DIFC for onward disbursements of cash to Individual A.
- 4.37. Mr Bhandari informed the DFSA in his Affidavit that the USD 2.4 million received from Individual B in 2015, 2016 and 2017 remained as deposits in Mr Bhandari’s name in an account outside the DIFC.
- 4.38. Similar to his position under the BVI Arrangement, Mr Bhandari informed the DFSA that he did not receive any direct financial benefit from the RAK Arrangement. Mr Bhandari stated that the USD 2.4 million held in Mr Bhandari’s name was in fact held in custody for Individual A or Individual B. Mr Bhandari further stated that his motivation to continue to be involved in the RAK Arrangement was to obtain and retain clients with his new employer.

***December 2011 to December 2012 - Failing to properly conduct ongoing due diligence***

- 4.39. As a relationship manager, Mr Bhandari was expected to play a key role in ABN’s compliance with its anti-money laundering obligations as prescribed in the AML module

of the DFSA Rulebook. ABN's legal obligations included, but were not limited to:

- a. identifying the customer and verifying their identity;
- b. identifying the Beneficial Owner of the customer and verifying their identity;
- c. ensuring information concerning a customer's identity remained up to date; and
- d. undertaking ongoing due diligence on its business relationship with a customer, including monitoring of transactions undertaken by a customer.

4.40. With respect to the monitoring of transactions, ABN was required under the AML module to establish and maintain policies, procedures, systems and controls in order to monitor and detect suspicious Transactions.

4.41. ABN's applicable anti-money laundering policies and procedures in place during the period of Mr Bhandari's employment stated that ABN staff were required to report all instances of unusual or potentially suspicious activity or transactions regarding clients to an appropriate compliance officer for further review and determination as to whether local reporting requirements are implicated. This included whether to submit a suspicious transaction report to Federal authorities as required under UAE Federal Law.

4.42. Circumstances that might give rise to a suspicious transaction may include:

- a. Transactions which have no apparent purpose and which make no obvious economic sense;
- b. The size or pattern of Transactions, without reasonable explanation, is out of line with any pattern that has previously emerged; and
- c. Unnecessary routing of funds through third party accounts.

4.43. ABN's compliance team monitored transactions conducted on ABN clients' accounts and AML alerts were generated on certain transactions. While employed at ABN, Mr Bhandari was the recipient of AML alerts raised by ABN compliance on transactions conducted on client accounts he managed, which he was required to respond to.

4.44. During the DFSA Interview, Mr Bhandari's responses to specific AML alerts raised by ABN compliance were discussed. The DFSA has found that Mr Bhandari was not transparent and honest with the ABN compliance team when responding to questions raised in the AML alerts in that he did not disclose the extent of his involvement and

knowledge of the transactions carried out by ABN clients or BVI Company, examples of which are set out in paragraphs 4.45 to 4.54 below.

*Transfer of funds from ABN client accounts managed by Mr Bhandari to BVI Company – 22 December 2011, 29 April 2012 and 20 December 2012.*

4.45. In three separate AML alerts dated 22 December 2011, 29 April 2012 and 20 December 2012, Mr Bhandari was asked by ABN compliance to answer their queries concerning six transfers from ABN client accounts to BVI Company, totaling USD 1,160,000. The queries to Mr Bhandari from ABN compliance requested, among other things, details of the relationship between the client and BVI Company and the purpose of the payments. Mr Bhandari told ABN compliance that the funds were fees payable to BVI Company for services including legal and consultancy.

4.46. When asked by ABN compliance about the details of the relationship between the client and BVI Company, Mr Bhandari did not disclose to ABN compliance that each of these transfers were made to an entity legally owned by him, to a bank account controlled by him and an entity which he was a registered director of until 3 December 2012. Under ABN policies and procedures, such outside activities and arrangements were not permitted by ABN without prior approval. Mr Bhandari did not have such approval. The DFSA considers that by withholding information concerning his involvement in BVI Company he misled the ABN compliance team to assume that the payments were being made to an unrelated third party.

*Circular transfer of funds from ABN client accounts to BVI Company and returned to the same Beneficial Owner at ABN – November 2012.*

4.47. On 19 and 20 November 2012, two amounts, USD 200,000 and USD 300,000, were transferred from an ABN client account to BVI Company. The narrative from the ABN statements for the payment details states the payments were for “consultancy/structuring fees”. The transactions generated an AML alert from ABN compliance on 20 December 2012. ABN compliance requested from Mr Bhandari, among other things, details of the relationship between the client and BVI Company, the purpose of the transfer, why the transfers were done in the same month and why they were not done in one amount. Mr Bhandari replied that it was for payments for “services / advice” that the company, BVI Company, rendered to the client.

4.48. On 22 November 2012, USD 400,000 was transferred back from BVI Company to an

ABN client account with the same UBO. The narrative from the ABN statements for the payment details stated the payment was for a “loan”. The transaction also generated an AML alert from ABN compliance on 20 December 2012. ABN compliance requested from Mr Bhandari, among other things, the purpose of the transfer. Mr Bhandari responded that the purpose was “business transactions”.

4.49. When asked by ABN compliance for details about the relationship between the client and BVI Company, Mr Bhandari did not inform ABN of his involvement in BVI Company. Under ABN policies and procedures, such arrangements were not permitted by ABN without prior approval. Mr Bhandari did not have such approval and by withholding this information he led the ABN compliance team to assume that the payment was being made from an unrelated third party (i.e. BVI Company) to the ABN client account.

4.50. Furthermore, Mr Bhandari had visibility of the cash flows through to BVI Company back to the ABN client account of the same UBO. Mr Bhandari did not report to ABN compliance the circular nature of such cash flows. The DFSA considers the transactions had no apparent purpose, made no obvious economic sense and Mr Bhandari ought to have reported the circular transactions to ABN compliance as suspicious transactions in accordance with ABN anti-money laundering policies and procedures.

*Circular transfer of funds from and to ABN client account – September and October 2011*

4.51. In September and October 2011, approximately USD 500,000 was transferred from an ABN client account through three related party entities before returning to the same ABN client account. At the time, Mr Bhandari was aware of the instructions to carry out the circular series of transactions as he had followed up the payments with the ABN accounts team. Mr Bhandari was also aware that the parties concerned in the transfers were all related.

4.52. In the DFSA Interview, Mr Bhandari stated he did not understand the circular flow of funds that was taking place and that had he become aware of the circular nature of these transactions at the time then he would have investigated them further.

4.53. Based on the facts in 4.51 above, Mr Bhandari had sufficient information available to him to reasonably suspect that the transactions had no apparent purpose, made no obvious economic sense and he ought to have reported the transactions to ABN compliance as suspicious transactions in accordance with ABN anti-money laundering policies and procedures. Alternatively, Mr Bhandari recklessly failed to make adequate enquiries, or

failed to assess adequately the facts and information that were available to him.

4.54. ABN compliance asked Mr Bhandari to explain his understanding of some of these transactions and he failed to disclose his full understanding of the circular nature of the transactions.

***December 2013 - Failing to properly verify the identity of a customer and its beneficial owner***

4.55. In 2013, ABN was required to undertake CDD for each of its customers. A customer includes a person with whom an Authorised Firm enters into a business relationship when there is an intention or commitment by each party to enter into a contractual relationship. As such, ABN was required to conduct CDD upon introducers with whom they proposed to enter into an introducer agreement.

4.56. In 2013, CDD was required under the AML module included, among other things:

- a. verifying the identity of the customer and any beneficial owner on the basis of original or properly certified documents, data or information issued by or obtained from a reliable and independent source; and
- b. undertaking ongoing due diligence of the customer business relationship.

4.57. On 29 December 2013, ABN conducted an annual review of its introducer agreement with Individual A. Handwritten notes on the annual review form state Individual A's introducer agreement had been revised in the name of BVI Company instead of Individual A personally. Accordingly, ABN was required to conduct CDD upon BVI Company.

4.58. On 29 December 2013, Mr Bhandari instructed his secretary to insert on the annual review form that the structure of BVI Company was as follows:

- a. the Director of BVI Company was Individual A;
- b. the nominee shareholder was a particular corporate nominee shareholder; and
- c. the UBO was Individual A.

