

UFFIĊĊJU TAT-TRIBUNAL GĦAL  
SERVIZZI FINANZJARJI  
ĊENTRU MALTI TA' L-ARBITRAĠĠ  
33, TRIQ NOFSINHAR,  
VALLETTA VLT 11



OFFICE OF THE FINANCIAL  
SERVICES TRIBUNAL  
MALTA ARBITRATION CENTRE  
33, SOUTH STREET,  
VALLETTA VLT 11

Dr Ian Stafrace LL.D. Chairman

Dr. Nicholas Valenzia LL.D Membru

Mr. Joseph Azzopardi FCCA, FIA, CPA, MBA (Warwick) Membru

FST 02/22

Reliance Management Ltd

vs.

MFSA

Illum 13 ta' Lulju 2022

It- Tribunal

Ra l-appell interpost mill-Appellanta liema appell gie intavolat fl-4 ta' Jannar 2022 li fih l-appellanta ssostni:

*Respectfully submits: -*

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1. That, on the 7th of October 2021, the MFSA (also referred to as the "Authority"), issued a proposed regulatory action against the appellant company Reliance Management Ltd, for an alleged failure to observe reporting requirements, annexed hereto and marked as **Annex A**;

2. That, by virtue of a letter dated the 12th of October 2021, annexed hereto, and marked as **Annex B**, the appellant company submitted its representations against the MFSA.

3. That, by virtue of a subsequent letter date the 1st of December 2021, annexed hereto and marked as **Annex C**, the respondent authority proceeded to take regulatory action against the applicant company;

4. That, appellant company respectfully submits that there were justifiable reasons for its delay in submitting the Audited Financial Statements and its Auditor's Management Letter, and therefore rejects the Authority's arguments and decision and, is filing this appeal as it feels aggrieved by the said decision;

**First Aggrievance:**

- (a) The appellant company feels aggrieved by the decision given by the MFSA in that the Authority abused its discretion and also reached a manifestly unfair decision by completely disregarding the justifiable reasons put forward by the appellant company as to why it was faced with an impossible force majeure situation resulting in the late submission of its Audited Financial Statements and its Auditor's Management Letter;
- (b) The appellant company is well aware of its obligations to take all reasonable measures to submit in a timely fashion, however in this instance the appellant company was faced with an occasional extra-ordinary situation; and despite the board of directors having done everything in their power to avoid any late submissions by taking all reasonable and responsible measures, an inevitable situation arose such that the submissions had to be made late;





- *(c) The cause for delay was completely outside the appellant company's sphere of influence and control, and the sanction levied against the appellant company is therefore inequitable and unjust;*
- *(d) The applicant company commenced the audit process for the 2019 accounts in a timely manner; in January 2020, however soon after the applicant company started showing concern in relation to the negative media surrounding involved persons with the applicant company's formerly engaged auditors, Nexia BT (the "Auditors");*
- *(e) During the time period within which the company was liaising with its Auditors for the purposes of completing the audit process, it started to become evident that the Auditors were not going to respect the deadlines that the applicant company set with them, and this in view of the fact that they were facing staffing issues following considerable resignations in light of the negative media that started to surface;*
- *(f) The appellant company complained and manifested concern with its auditors on the frequent change of audit staff which resulted in even further delays to conclude the audit, and this due to new staff needing to be brought up to speed with the appellant company's financial statements;*
- *(g) The appellant company considered the option of removing and replacing the Auditors however it found that this was not a possible or viable option as it would have caused even greater delays, and this given the lengthy process of removing an auditor as per the requirements set out in Chapter 386 of the laws of Malta;*
- *(h) The appellant company respectfully disagrees with the MFSA's decision that it was an obligation on the part of the appellant company to appoint a new auditor in*





*view of the suspicions and concerns that were raised due to the negative media circulating the Auditors; any obligation surrounding the third-party Auditors was on the part of the MFSA; in that it is one of the Authorities that should ensure strict adherence to the laws; any blame for failure on the part of the MFSA or any other authority to take immediate action against third-party licenced entities should not be shifted onto innocent third-party companies who had no control over the situation at hand. At the stage when any such decision to change the Auditors had to be taken by the appellant company, the MFSA had not revoked the Auditor's licence and any adverse media information could not be independently confirmed by the appellant company; therefore, contrary to the MFSA's decision; any such obligation to remove the Auditors on the part of the appellant company did **not** exist;*

- *(i) It was the responsibility of the authorities, including the MFSA, to ensure that the Auditors were abiding by their licencing requirements and any third party victim to the practices undertaken by any such licenced entities cannot be blamed or ordered to take action prior to the authorities themselves taking action. In this respect, it should be noted that whilst one cannot ignore adverse media information, an innocent third party cannot be expected to take all media reports as facts and take action without any background reliable information available or actual convictions, even prior the MFSA itself taking action (it should be noted that its only on the 13 October 2020 (months later) that the MFSA suspended Nexia BT's authorisation);*
- *(j) That, in any case, irrespective of whether the appellant company removed the Auditors or otherwise, the delays were still going to be experienced given the lengthy processes that would have been involved for the purposes of changing the Auditors;*
- *(k) Having said that new auditors were eventually engaged for the year 2020, and a substantial improvement in the filing of the 2020 audit was registered as can even be confirmed on the Authority's end.*







**Second Aggrievance:**

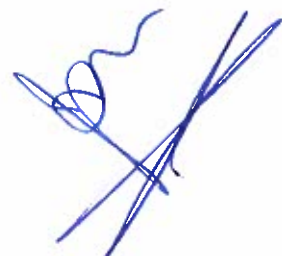
- *(a) Secondly, the applicant company felt aggrieved by the MFSA's decision that the severe disruptions brought about by the COVID-19 pandemic were not justifiable reasons raised by the appellant company for its late submission of the Audited Financial Statements and Auditor's Management Letter;*
- *(b) Irrespective of the fact that the submissions were indeed late, the MFSA failed to abide by its obligation to take into account justifiable reasons as to why any such delays were caused;*
- *(c) The MFSA, abused its discretion reaching a manifestly unfair decision against the appellant company, given that it completely ignored the reality we are living in; a global pandemic COVID-19 crises, which undeniable caused severe delays, especially in beginning of the year 2020 when the whole world was at a standstill;*
- *(d) In March 2020, the COVID-19 pandemic hit Malta, which meant that all Reliance Management's staff were immediately requested to leave the offices and only in July of that same year was the gradual return to the offices allowed;*
- *(e) Performing an audit for the appellant company required a considerable amount of time in view of the size of the group of companies; and moreover, the audit required physical office presence to be concluded and could not be performed remotely;*
- *(f) During the national lockdown period ordered by the Maltese Government between March and June 2020, the appellant company prioritised staff's health above anything else, and imposed strict procedures to minimise the spread of the virus in line with the directives issued by the Office of the Superintendent of Public Health,*





*whilst, trying to also ensuring business continuity taking into account the surrounding circumstances;*

- *(g) Indeed, the MFSA itself agrees that COVID-19 caused disruptions in business operations of several companies; so much so that it extended submission deadlines itself; unfortunately, such extension was not for a sufficient period in this circumstance;*
- *(h) The impact of the pandemic, coupled with further disruption from the Auditors' end, resulted in further delays which were entirely and absolutely out of the appellant company's control, such that it was impossible for the appellant company to conclude the audit by June 2020;*
- *(i) Upon the easing of the public health measures and the containment of the virus (to a certain extent), the audit process was given top priority by the appellant company, and the appellant company managed to conclude same within less than two (2) months;*
- *(j) Companies should be encouraged to first and foremost adhere to best health practices and ensure that their staff are protected to the highest extent possible; any such decision against the appellant company would simply encourage entities to disregard their staff's health considerations in order to abide by strict filing deadlines;*
- *(k) The appellant company should not be penalised for being responsible and adhering to the best protocols for the purposes of minimising the spread of the COVID-19 pandemic;*