4.59. The information in paragraphs 4.58 a., b. and c. above was noted in the annual review form alongside the notation, "RM has confirmed the structure of the Co. with client".

4.60. The BVI Company introducer agreement was subsequently entered into between BVI

Company and ABN and back-dated to 1 March 2011, the same date recorded on Individual A's original introducer agreement.

4.61. However, the information Mr Bhandari provided to his secretary on 29 December 2013, and which appears on the annual review form, was materially incorrect and misleading because:

- a. the Register of Directors maintained by BVI Company show that Individual A was not a Director at the time of the annual review in 2013, he was a Director for only eight days from 29 July 2011 to 5 August 2011. At the time of the annual review Individual H was a director of BVI Company; and
- b. pursuant to a declaration of trust dated 29 July 2011, Mr Bhandari was the UBO, or beneficial owner, of BVI Company.

None of this information was disclosed to ABN.

4.62. The ABN introducer file also contained a copy of an BVI Company director's resolution dated 29 July 2011 bearing the name and signature of then director Individual A. However, when compared to the same resolution obtained by the DFSA from the company service provider responsible for setting up BVI Company, the names and signatures of the other two directors, namely Mr Bhandari and Individual H, appear to have been removed from the copy of the resolution on the ABN introducer file. The DFSA considers that a reasonable inference may be drawn that Mr Bhandari removed the two signatures on the ABN copy, or was knowingly involved in its production, to conceal this information from ABN.

4.63. The annual review form was signed by three other ABN senior staff members, Individual C, Individual E, and one other (**Individual F**). All three subsequently confirmed that they were not aware of Mr Bhandari's ownership or directorship of BVI Company or his control of the Mauritius Bank account.

4.64. In the DFSA Interview, Mr Bhandari agreed he did not inform anyone at ABN about his ownership of BVI Company nor his and Individual H's directorship of BVI Company. Mr Bhandari explicitly and falsely informed ABN that BVI Company and the BVI Company's Mauritius Bank account were owned and controlled by the introducer, Individual A.

4.65. In the DFSA Interview, Mr Bhandari stated his reason for not informing ABN of his ownership and interest in BVI Company was that ABN would not permit such an

arrangement and, if that happened, Individual A would have taken his referrals to another bank.

***December 2017 – Providing false, misleading and deceptive information to DFSA***

- 4.66. During the DFSA Interview on 12 and 13 December 2017, Mr Bhandari was required to answer all questions put to him that were relevant to the investigation. Mr Bhandari swore an oath at the commencement of the interview to the effect that the answers he would provide at the interview would be true.
- 4.67. During the two-day interview, Mr Bhandari made false and misleading statements to the DFSA and concealed relevant information from the DFSA including but not limited to the following:
- a. Mr Bhandari submitted that he was not aware when BVI Company was set up. In fact, Mr Bhandari had travelled to Mauritius to set up the BVI Company himself, was the founding director, the Beneficial Owner, and noted as the 100% registered UBO of BVI Company and sole authorised signatory on the opening of BVI Company's bank account with Mauritius Bank.
  - b. Mr Bhandari was asked if he was aware of any other employees or directors at BVI Company. Mr Bhandari stated that his only contact at BVI Company was Individual A. This statement was in fact false and Mr Bhandari failed to disclose that he and Individual H were directors of BVI Company.
  - c. Mr Bhandari submitted that he did not know what happened to funds that were transferred to BVI Company. Mr Bhandari was provided with a summary of the cash transferred to BVI Company from ABN client accounts totaling approximately USD 1.5 million and asked to provide any information as to what happened to this money. Mr Bhandari stated that there was nothing he could think of. Mr Bhandari failed to disclose to the DFSA his interest in and control of BVI Company and his involvement in the onward transfer of approximately USD 1 million to his personal accounts outside the DIFC.
  - d. Mr Bhandari was shown an email which he had sent to ABN compliance in which he confirmed that Individual A was the owner of BVI Company. Mr Bhandari acknowledged that he replied to ABN compliance stating that Individual A was the owner of BVI Company. Mr Bhandari did not disclose to the DFSA that, in fact, he was the Beneficial Owner of BVI Company at that time.

- e. After the BVI Company incorporation documents and the BVI Company's Mauritius Bank account opening documents were shown to him (and after Mr Bhandari had repeatedly and falsely provided answers to the effect that he had no involvement with BVI Company), Mr Bhandari provided an explanation for his involvement in the BVI Arrangement, namely to obtain and retain clients referred to him by Individual A. At this time of the DFSA Interview, Mr Bhandari was adamant and repeatedly asserted that his involvement with Individual A came to an end when the BVI Arrangement ceased in December 2013. Mr Bhandari stated that he realised such an arrangement was "not the right thing" and therefore he decided to put an end to everything and have no further involvement with Individual A. This statement, that he ended such arrangements, was in fact false and, further, Mr Bhandari failed to disclose that he continued to receive millions of dollars into his personal accounts outside the DIFC up to at least April 2017 under an alternative arrangement with Individual A, namely the RAK Arrangement.
- f. Mr Bhandari was asked directly whether any further transfers took place after December 2013 when the BVI Arrangement came to an end. In reply, Mr Bhandari stated that there was a possibility of one or two transactions totaling around USD 200,000 to USD 250,000, if any, that may have taken place after the BVI Arrangement had ended. Mr Bhandari also stated that he could not recall the details and was not sure if anything at all happened. Mr Bhandari stated that the source of these cash disbursements to Individual A would have been from the balance in his accounts outside the DIFC resulting from the BVI Arrangement.
- g. After being shown certain bank statements, Mr Bhandari later admitted that through over a dozen transactions, funds totaling approximately USD 1.3 million were transferred to his personal accounts outside the DIFC in 2015 and 2016. Mr Bhandari subsequently revised that number in his Affidavit to USD 2.4 million including transfers taking place in 2017.
- h. Given that the transactions in question happened shortly before the DFSA Interview and involved large sums of money that remained as deposits under Mr Bhandari's name, the DFSA does not accept that Mr Bhandari's earlier responses to questions were made in error or genuinely not remembered. Rather, Mr Bhandari provided false information and or concealed information in an attempt to mislead the DFSA.
- i. Later, during the DFSA Interview, Mr Bhandari stated that he continued to provide cash to Individual A outside the DIFC from the funds he received from Individual B

in 2015 and 2016. However, Mr Bhandari subsequently stated in his Affidavit that the entire USD 2.4 million received from Individual B actually remained as deposits in his name in a bank account outside the DIFC.

- j. In his Affidavit, Mr Bhandari submitted that the USD 2.4 million held in his name at that time would be used to set up a financial services firm outside the DIFC with Individual A and Individual B. However, he failed to disclose this during the DFSA Interview. Rather, in the DFSA Interview, Mr Bhandari misleadingly stated that his dealings with Individual A were very limited.
- k. Mr Bhandari stated that he had no involvement in the commission paid by a fund to BVI Company for sums invested by ABN clients that were managed by Mr Bhandari. However, contemporaneous email correspondence, in which Mr Bhandari participated, confirmed that Mr Bhandari negotiated the commission split for BVI Company, arranged for Individual A to sign the agreement, provided BVI Company bank details into which the commission payments were paid, and pursued unpaid commissions.
- l. Mr Bhandari stated that he did not receive any money from a particular entity. However, contemporaneous evidence confirmed that Mr Bhandari in fact coordinated and received a payment of USD 120,000 from the entity into his personal account outside the DIFC. RAK Company was also the recipient of two transfers totaling USD 82,594 from the same entity. Given the timing and size of these transfers, the DFSA does not accept that Mr Bhandari had no knowledge of this entity transferring the money or the purpose of the transfers. The DFSA considers that this further demonstrates an attempt by Mr Bhandari to conceal information in order to mislead or deceive the DFSA.
- m. Mr Bhandari stated that he had no information on a particular entity or why he received AED 109,619 and USD 54,509 from the entity into two separate personal accounts in the UAE on the same day in November 2015. Given the timing and size of these transfers into Mr Bhandari's personal accounts, the DFSA does not accept that Mr Bhandari had no knowledge of this entity transferring the money or the purpose of the transfers. The DFSA considers this further demonstrates an attempt by Mr Bhandari to conceal information in order to mislead or deceive the DFSA.
- n. Mr Bhandari was asked to provide details of his knowledge of several specific

transactions involving BVI Company during the course of the interview as set out in paragraphs 4.45 to 4.54. On each occasion, Mr Bhandari failed to inform the DFSA of the extent of his involvement and knowledge of BVI Company.