- *(l) The appellant company, as with all other corporate services providers, is going through a number of challenges, including but not limited to Malta's Grey Listing on the FATF's list, the overhaul of regulatory changes, increased compliance costs, and loss of new business; the execution and publication of the decision of the authority could seriously damage the appellant company's reputation despite the fact that the failure on the part of the appellant company was completely justifiable and nothing but a minor misdemeanour which was almost immediately rectified.*

*Therefore, and in view of the above, the appellant company is respectfully requesting this Tribunal to:*

- 1. Order that the decision of the MFSA was abusive and manifestly unfair given that the Authority failed to apply the principles of proportionality, and fairness and completely disregarded the justifiable reasons for the delay put forward by the appellant company;*
- 2. Order that the sanction levied by the MFSA against the appellant company was inequitable and unjust given the justifiable reasons for the delay put forward by the appellant company; and to*
- 3. Order the revocation of the decision of the MFSA and confirm that the appellant company had justifiable reasons for its delay in submitting the Audited Financial Statements and its Auditor's Management Letter;*

*And this, in line with any other decision/s that this Tribunal deems fit and necessary accordingly, with costs against the Authority; the MFSA.*

*Ra r-risposta imressqa mill-Awtorita Appellata fit-18 ta' Frar 2022 li fiha, rrispondiet ghall-appell interpost u sostniet:*

*The Authority respectfully submits:*





*That on the 7th of October 2021, the Authority sent a Minded Letter to Reliance Management Ltd (the "Company") whereby it communicated the proposed regulatory action of a total penalty of €2,500 for a number of breaches (the "Minded Letter"). Such amount consisted of the proposed penalties of €2,000 for the late submission of the Audited Financial Statements and €500 for the late submission of the Auditor's Management Letter for the year ended 30th November 2019. Such late submissions were in breach of Rule 17.03 of the Rules for Company Services Providers which were applicable until the 15th of March 2021;*

*That, on the 12th of October 2020, Reliance Management Ltd replied citing fault of third parties engaged to carry out accounts and audits and negative media attention around the auditors engaged at the time as the reason behind such late submissions. The Authority did not feel that these representations warranted a change in the proposed penalty and thus proceeded by imposing such penalty by means of a Decision on the 1st of December 2021 (the "Decision");*

*Reliance Management Ltd felt aggrieved by the Decision and availed itself of its right of appeal before the Financial Services Tribunal in terms of Article 21 of the Malta Financial Services Authority Act (Chapter 330 of the Laws of Malta) asking for the same Tribunal to revoke the Decision and consequent penalty.*

*That, as will be explained in great detail throughout this reply and elaborated further in the course of these proceedings, in reaching its Decision, the Authority did not act in a manner that is manifestly unfair or impose a disproportionate penalty. The requests and allegations tabled by the Company before this Honourable Tribunal are unfounded in fact and at law and should be rejected in their entirety by this Tribunal with all legal costs to be borne by the same Company.*

#### ***Preliminary Pleas***

*That preliminarily, this appeal is to be dismissed immediately on account of it being submitted outside of the thirty (30) day period allowed for an appeal for a decision or act of the competent authority as stipulated in Article 21(8) of Malta Financial Services Authority Act (Chapter 330 of the Laws of Malta). While Reliance Management Ltd were notified of the Decision on the 1st of December 2021, payment in relation to lodging the appeal was affected beyond the time period established at law for the filing of an appeal. Article 5 of the*







*Financial Services Tribunal (Fees) Regulations (Subsidiary Legislation 330.08) clearly stipulates the following:*

*5. An appeal application or an application for transfer of long-term business, as applicable, filed before the Financial Services Tribunal **shall not be considered unless it is accompanied by the applicable administrative fee in terms of these regulations.** [emphasis added]*

*That, as such, it is amply clear that the appeal was submitted fuori termine and, therefore, cannot be considered by this Honourable Tribunal;*

*That, subsidiarily to the above and also preliminarily, the Authority submits that the appeal in question is essentially questioning the properly exercised discretion of the Authority. It is here reiterated that the proviso to Article 21(9) of the Malta Financial Services Authority Act stipulates that "the discretion of the competent authority may not, so long as it has been exercised properly, be queried by the Tribunal". As such, it follows that this appeal should be dismissed on this basis alone.*

#### ***The Merits***

*That, firstly, the Authority submits that the content of this reply is without prejudice to the submissions, evidence and findings put forth in the Minded Letter and the Decision;*

*That, in so far as the merits of the appeal are concerned, the first grievance of Reliance Management Ltd is based on the premise that the Company and Board of Directors did everything in their power to make sure the regulatory submissions were made within the timeframes stipulated at law and that the delays of third-party professionals engaged to carry out accounting and audits were beyond their control. The Company even goes as far as stating that the situation with which it was presented constituted force majeure.*

*The Authority humbly submits here that, in so far as the Appellant is attributing fault for delays to engaged third party professionals, as soon as the Company became aware that the appointed auditors were not in a position to respect the deadlines, it should have initiated the process of onboarding new auditors immediately, or, at the very least, notified or sought guidance from the Authority.*

*In fact, the Circular dated 20th March 2020, which provides for the two-month extension, clearly stipulates that "Licensed entities should nevertheless report to the MFSA material information relevant to their financial position immediately upon becoming aware." As such,*



*while it remains the Company's duty to ensure that obligations are observed even when dependant on third parties, this shortcoming is one attributable purely to the Company itself.*

*That further to this, with regards to Appellant's comments regarding fault of the Authority for not having issued sanctions against the auditing firm it was using at the time, exponent humbly submits that a distinction is to be drawn between Company Services Providers' obligations with respect to the Authority and the Authority's functions in ensuring that auditors abide by their licensing requirements. While the Authority had to ascertain that there were grounds severe enough to justify revocation of the auditors' license, a high threshold to meet, Appellant merely had to ascertain that the auditors were not in a position to respect the relevant deadlines. Therefore, the Company's grievances in this respect are unfounded and are to be rejected by this Honourable Tribunal;*

*That as regards the second grievance raised, in the Company's appeal, specifically the assertion that the Authority did not take note of the representations made by them, exponent wishes to clarify that consideration of the points raised is certainly not tantamount to acceptance. While the representations made in reply to the Minded Letter were duly noted and considered, they did not justify an alteration or amendment to the action proposed in the Minded Letter. It is reiterated here that the properly exercised discretion of the Authority is not to be queried at appellate stage 1.*

*1 Proviso to Article 21(9) of the Malta Financial Services Authority Act (Chapter 330 of the Laws of Malta).*

*2 Paragraph (c) of the Second Grievance of the Appeal.*

*That secondly, as regards the Company's argumentation regarding the COVID-19 pandemic, the Authority humbly submits that this is completely unfounded. The Company firstly argues that the Authority "completely ignored the reality we are living in; a global pandemic COVID-19 crises"<sup>2</sup> and immediately follows this up by acknowledging the fact that the Authority did indeed cater for these unprecedented circumstances*

*("Indeed, the MFSA itself agrees that COVID-19 caused disruptions in business operations of several companies, so much so that it extended submission deadlines itself."<sup>3</sup>)*

*3 Paragraph (g) of the Second Grievance of the Appeal.*





*That the above argumentation is contradictory in itself and fails to address the crux of the breaches in question; that such breaches were committed despite the fact that the Authority acknowledged and catered for the difficult circumstances and provided extensions and leeway in this respect. The circumstances alone do not justify failure to adhere to statutory obligations, especially in light of the extensions provided by the Authority. In fact, the Circular dated 20th of March 2020 clearly stipulates the following:*

*the MFSA expects regulated firms to take all reasonable measures in order to have appropriate contingency plans in place to be able to deal with any eventuality relating to the outbreak of COVID-19.*

...