- 4.68. Mr Bhandari's conduct, which included concealing information and giving information that was false and misleading during the course of a DFSA compulsory interview, was intended to obstruct the DFSA's investigation.

#### ***14 December 2017 notice – non-compliance with DFSA notice***

- 4.69. During the course of the DFSA investigation, Mr Bhandari failed without reasonable excuse to comply fully with two investigative notices issued to him pursuant to Article 80(1) of the Regulatory Law. Mr Bhandari failed to comply fully with a requirement imposed on 14 December 2017 (**December Notice**) to provide specified information, documents and assistance. He also refused to comply with a similar requirement imposed on him on 24 January 2018 (**January Notice**) to provide specified information and documents forthwith at the premises of the DFSA.
- 4.70. Mr Bhandari failed to comply fully with the December Notice by not producing all information and documents required under the notice. In the December Notice, Mr Bhandari was required to produce to the DFSA:
- a. all records of communications and correspondence relating to Individual A's first and middle initials and surname, and the name of BVI Company including the words "Capital Limited" or "Capital". This included correspondence between Mr Bhandari and Individual A, his staff, family or agents;
  - b. all records of communications and correspondence relating to payments received into or made from bank accounts in relation to a number of named individuals and entities; and
  - c. details of all Mr Bhandari's bank accounts, all accounts from which funds were withdrawn to pay Individual A, and bank statements for the bank accounts referred to in paragraph 4.70.b.
- 4.71. In response, Mr Bhandari's lawyer replied on 15 January 2018 with a number of scanned emails from one of Mr Bhandari's personal email accounts with a cover note which stated:

*"Mr Bhandari has performed various keyword-based search on the gmail search function of his private account... using the following keywords: ... The searches*

*have returned the scanned emails attached.”*

- 4.72. Keywords relating to Individual A's surname and the name of BVI Company not including “Capital Limited” or “Capital” were absent from the search parameters. With respect to the 167 pages of email communications received in response to the notice, the DFSA found that none contained any reference to any of those keywords.
- 4.73. With respect to the information and documents requested under paragraph 4.70.a., having regard to the nature and scale of the relationship between Mr Bhandari and Individual A concerning the BVI Arrangement and RAK Arrangement, the duration of their relationship which spanned from 2011 to 2017, and the absence of use of the keywords relating to Individual A's surname and the name of BVI Company not including “Capital” or “Capital Limited” in the email searches, it is reasonable to conclude that email communications relating to Individual A and BVI Company existed but were not produced to the DFSA.
- 4.74. With respect to the information and documents requested under paragraph 4.70.b., certain emails were produced, but not their attachments. The DFSA considers the attachments as part of the relevant communications requested and therefore not all information and documents were produced to the DFSA as required by the December Notice.
- 4.75. With respect to the information and documents requested under paragraph 4.70.c., Mr Bhandari provided details of four bank accounts he held outside the DIFC. However, in his DFSA Interview, Mr Bhandari stated he had 10 to 15 bank accounts outside the DIFC. Furthermore, details of other bank accounts from which funds were withdrawn to pay cash to Individual A, including connected persons, were not provided. Accordingly, the DFSA considers that not all information and documents were produced to the DFSA as required by the December Notice.
- 4.76. Subsequently, the DFSA arranged a meeting with Mr Bhandari to discuss the absence of the keywords corresponding to the BVI Company and Individual A's surname from the listed search terms and the shortfalls in other requests in the December Notice.

#### ***24 January 2018 meeting and notice – non-compliance with DFSA notice and obstruction***

- 4.77. Mr Bhandari and his lawyer attended a meeting on 24 January 2018 at the DFSA offices. Mr Bhandari stated he had in fact run the keyword searches on his personal email account including Individual A's surname but no emails were identified and that “there were no hits”. Given the nature and duration of the relationship with Individual A and Mr Bhandari's role

and involvement in both BVI Company and RAK Company, the DFSA suspected that the search carried out by Mr Bhandari was incomplete and that Mr Bhandari was withholding relevant information.

- 4.78. As a result of these concerns and the possibility of Mr Bhandari deleting relevant material from his personal email account, the DFSA issued Mr Bhandari with the January Notice. The January Notice required Mr Bhandari to run the searches requested under the December Notice, namely the matters in paragraphs 4.70.a. and 4.70.b. above, at that time and while he was at the office of the DFSA under the supervision of DFSA officers.
- 4.79. Mr Bhandari stated, "I don't want to do this" and "I will not do this". He was warned that his refusal may be taken as an obstruction of the DFSA under the Regulatory Law. Mr Bhandari was allowed time to discuss the notice with his lawyer after which Mr Bhandari stated he was not willing to comply with the notice, again stating "I don't want to do this".
- 4.80. When asked by the DFSA to explain why he would not comply, Mr Bhandari's lawyer stated that the emails may include confidential information relating to Mr Bhandari's clients and associates. The DFSA did not (and does not) consider that this was a reasonable excuse for failing to comply with the January Notice, however, the DFSA offered an alternative solution whereby the number of results for each search could be recorded instead. Mr Bhandari was informed that the DFSA needed to ensure that information in his possession would not be destroyed after he left the offices of the DFSA. Mr Bhandari said he would not destroy any material, but refused to run the searches at the DFSA. Instead, Mr Bhandari said that the DFSA officers could accompany him to an Internet café and watch him run the searches there. This was not acceptable to the DFSA.
- 4.81. After several breaks and discussions with his lawyer, Mr Bhandari was asked several times by the DFSA officers if he would comply with the notice. Mr Bhandari on each occasion said he would not. When asked by the DFSA officers why he was not willing to comply, Mr Bhandari's lawyer provided the following explanation on behalf of Mr Bhandari:
  - a. The notice would cover communications that in their view were not relevant to the allegations;
  - b. The communications may however be relevant or of interest to authorities in other jurisdictions. They were concerned about what would happen to the communications

- once they were produced; and
- c. They wanted to get advice from an Emirati or Indian lawyer.
- 4.82. None of the above explanations from or on behalf of Mr Bhandari constitutes a reasonable excuse for refusing to comply with the January Notice, on the following bases:
- a. The communications involving specified persons were plainly relevant to the DFSA's investigation of suspected misconduct by Mr Bhandari involving those same specified persons, as outlined in the January Notice and discussed in detail during the interviews.
  - b. The relevance or not of the communications to other authorities has no bearing on Mr Bhandari's compliance with the notice. Any concern that Mr Bhandari may have had that the DFSA would somehow improperly or unlawfully disclose the communications he was required to produce was entirely unexplained and unfounded. The DFSA is bound to comply with legal requirements under UAE and DIFC laws with respect to safeguarding and dealing with any confidential information it receives and is permitted to release only such confidential information in accordance with those laws. Nevertheless, the interim solution offered by the DFSA that addressed any immediate confidentiality or relevance concerns, whereby the contents of the emails were not revealed, was unreasonably refused by Mr Bhandari.
  - c. Under Article 78(2) of the Regulatory Law, a person is entitled to legal representation during the course of an investigation. In this instance, Mr Bhandari had already engaged the services of, and had present with him, a UAE-based legal representative. Therefore, Mr Bhandari was already legally represented and - having regard to the interim solution that was offered - it was not a reasonable excuse to refuse to comply with the January Notice on the basis he required further legal advice from an Emirati or Indian lawyer.

- 4.83. Within an hour of leaving the office of the DFSA, Mr Bhandari's lawyer emailed the DFSA officers with screenshots showing the number of hits for certain key words on two of Mr Bhandari's personal email accounts. The number of hits for the key words were extremely low with the majority of them dated January 2018. For example, a keyword term including Individual A's surname only returned 36 hits on one of his email accounts. The screenshot displayed 12 of the hits which were all received in January 2018 and related to correspondence between Mr Bhandari and his lawyer. Given Mr Bhandari's reluctance

to comply with the January Notice in a manner that would have given the DFSA assurance that he would not delete emails and the small number of irrelevant emails that remained in his email inbox, the DFSA considers it reasonable to infer that he deleted emails after leaving the DFSA offices on 24 January 2018.