*The MFSA's position is aimed at striking the right balance between providing the necessary relief to licensed entities, whilst maintaining its objective of ensuring the protection of markets and consumers/investors... No requirements will be waived or disapplied.*

*That it follows that the Authority's position in this regard was clear from the outset (and even provided for a significant amount of flexibility) and that Reliance Management Ltd were made well aware of this.*

*That the argument put forth in paragraph (i) of Reliance Management Ltd's appeal application is also unfounded and incorrect in that the two-month period cited is certainly not applicable. The applicable timeframes are naturally those set by the Authority itself.*

*That without prejudice to the above, it should be mentioned that the Authority did consider a number of mitigating factors in its imposition of the penalty, including inter alia:*

- i. The fact that Reliance Management Ltd had not previously been subject to regulatory action; and*
  
- ii. The relatively low degree of impact of the breaches on the Company's business activities, its reputation, and the financial services sector in general;*

*That as such it follows that the representations made by the Company in reply to the Minded Letter were considered, but not did justify an alteration to the proposed action. It also follows*





*that the penalty imposed is just and observes the principles of proportionality and fairness. Further to this, a glance at Article 9(1) of the Company Service Providers Act (Chapter 529 of the Laws of Malta) clearly evidences how a €2,500 fine for the breaches committed certainly cannot be considered as harsh or disproportionate when considering that the Authority can impose significantly harsher penalties should the circumstances warrant such action.*

*That, therefore, in light a clear breach of the Rule 17.03 of the Rules for Company Services Providers (applicable until the 15th of March 2021), the Decision was correct, just and proportionate and the Authority exercised its discretion in a fair manner and according to the provisions of law;*

*Therefore, for the abovementioned reasons, the Authority respectfully requests that this Honourable Tribunal dismisses the appeal as tabled by Reliance Management Ltd and to confirm the Decision issued by the Authority on the 1st of December 2021, with costs against the same Reliance Management Ltd.*

Ra id-dokumenti u l-provi sottomessi mill-partijiet;

Ra is-sottomissjonijiet tal-partijiet.

Sema it-trattazzjoni tal-partijiet u ra li l-appell gie differit ghall-lum sabiex jigi deciz;

Ra' l-atti kollha tal-kaz

Kunsiderazzjonijiet tat-Tribunal:

1. Illi s-socjeta Appellanta qeghdha tilmenta mill-multa ta' elfejn u hames mitt Euro (€2,500) fuqha imposta mill-Awtorita permezz tad-decizjoni tal- 1 ta' Dicembru 2021 liema multa giet imposta a bazi ta l-artikolu 9 (1) tal- Company Service Providers Act u dan stante li l-istess socjeta Appellanta kisret ir- Rule 17.03 tar- Rules for Company Services Providers meta issottomettiet l- Audited Financial Statements u Auditors' Management Letter ghas-sena 30<sup>th</sup> Novemberr 2019 wara it-terminu stipulat.
2. Illi in succinct, dak li wassal ill-Awtorita' appellata sabiex tiehu il-mizuri li wasslu ghall-kontestazzjoni odjerna kien il-fatt illi s-socjeta' appellanta ssottomettiet l- *audited annual financial statements* u l-*Auditors' management letter* ghas-sena





finanzjarja Novembru 2019, fit-23 ta' Lulju 2020 u fid- 29 ta' Lulju 2020 rispettivament, u dan meta suppost tali dokumenti kellhom jigu sottomessi sal-31 ta' Marzu 2020.