## 5. REPRESENTATIONS

- 5.1. On 24 November 2019, the DFSA gave Mr Bhandari written notice that it was proposing to fine and restrict him (the **Preliminary Notice**).
- 5.2. The following written submissions were subsequently made to the DFSA:
  - a. On 23 January 2020 from Mr Bhandari;
  - b. On 3 March 2020 from Enforcement;
  - c. On 16 April 2020 from Mr Bhandari;
  - d. On 10 May 2020 from Mr Bhandari;
  - e. On 31 May 2020 from Enforcement;
  - f. On 18 June 2020 from Mr Bhandari;
  - g. On 5 July 2020 from Enforcement
  - h. On 22 July 2020 from Mr Bhandari;
  - i. On 3 August 2020 from Mr Bhandari;
  - j. On 25 August 2020, when Enforcement, at the request of Mr Bhandari, provided copies of 301 further documents responsive to a keyword search for BVI Company's name; and
  - k. On 9 September 2020, from Mr Bhandari in response to the 301 further documents provided on 25 August 2020.
- 5.3. While the DFSA gave Mr Bhandari an opportunity to provide oral representations concerning the proposed decision, he chose not to do so.
- 5.4. In his submissions, Mr Bhandari made a number of submissions disputing the facts and the focus of the DFSA's allegations. A primary submission by Mr Bhandari was that the

DFSA was time-barred because the statutory limitation period of three years had expired with respect to his knowing concern in ABN's AML contraventions. The basis of Mr Bhandari's contention is Article 63(2) of the Regulatory Law, which provides: "*Except as provided in Article 63(3), the DFSA may only exercise a power under Article 63(1) in relation to a person within three years after the day on which the DFSA became aware of the act or omission that gave rise to the right to exercise the power in respect of that person.*" The key question is: to what extent does the limitation apply to enforcement action taken under Article 90 of the Regulatory Law in respect of a contravention arising by reason of Article 86(1) of the Regulatory Law (which provides that a person commits a contravention if he is "*knowingly concerned in a contravention of the Law or Rules or other legislation administered by the DFSA committed by another person*")?

- 5.5. Article 63 of the Regulatory Law concerns powers which are exercisable against a person by reason of that person having a particular regulatory status, such as that of Authorised Firm, Registered Auditor, Authorised Individual or Domestic Fund, or an officer, employee or agent of an Authorised Person, etc. It makes provision for the DFSA to be able to exercise those powers in certain circumstances even after the person has ceased to have the relevant status. The limitation in Article 63(2) applies to the exercise of those powers. The limitation does not apply to powers that are exercisable irrespective of whether the person against whom they are directed has a particular regulatory status.
- 5.6. For example, Article 63(2) does not apply to the exercise of the DFSA's powers under Article 90, which are available where "*the DFSA considers that a person has contravened a provision of any legislation administered by the DFSA*". It also does not apply to the DFSA's power in Article 59 of the Regulatory Law to restrict "*a person*" from performing any functions in connection with the provision of Financial Services in or from the DIFC. Several DFSA requirements contemplate the possibility of contraventions by persons without any particular regulatory status, such as the provision of false or misleading information to the DFSA, which is a contravention of Article 66 of the Regulatory Law if done by "*a person*". Because Article 66 does not depend on the person having any particular regulatory status, there is no need for the DFSA to rely on the extended jurisdiction under Article 63(1), so the limit on that extended jurisdiction under Article 63(2) is not engaged. Similarly, enforcement action taken under Article 90 in relation to contraventions arising by reason of Article 86(1) applies to "*a person*" who is knowingly concerned in a contravention by another person, and does not depend on the target of the enforcement action having any particular regulatory status.

- 5.7. Although the enforcement action imposed under Article 90 regarding contraventions arising by reason of Article 86 does not depend on Mr Bhandari having any regulatory status, the underlying contravention is a contravention of the DFSA Rules by a person with a particular regulatory status ; ABN was an Authorised Firm. It is however necessary to distinguish between the fact of the contravention and the exercise of a power. In taking action against Mr Bhandari it is necessary to show that there was in fact a contravention of the Rules by ABN. But Article 63 concerns powers which the DFSA may exercise; it is not necessary to the action against Mr Bhandari that the DFSA must have exercised its powers against ABN in respect of the same contravention. Accordingly, the limitation in Article 63(2) does not apply to powers that are exercisable against persons irrespective of whether they hold one of the regulatory statuses specified in Article 63(1), including the power in Article 90 to take action for contraventions arising by reason of Article 86(1) against a person who was knowingly concerned in a contravention by another person. Consequently, the secondary issue of what test is to be applied in determining when the DFSA “became aware of the act or omission that gave rise to the right to exercise the power” does not need to be considered.
- 5.8. A second submission by Mr Bhandari is that because the DFSA did not make a primary finding against ABN that it had contravened either AML Rule 3.4.4(1)(b) or AML Rule 7.1.1, and therefore the DFSA could not allege that Mr Bhandari was knowingly concerned in these contraventions. In fact and law, it is not necessary for the DFSA to find that ABN committed the same contraventions as found against Mr Bhandari in order for Mr Bhandari to be knowingly concerned in the same breaches for the purposes of Article 86.
- 5.9. A third submission by Mr Bhandari is that the facts and matters relied upon do not support a finding that ABN contravened either AML Rule 3.4.4(1)(b) or AML Rule 7.1.1. However, The Introducer Form in August 2011 was completed for an individual, Individual A, and not a company. Given the Introducer Form did not mention BVI Company in any form, there would have been no requirement to collate KYC documents for BVI Company as part of on-boarding Individual A in August 2011. Individual A’s Introducer Review Form dated December 2013 stated that the Introducer Agreement had been revised from being in Individual A’s name to the name of BVI Company. BVI Company was not treated as a new introducer, in that an Introducer Form was not completed, nor was a Client Acceptance Review Committee (**CARC**) meeting tabled for a new introducer. Rather, the change was documented on Individual A’s annual review using the Introducer Review Form. There is no evidence of a separate CARC meeting or any other meeting having

taken place to approve the change of the Introducer Agreement from Individual A to BVI Company before the annual review in December 2013. Any references made by individuals to CARC meetings prior to May 2013 are in fact references to introducer on-boarding meetings and any reference to CARC meeting minutes prior to February 2015 is a reference to the Introducer Form or the Introducer Review Form. Also, there is no evidence or correspondence regarding KYC deficiencies in the BVI Company KYC file with ABN's Regional and/or Head Office.

- 5.10. In his submission dated 22 July 2020, Mr Bhandari submitted that ABN was aware of the arrangement with Individual A, in support of which, he provided emails, dated as recently as 22 July 2020, from both Individual D and Individual C agreeing with the proposition that "*the bank was aware that Bhandari was or proposed to be a shareholder/director of [BVI Company] at the request of [Individual A]*". Individual D and Individual C had earlier provided written responses that they did not recall any temporary arrangement approving Mr Bhandari's ownership or directorship of BVI Company. In his email of 22 July 2020, Individual C stated "*any account or Introducer could not be onboarded without explicit approval from compliance and CARC committee.*" In his email of 22 July 2020, Individual D stated "*the bank was aware of the introducers request for anonymity temporarily.*" However, the fact remains that there is no evidence that CARC approval was sought or given. In all the circumstances, including consistency with documentary and other evidence, and the length of time passing between the events in question, their earlier statements and their recent emails, the DFSA gives greater weight to the original information given by Individual D and Individual C, rather than their more recent emails.
- 5.11. A fourth submission by Mr Bhandari is that the allegations of knowing involvement in AML contraventions by ABN amount to an illegal public censure of ABN and are an abuse of power, because the DFSA has failed to follow the procedures required by Article 90 and Schedule 3 to the Regulatory Law, including issuing a Preliminary Notice against ABN. Mr Bhandari submitted that, in effect, as the DFSA does not have jurisdiction to make findings against ABN in relation to these allegations, it cannot make findings that Mr Bhandari was knowingly concerned in them. This submission has no weight. While the DFSA has indeed made additional findings of Rule contraventions by ABN compared to the decision taken against ABN in 2015, they stem from the same underlying set of circumstances described in that decision. Arriving at findings of contravention by a person does not necessarily require the exercise of Article 90 powers against that person. The DFSA is, in this Notice, not exercising any further powers under Article 90 against ABN. Taking action against Mr Bhandari for knowing involvement in contraventions by

ABN (or publishing that action) is not equivalent to exercising the public censure power under Article 90(2)(b) of the Regulatory Law.

5.12. In relation to the breach of Article 66 (Providing False and Misleading Information to the DFSA), Mr Bhandari submits that the allegations are weak and fundamentally flawed on the following four grounds (with a summary of the DFSA's view in italics):

- a. The first of these grounds is that a mental element is required to find a contravention of Article 66, such as the conduct being reckless, deliberate, intentional or dishonest, and that no such mental element exists for Mr Bhandari.

*The only mental element required is that the person knew the information was false. While the mere innocent provision of inaccurate or incorrect information may not meet the test required for a contravention of Article 66, it is apparent from subparagraphs 4.67 (a) to (n) of this Notice that Mr Bhandari deliberately provided information that was false, misleading or deceptive.*

- b. The second ground is that the DFSA abused its powers under Article 80(1)(d) in conducting its interview of Mr Bhandari. Mr Bhandari submits that in asking very specific questions over events from many years earlier, the DFSA was seeking to entrap him; while, he submits, the purpose of the DFSA powers under Article 80(1)(d) is restricted to the purposes of information gathering.

*There appears to be nothing abusive in the transcript of the interview, during which Mr Bhandari (who was legally represented), rather than responding that he could not recall information, chose instead to give answers which he knew were not true.*

- c. The third ground is procedural unfairness in that Mr Bhandari was denied any pre-interview disclosure or any advance notice of the topics to be asked.

*No such pre-disclosure of documents is required during the investigative stage.*

- d. The fourth and final ground concerning the Article 66 contravention is that the allegations are wholly unsupported by the facts relied upon and that the standard of proof is a higher one given the issue is one of lack of integrity.

*The standard of proof is in fact on the balance of probabilities and on that basis, there is sufficient evidence to support the allegations in paragraphs 4.66 to 4.68.*

5.13. Mr Bhandari also made the following submissions challenging the allegations of non-

compliance with requirements of the DFSA and obstruction of the DFSA, with a summary of the DFSA's position in italics:

- a. Regarding the December Notice, the evidence demonstrates Mr Bhandari did in fact comply with it. For the requirement for communications regarding Individual A and BVI Company, these were extinguished by the January Notice. For the requirement for details of all of Mr Bhandari's bank account, he complied with this by providing all bank accounts he held alone, or had a reasonable excuse for not providing all bank accounts he held with others, because this was only clarified during the January 2018 meeting.

*This submission is incorrect. The requirement for the communications was not extinguished by the January Notice, and Mr Bhandari did not have a reasonable excuse for failing to provide details of all his bank accounts, including those he held with others.*

- b. Regarding the January Notice, either the DFSA did not have the power to require the production forthwith because this interfered with his right to legal representation, or the DFSA abused its power to make a forthwith requirement because there was no evidence to support the concern that Mr Bhandari may delete or withhold evidence. In any event, Mr Bhandari complied with the January Notice as he provided the DFSA with the information it required. Even if he didn't comply, he had a reasonable excuse for this, because he wanted to obtain legal advice from an Emirati or Indian lawyer before doing so.

*The DFSA has the power to require production of information or documents forthwith and at the DFSA's offices, as this is consistent with Article 80(5) which refers to the production being "by the end of a reasonable period and at a place specified in the notice". Further, it was justified in these circumstances including Mr Bhandari's previous responses to the December Notice, and his statements during the January 2018 meeting. While a person has the right to legal representation during an investigation (Article 78(2)), the person's obligation to comply with an Article 80 requirement is not subject to the person first consulting their legal representative, particularly where they are already legally represented and their legal representative is present and able to advise them of their obligations to comply.*

- c. Regarding the obstruction of the DFSA, Enforcement has failed to present evidence

demonstrating that Mr Bhandari intended to obstruct. Mr Bhandari's reason for not producing the information was because he wanted to seek legal advice and was concerned about accessing his personal email accounts on a DFSA device, in the DFSA's office and under the supervision of DFSA officers. Further, he proposed to conduct the searches in the presence of DFSA officers in a local internet café, which the DFSA refused.

*Mr Bhandari's lack of willingness to comply, and intention to obstruct, is inferred from his entire course of conduct as demonstrated by the totality of the documentary and testimony evidence, including non-compliance with previous requirements, his statements during the meeting, and his conduct afterwards.*

- 5.14. Each of Mr Bhandari's submissions on the allegations of non-compliance with requirements of the DFSA, and obstruction of the DFSA, has been closely considered, but for the reasons detailed in paragraphs 4.69 to 4.83, these findings stand.
- 5.15. The 301 further documents Enforcement provided at Mr Bhandari's request on 25 August 2019 include agreements, communications and transaction documents regarding the introducer relationship between ABN and SG BVI. Enforcement submitted that the documents do not indicate any concern held by ABN, or discussion within ABN of Mr Bhandari's ownership or directorship of BVI Company. On 9 September 2020, Mr Bhandari made submissions on the documents.
- 5.16. Mr Bhandari made the submission that the further documents showed that Individual A was the "de facto" director, controller and UBO of SG BVI, and that Mr Bhandari was acting as no more than Individual A's nominee. In fact, Mr Bhandari was a director and the UBO of SG BVI, but concealed this fact from ABN and the DFSA and did not seek or receive approval for the arrangement.
- 5.17. In support of his submissions, Mr Bhandari specifically referred to four of the 301 documents as supporting his contention that Mr Bhandari was no more than Individual A's nominee:
  - a. The introducer agreement between ABN and SG BVI dated 1 March 2011. While this does appear to be signed by Individual A, the signatory description is "Signed by/for and on behalf of:", which is ambiguous and does not appear to be consistent with Mr Bhandari's other claims regarding other documents referred to below.
  - b. The retention of services agreement between a third party and BVI Company that

appears to have been signed on 28 November 2011 by Mr Bhandari for Individual A, and the signatory is described as BVI Company, with the title “Director and Shareholder”. However, at that time, only Mr Bhandari and Individual H were directors. Individual A was only a director for a short period from 29 July 2011 to 5 August 2011. This contradicts the claim that the document was not signed by Mr Bhandari acting for himself.

- c. The referral agreement between a third party and BVI Company dated 5 January 2014. This document bears no signature on behalf of BVI Company. While the signatory block says it is “For: [Individual A]”, the title is listed as “representative & signatory”, which is ambiguous.
- d. An email from Individual F to Mr Bhandari dated 10 September 2014 stating that ABN has not paid SG BVI introducer fees for two years. This document does nothing to disturb the contention that Mr Bhandari misled ABN about the nature of the arrangement with Individual A and SG BVI. Mr Bhandari submitted that the outstanding payments were subsequently made to SG RAK and that Individual A was the UBO of SG RAK. However, the fact that payments that were supposed to be made under the BVI arrangement were eventually paid under the SG RAK arrangement has no bearing on the issues at hand.

## 6. CONTRAVENTIONS

### ***December 2011 to December 2012 - ongoing due diligence contraventions by ABN***

- 6.1. AML Rule 3.4.4(1)(b) of the DFSA Rulebook<sup>3</sup> required that an Authorised Firm must conduct ongoing due diligence on its business relationship with, and ongoing scrutiny of, Transactions undertaken by a customer throughout the course of the relationship.
- 6.2. Transactions include any transaction undertaken by an Authorised Firm in the course of carrying on a Financial Service in or from the DIFC. ABN clients were customers of ABN for the purposes of AML Rule 3.4.4(1). Accordingly, ABN was required to conduct ongoing due diligence on Transactions conducted on ABN client accounts.
- 6.3. By reasons of the facts set out in paragraphs 4.39 to 4.54 above, the DFSA considers that, between December 2011 and December 2012, ABN failed to properly conduct ongoing due diligence on its business relationship with, and ongoing scrutiny of,

---

<sup>3</sup> Versions AML/VER7/02-11 and AML/VER8/07-12.

Transactions undertaken by customers through the course of the relationship, contrary to AML Rule 3.4.4(1)(b).

***December 2013 - CDD contraventions by ABN***

- 6.4. AML Rule 7.1.1 of the DFSA Rulebook<sup>4</sup> required that a Relevant Person must undertake CDD under Rule 7.3.1 for each of its customers.
- 6.5. AML Rule 7.3.1(1), as it then was, required that a Relevant Person must, among other things:
  - a. verify the identity of the customer and any beneficial owner on the basis of original or properly certified documents, data or information issued by or obtained from a reliable and independent source; and
  - b. undertake on-going due diligence of the customer business relationship under Rule 7.6.1.
- 6.6. By reasons of the facts set out in paragraphs 4.55 to 4.65 above, ABN was a Relevant Person and BVI Company became a customer of ABN pursuant to the introducer agreement entered into between the two parties in December 2013. Accordingly, ABN was required to conduct CDD on BVI Company in accordance with AML Rule 7.3.1(1).
- 6.7. Further, under AML Rule 7.2.1(1)(a), ABN was required to conduct such CDD under AML Rule 7.3.1(1)(a) when it was establishing its business relationship with BVI Company.
- 6.8. By reasons of the facts set out in paragraphs 4.55 to 4.65 above, the DFSA considers that on or about 29 December 2013:
  - a. ABN did not perform CDD in accordance with the requirements of AML 7.3.1(1)(a), namely the verification of the identity of the customer and beneficial owner was not conducted on the basis of original or properly certified documents or information issued by or obtained from a reliable and independent source; and
  - b. ABN failed to properly verify the identity of a customer, namely BVI Company, and any beneficial owner;contrary to AML Rule 7.3.1(1)(a).

---

<sup>4</sup> Version AML/VER9/07-13.

***Knowingly concerned in ABN's contraventions***

- 6.9. By concealing relevant information within his knowledge from ABN compliance in response to AML Alerts raised on transactions conducted on his clients' accounts, by not reporting suspicious transactions conducted on his clients' accounts between December 2011 and December 2012, and by providing ABN misleading information for the introducer agreement annual review in December 2013, the DFSA considers that Mr Bhandari was knowingly concerned in ABN's breach of AML Rules in paragraphs 6.1 to 6.8 above. In being so knowingly concerned, Mr Bhandari therefore committed a contravention by reason of Article 86(1) of the Regulatory Law.
- 6.10. Article 86(1) of the Regulatory Law provides that 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.
- 6.11. Article 86(7) of the Regulatory Law provides that a person is "knowingly concerned" in a contravention if, and only if, the person:
- a. has aided, abetted, counselled or procured the contravention;
  - b. has induced, whether by threats or promises or otherwise, the contravention;
  - c. has in any way, by act or omission, directly or indirectly, been knowingly involved in or been party to the contravention; or
  - d. has conspired with another or others to effect the contravention.
- 6.12. By reasons of the facts set out in paragraphs 4.39 to 4.54 above, the DFSA has found that Mr Bhandari aided or abetted or was knowingly involved in or a party to, the ongoing due diligence contraventions between December 2011 and December 2012 by ABN as set out in paragraphs 6.1 to 6.3 above, and under Article 86(1) of the Regulatory Law is accordingly liable.
- 6.13. By reasons of the facts set out in paragraphs 4.55 to 4.65 above, the DFSA has found that Mr Bhandari aided or abetted or was knowingly involved in or a party to, the CDD contraventions in December 2013 by ABN as set out in paragraphs 6.4 to 6.8 above and under Article 86(1) of the Regulatory Law is accordingly liable.

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

6.14. Article 66 of the Regulatory Law prohibits a person from:

- a. providing information which is false, misleading or deceptive to the DFSA; or
- b. concealing information where the concealment of such information is likely to mislead or deceive the DFSA.

6.15. For the reasons given in paragraphs 4.66 to 4.68 above, the DFSA considers that Mr Bhandari provided information to the DFSA in the course of the DFSA Interview which was false, misleading and or concealed information which was likely to mislead or deceive the DFSA, contrary to Article 66 of the Regulatory Law.

### ***Non-compliance with requirements of the DFSA***

6.16. Article 69 of the Regulatory Law requires a person, unless he has a reasonable excuse, to comply with any order, direction, prohibition or requirement made by the DFSA.

6.17. For the reasons given in paragraphs 4.69 to 4.76 above, the DFSA considers that Mr Bhandari failed, without reasonable excuse, to adequately comply with the requirement in the December Notice to produce information and documents and assist the DFSA in relation to its investigation. As a result, the DFSA has found that Mr Bhandari contravened Article 69 of the Regulatory Law.

6.18. For the reasons given in paragraphs 4.77 to 4.82 above, the DFSA considers that Mr Bhandari failed, without reasonable excuse, to adequately comply with the requirement in the January Notice to produce information and documents and assist the DFSA in relation to its investigation. As a result, the DFSA has found that Mr Bhandari contravened Article 69 of the Regulatory Law.

### ***Obstruction of the DFSA***

6.19. Article 83 of the Regulatory Law prohibits a person, without reasonable excuse, from engaging in conduct, including without limitation the:

- a. destruction of documents;
- b. failure to give or produce information or documents specified by the DFSA;
- c. failure to attend before the DFSA at a specified time and place to answer questions;

- d. the giving of information that is false or misleading; and
- e. failure to give any assistance in relation to an investigation which the person is able to give;

that is intended to obstruct the DFSA in the exercise of any powers under Chapters 1 and 2 of Part 5 of the Regulatory Law or under any Law administered by the DFSA.

- 6.20. As set out in paragraphs 4.66 to 4.68 and 6.14 to 6.15 above, Mr Bhandari provided information in the course of the DFSA Interview which was false and misleading, or concealed information which was likely to mislead or deceive the DFSA. Furthermore, the DFSA considers Mr Bhandari did not have a reasonable excuse for engaging in the conduct and such conduct was intended to obstruct the DFSA in the exercise of its powers under Chapter 2 of Part 5 of the Regulatory Law. As a result, the DFSA has also found that Mr Bhandari contravened Article 83 of the Regulatory Law.
- 6.21. For the reasons given in paragraphs 4.77 to 4.82 and 6.18 above, the DFSA considers that Mr Bhandari failed, without reasonable excuse, to comply with a written requirement from the DFSA under Article 80(1)(b), (c) and (e) of the Regulatory Law dated 24 January 2018 to produce information and documents and assist the DFSA in relation to its investigation. Furthermore, the DFSA considers Mr Bhandari's conduct was intended to obstruct the DFSA in the exercise of its powers under Chapter 2 of Part 5 of the Regulatory Law. As a result, the DFSA has again found that Mr Bhandari contravened Article 83 of the Regulatory Law.

## **7. SANCTIONS**

- 7.1. In deciding whether to take the action set out in this Notice, the DFSA has taken into account the factors and considerations set out in sections 6-2 and 6-3 of the DFSA's Regulatory Policy and Process Sourcebook (RPP).
- 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));
  - b. the deterrent effect of the action and the importance of deterring Mr Bhandari and others from committing further or similar contraventions; and

- c. the seriousness of Mr Bhandari's conduct including providing information that was false and misleading or concealing relevant information from the DFSA, which the DFSA considers to have been carried out deliberately.
- 7.3. The DFSA has considered the sanctions and other options available to it and has concluded that the Fine and Restriction are appropriate given the circumstances of this matter.

***Determination of the Fine***

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

***Step 1 – Disgorgement***

- 7.5. The DFSA is not in a position to quantify accurately the amount of the indirect economic benefit derived by Mr Bhandari as a result of his actions and therefore the financial penalty after Step 1 is USD 0.

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

- 7.6. The DFSA considers Mr Bhandari's contraventions to be serious because:
- a. of the nature of the Laws and Rules contravened (RPP 6-6-4(a)). The contraventions involved the provision of false and misleading information to, or concealment of information from, both ABN and the DFSA, and obstruction of the DFSA;
  - b. the scope for any potential financial crime to be facilitated, occasioned or otherwise occur as a result of the contravention (RPP 6-6-4(d)). The knowingly concerned contravention with respect to the AML contraventions adversely affected and compromised ABN's ability to properly conduct ongoing due diligence and CDD requirements under the AML module and obligations under UAE Federal Law with respect to the reporting of suspicious transactions;
  - c. he failed to act with integrity (RPP 6-6-4(e)). The contraventions and conduct, including the provision of false and misleading information to or concealment of information from both ABN and the DFSA, including obstruction of the DFSA, demonstrate Mr Bhandari failed to act with integrity and was not candid or truthful

- in his dealings with both ABN and the DFSA;
- d. he was an experienced industry professional (RPP 6-6-4(j)). This was demonstrated in his description during interview of his education and work history, and includes accountancy qualifications, an MBA, and roles at five banks or financial services firms over a period of approximately 12 years;
  - e. the individual intended to benefit financially from the contravention, either directly or indirectly (RPP 6-6-5(b)). Mr Bhandari intended to indirectly benefit financially from the knowingly concerned contravention. As he admitted during interview, by not disclosing his outside activities and involvement in BVI Company to ABN, he was able to maintain the cash routing arrangements under the BVI Arrangement and then the RAK Arrangement, and by doing so was able retain the clients that were referred to ABN by Individual A;
  - f. the individual sought to conceal his misconduct (RPP 6-6-5(d)). Mr Bhandari sought to conceal his misconduct from both ABN and the DFSA. His failure to disclose his involvement in BVI Company (an offshore BVI company, which contributed to its opaqueness) was contrary to ABN policies and procedures. He misled ABN about the ownership and directorship of BVI Company at the introducer annual review. Being the relationship manager and main contact for any compliance or transaction queries for the client, he was in a position of trust, which was misused. In addition, the repeated and false statements he made to the DFSA and initial non-disclosure of his involvement with BVI Company during the DFSA interview, and his non-compliance with two compulsory notices to produce information, demonstrate attempts to conceal;
  - g. he was influenced to commit the contraventions by the belief that they would be difficult to detect (RRP 6-6-5 (f)). This can be inferred from his attempts to conceal his misconduct, outlined in the preceding paragraph; and
  - h. his actions were repeated (RPP 6-6-5(h)). Mr Bhandari failed on multiple occasions to fully disclose to ABN compliance his knowledge of and involvement in BVI Company and various transactions that were the subject of AML alerts (see paragraphs 4.45 to 4.54). This non-disclosure was repeated in his failure to properly verify the identity of the customer and its beneficial owner (see paragraphs 4.55 to 4.65). Mr Bhandari repeatedly gave false, misleading or deceptive information to the DFSA during interview (see paragraph 4.67). Mr Bhandari also

failed, on two occasions, to fully comply with DFSA compulsory notices (see paragraphs 4.77 to 4.83).

7.7. Given the two distinct types of conduct which are the subject of this Notice, the DFSA considers it appropriate to determine two amounts under this step which appropriately reflect the seriousness of Mr Bhandari's contraventions. Therefore, taking the above factors into account, the DFSA considers that:

- a. a financial penalty of USD 70,000 appropriately reflects the seriousness of Mr Bhandari's contravention due to the operation of Article 86 of the Regulatory Law in relation to his knowing concern in ABN's ongoing due diligence and CDD contraventions; and
- b. a financial penalty of USD 80,000 appropriately reflects the seriousness of Mr Bhandari providing false and misleading information to, or concealing information from, the DFSA in contravention under Article 66 of the Regulatory Law; the non-compliance with DFSA requirements under both the December Notice and January Notice under Article 69 of the Regulatory Law; and both of the contraventions under Article 83 of the Regulatory Law arising from obstruction of the DFSA.

7.8. Accordingly, the figure after Step 2 is USD 150,000.

*Step 3 – Mitigating and aggravating factors*

7.9. In considering the appropriate level of the fine, the DFSA had regard to the factors set out in RPP 6-6-8.

7.10. The DFSA takes into account that the DFSA has 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, namely the importance of open and transparent conduct of employees of DFSA Authorised Firms and full and honest cooperation with the DFSA (RPP 6-6-8(I))<sup>5</sup>.

7.11. Having regard to this aggravating factor, the DFSA considers it appropriate in the circumstances to increase the figure arrived at in Step 2 in the order of 10%, or USD

---

<sup>5</sup> See Media Releases and Decision Notices in the following matters; Decision Notice 26 February 2015 – Abdul Rahman Al Ansari, Decision Notice 26 February 2015 – Anthony Robert D'Aniello, Decision Notice 16 March 2015 - Hany Lotfy Awwad Abdelwahab, Decision Notice 2 April 2017 – Jai Surve, and Decision Notice 3 May 2017 - Andrew Grimes

15,000, to USD 165,000.

*Step 4 – Adjustment for deterrence*

- 7.12. Pursuant to RPP 6-6-9, if the DFSA considers that the level of the financial penalty which it has arrived at after Step 3 is insufficient to deter the individual who committed the contravention, or others, from committing further or similar contraventions, then the DFSA may increase it. RPP 6-6-9 sets out the circumstances where the DFSA may do this.
- 7.13. The DFSA considers that the figure after Step 3 is sufficient for the purposes of deterring others from committing further or similar contraventions. Accordingly, the DFSA does not consider it appropriate to adjust the amount of the fine arrived at after Step 3 for the purposes of deterrence.
- 7.14. Accordingly, the figure after Step 4 remains at USD 165,000.

*Step 5 – Settlement discount*

- 7.15. Where the DFSA and the person on whom the financial penalty is to be imposed agree on the amount and other terms, RPP 6-6-10 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which agreement is reached.
- 7.16. There has been settlement with Mr Bhandari. However, given the late stage at which this was reached, the DFSA has not applied any settlement discount at Step 5 so the figure remains at USD 165,000.

*The level of the Fine imposed*

- 7.17. Given the factors and considerations set out in paragraphs 7.1 to 7.16 above and the circumstances of this matter, the DFSA has determined that it is proportionate and appropriate in the circumstances to impose on Mr Bhandari a fine of USD 165,000.

***The Restriction***

- 7.18. The DFSA considers it appropriate and proportionate in the circumstances to restrict Mr Bhandari from performing any function in connection with the provision of Financial Services in or from the DIFC.
- 7.19. The DFSA's policy in relation to its exercise of the restriction power under Article 59(1)

of the Regulatory Law is set out in section 4-10 of the RPP Sourcebook.

7.20. RPP 4-10-3 says that, 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 GEN Chapter 7 and Section 2-3 of the RPP Sourcebook (including Section 2-3-5 which relates to integrity).

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

- a. the issues giving rise to concerns about Mr Bhandari'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. the materiality of the issues giving rise to concerns as to Mr Bhandari's fitness and propriety including: the fact he conducted outside activities without prior approval from ABN and contrary to ABN policy, his conduct in concealing such activities from ABN compliance, his conduct in relation to the annual review by deliberately misleading ABN as to the identity of BVI Company, and in particular the fact he failed to be candid and truthful with the DFSA throughout the DFSA investigation including the DFSA Interview and his non-compliance with the December Notice and January Notice; and
- c. the need to protect against the level of risk which Mr Bhandari currently poses, and may pose in the future, to the integrity and reputation of the DIFC, and ensure the confidence of participants in the market.

7.22. Given the seriousness of Mr Bhandari's improper conduct, the DFSA believes on reasonable grounds that he is not a fit and proper person to perform any functions in connection with the provision of Financial Services in or from the DIFC. The DFSA therefore considers it appropriate to impose the Restriction because it is necessary and proportionate to support the DFSA's objectives to foster and maintain confidence in the financial services industry in the DIFC, and to protect direct and indirect users and prospective users of the financial services industry in the DIFC should Mr Bhandari 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 in the future.

## **8. PROCEDURAL MATTERS**

### **Decision Maker**

- 8.1. The decision which gave rise to the obligation to give this Notice was made by the Decision-Making Committee of the DFSA (**DMC**).
- 8.2. This Notice is given to Mr Bhandari under Paragraph 5 of Schedule 3 to the Regulatory Law.

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

- 8.3. Annex A sets out extracts from some legislative provisions relevant to this Notice.
- 8.4. In accordance with paragraph 5(2) of Schedule 3 to the Regulatory Law, the DFSA is required to provide a copy, or access to a copy, of the relevant materials that were considered in making the decision which gave rise to the obligation to give this Notice.
- 8.5. In accordance with paragraph 5(3)(a) of Schedule 3 to the Regulatory Law, the relevant materials that were considered in deciding to give this Notice include of the evidence, representations and other materials provided to the DMC by Enforcement and Mr Bhandari, all of which are already held by Mr Bhandari. In accordance with paragraph 5(3)(b) of Schedule 3, the DFSA is not require to provide material that is the subject of legal professional privilege.

### **Manner and time for payment of the Fine**

- 8.6. The Fine must be paid by Mr Bhandari no later than 28 days from the date of receipt of this Notice.

### **If the Fine is not paid**

- 8.7. 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 Mr Bhandari and due to the DFSA.

### **Right of review of the decision by the FMT**

- 8.8. Under Articles 29, 59(6) and 90(5) of the Regulatory Law 2004, Mr Bhandari has the right to refer this matter to the FMT for review.
- 8.9. 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.

8.10. On 18 October 2020, Mr Bhandari referred the matter to the FMT. On 3 February 2021, Mr Bhandari withdrew his reference to the FMT in agreeing to the action set out in this Notice.

### **Publicity**

8.11. Under Article 116(2) of the Regulatory Law, the DFSA may publish, in such form and manner as it regards appropriate, information and statements relating to decisions of the DFSA and of the Court, censures, and any other matters which the DFSA considers relevant to the conduct of affairs in the DIFC.

8.12. RPP 5-17-2 is relevant to the publication of information about the matter to which this Notice relates. It provides that the DFSA will generally publish, in such form and manner as it regards appropriate, information and statements relating to enforcement actions.

8.13. RPP 5-17-9 to 5-17-11 are relevant to the publication of information about the matter to which this Notice relates. As stated in paragraph 8.10 above, Mr Bhandari had previously referred this matter to the FMT. As he subsequently agreed to withdraw the reference, the appeal process has come to an end. Accordingly, the DFSA has decided to publish this Notice.

## **DFSA contacts**

8.14. For more information concerning this matter generally, please contact the Administrator to the DMC by email at [DMC@dfsae.ae](mailto:DMC@dfsae.ae).

Signed:

A handwritten signature in blue ink that reads "Mark McGinness". The signature is fluid and cursive, with "Mark" on the top line and "McGinness" on the bottom line.

Mark McGinness

On behalf of the Decision-Making Committee of the DFSA

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

### **1. STATUTORY PROVISIONS**

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

#### **69. Compliance with an order or requirement of the DFSA**

Where the DFSA makes an order, issues a direction or prohibition, or makes any requirement in relation to a person pursuant to a provision of this Law or Rules or legislation administered by the DFSA, such person must, unless he has a reasonable excuse, comply with such order, direction, prohibition or requirement.

#### **83. Obstruction of the DFSA**

A person shall not without reasonable excuse engage in conduct, including without limitation the:

- (a) destruction of documents;
- (b) failure to give or produce information or documents specified by the DFSA;
- (c) failure to attend before the DFSA at a specified time and place to answer questions;
- (d) giving of information that is false or misleading; and
- (e) failure to give any assistance in relation to an investigation which the person is able to give;

that is intended to obstruct the DFSA in the exercise of any powers under Chapters 1 and 2 of Part 5 or under any Law administered by the DFSA.

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

#### **86. General Contravention Provision**

- (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
- (...)
- (7) For the purposes of Article 86, a person is ‘knowingly concerned’ in a contravention if, and only if, the person

- (a) has aided, abetted, counselled or procured the contravention;
- (b) has induced, whether by threats or promises or otherwise, the contravention;
- (c) has in any way, by act or omission, directly or indirectly, been knowingly involved in or been party to the contravention; or
- (d) has conspired with another or others to effect the contravention.

## 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.

#### **Anti-Money Laundering (AML) Module of the DFSA Rulebook**

AML/VER7/02-11 and AML/VER8/07-12

### **3.4 Customer identification requirements**

- 3.4.4** (1) An Authorised Firm must:
- (a) ensure that the information and documentation concerning a customer's identity remains accurate and up-to-date; and
  - (b) conduct ongoing due diligence on its business relationship with, and ongoing scrutiny of, Transactions undertaken by a customer throughout the course of the relationship.
- (2) If at any time an Authorised Firm becomes aware that it lacks sufficient information or documentation concerning a customer's identification, or develops a concern about the accuracy of its current information or documentation, it must promptly obtain appropriate material to verify the customer's identity.

## **7.1 Requirement to undertake customer due diligence**

**7.1.1 (1)** A Relevant Person must:

- (a) undertake Customer Due Diligence under Rule 7.3.1 for each of its customers; and
- (b) in addition to (a), undertake Enhanced Customer Due Diligence under Rule 7.4.1 in respect of any customer it has assigned as high risk.

## **7.2 Timing of customer due diligence**

**7.2.1 (1)** A Relevant Person must:

- (a) undertake the appropriate Customer Due Diligence under Rule 7.3.1 (a) to (c) when it is establishing a business relationship with a customer; and
- (b) undertake the appropriate Customer Due Diligence under Rule 7.3.1(d) after establishing a business relationship with a customer.

## **7.3 Customer due diligence requirements**

**7.3.1 (1)** In undertaking Customer Due Diligence required by Rule 7.1.1(1)(a) a Relevant Person must:

- (a) verify the identity of the customer and any beneficial owner on the basis of original or properly certified documents, data or information issued by or obtained from a reliable and independent source;
- (b) understand the customer's source of funds;
- (c) understand the customer's source of wealth; and
- (d) undertake on-going due diligence of the customer business relationship under Rule 7.6.1.

## **ANNEX B - GLOSSARY**

<b>AML</b>	Anti-money laundering and, interchangeably depending on the context, the Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module of the DFSA Rulebook in force at the time of the relevant conduct, namely Version 7 in force from February 2011 to July 2012, Version 8 in force from July 2012 to July 2013, Version 9 in force from July 2013 to June 2014, and Version 10 in force from June 2014 onwards.
<b>Beneficial Owner</b>	As defined in the Glossary Module (GLO) of the DFSA Rulebook, namely Versions 24 through to 29, in force from February 2011 through to July 2013. See also UBO.
<b>beneficial owner</b>	As defined in the AML Module of the DFSA Rulebook, namely Version 9, in force from July 2013 to June 2014. See also UBO.
<b>BVI Company</b>	An off-shore entity established in the British Virgin Islands.
<b>CARC</b>	Client Acceptance Review Committee.
<b>customer</b>	As defined in the AML Module of the DFSA Rulebook, namely Version 9, in force from July 2013 to June 2014.
<b>CDD</b>	Customer Due Diligence as defined under Rule 7.1.1(1)(a) of the AML Module, Version 9, in force from July 2013 to June 2014.
<b>DIFC</b>	The Dubai International Financial Centre, the financial free- zone in the Dubai Emirate.
<b>DFSA</b>	The Dubai Financial Services Authority, the financial services regulator in the DIFC.
<b>DMC</b>	The DFSA's Decision Making Committee.
<b>Enforcement</b>	The DFSA's Enforcement Division.
<b>Fine</b>	The fine referred to in paragraph 1.1.a. of the Notice.
<b>FMT</b>	The Financial Markets Tribunal.

<b>GEN</b>	General Module of the DFSA Rulebook.
<b>KYC</b>	“Know Your Customer”, procedures for obtaining and verifying the identity of a customer, the nature and level of business to be conducted with the customer, the origin of funds and the source of wealth or income.
<b>Notice</b>	This Preliminary Notice.
<b>RAK Company</b>	An off-shore entity established in Ras Al Khaimah Free Trade Zone, UAE.
<b>Regulatory Law</b>	Regulatory Law 2004, DIFC Law No. 1 of 2004.
<b>Restriction</b>	The restriction referred to in paragraph 1.1.b. of this Notice.
<b>RPP</b>	The DFSA’s Regulatory Policy and Process Sourcebook Module, February 2017 Edition.
<b>UAE</b>	The United Arab Emirates.
<b>UBO</b>	“Ultimate beneficial owner”, a term to describe a person - in relation to conduct in or from the DIFC – who is a Beneficial Owner as defined in GLO or a beneficial owner as defined in AML as in force at the relevant time. Generally, a term commonly used to describe the natural person who ultimately owns or controls the customer or on whose behalf a transaction is being conducted.