3. Illi s-socjeta' appellanta ssostni illi hija esperjenzat diffikolta' sabiex l-audited financial statements tas-sena 2019 ikunu saru fil-hin u t-termini stabbiliti u dan stante illi l-awdituri taghha, u cioe Nexia BT kienu qeghdin jesperjenzjaw diffikultajiet minhabba ic-cirkostanzi li huma kienu jinsabu fihim, u anke minhabba il-problerni marbuta mal- pandemija Covid19.
4. L-Awtorita' appellata ssostni illi r-ragunijiet imressqa mill-Appellanta sabiex tiggustifika id-dewmien ma kienux ragunijiet sufficjenti u dan ma nehha xejn mill-obbligi regulatorji tas-socjeta Appellanta li tissottometti dak minnha mitlub fit-termini stabbiliti.
5. Illi fid-dokumentazzjoni sottomessa, l-Appellanta indikat illi minkejja illi hija bdiet il-process ta' l-audit tas-sena 2019 immedjatament f' Jannar 2020, l-awdituri taghha, u cioe NexiaBT, kienu ghaddejjin minn problemi gudizjarji u li kienu qeghdin iwasslu ghas-sitwazzjoni li kellhom numru konsiderevoli ta' impjegati li kienu qeghdin jitilquhom. L-Appellanta tghid ukoll illi hija kienet qeghdha taghmel pressjoni ma' l-istess awdituri sabiex dawn jottepraw ruhhom, izda minkejja kull sforz li sar, l-audited financial statements u l-auditors management letter kienu lesti fit- 28 ta' Settembru 2020 u fit- 30 ta' Settembru 2020 rispettivament. Sussegwentement, l-istess Appellanta bidelt l-awdituri taghha.
6. L-Appellanta tghid ukoll illi meta faqqgħet il-pandemija, hija mexiet mad-direttivi li kienu qeghdin jinhargu mill-awtoritajiet tas-sahha, u ordnat lill-haddiema taghha sabiex ma jmorrux fl-ufficini taghha ghax-xogħol. Illi dan wassal għal problemi logistici li ukoll wasslu għad-dewmien fit-tlestija ta' l-accounts.

***Eccezzjoni Preliminari:***

7. Illi l-Awtorita Appellata resqet eccezzjoni preliminari fis-sens illi l-Appell huwa tardiv u allure null ghaliex l-appell gie fizikament sottomess fl- 4 ta' Jannar 2022 u l-hlas sar fis- 6 ta' Jannar 2022.





8. Illi l-Appellant jissottometti illi dan ma kienx il-kaz ghaliex l-appell intbghat fuq l-email elettroniku tat-Tribunal fil- 31 ta' Dicembru 2021, u allura entro it-terminu ta' 30 gurnata minn meta id-decizjoni giet lilu ikkomunikata.
9. Illi mill-fatti jidher car illi l-appell intbghat b' email fil- 31 ta' Dicembru 2021. It-Tribunal jista jikkonferma dan bhala fatt korrett. Huwa minnu illi intbghatet kopja fizika illi waslet fic-Centru ta' l-Arbitragg fl- 4 ta' Jannar 2022, kif ukoll il-hlas tad-dritt ta' l-appell thallas fis- 6 ta' Jannar 2022. Huwa ukoll minnu illi t-Tribunal irregistra l-istess appell b' referenza 2/22.
10. Izda certament li din l-eccezzjoni m' ghandiex tintlaqa. L-ewwel nett ghandu jinghad illi t-Tribunal m' ghadux registru centralizzat u ma hemm xejn hazin illi l-istess rikors intbghat b' email. Illi dan sar fit-terminu prefiss mil-Ligi u ghalhekk l-appell m' huwiex fuori termine. L-istess ghandu jinghad ghall-hlas. Meta tribunal ma jkollux registru centrali, ikun kemmxejn difficli illi persuna taqbad u thalli cheque jew pagament f' xi ufficju. Dan izjed u izjed meta si tratta ta' perjodu ta' festività fejn l-accessibilita ma tkunx wahda ideali. Illi ghalhekk, anke f' dan ir-rigward it-Tribunal ihoss illi l-procedura adoperata mill-Appellanta kienet wahda korretta u l-appell huwa validu.
11. Illi hawn it-Tribunal jiehu spunt sabiex iressaq rakomandazzjoni sabiex possibilment ikun hemm procedura kif appelli quddiem tribunali amministrattivi jkun jistghu jigi prezentati fir-Registru tal- Qrati Civili fejn ikun jista jsir il-hlas bil-proceduri normalment adoperati ghal kazijiet li jitressqu quddiem it-Tribunal Amministrattiv stabbilt taht il-Kap. 490.

**Mertu:**

12. Illi minn dak sottomess, ma jidhirx illi f' xi stadju l-Appellanta infurmat lill-Awtorita bid-diffikoltajiet illi hija kien qed ikollha sabiex tonora l-obbligi taghha.
13. Illi rigward is-sitwazzjoni tal- Covid19, l-Awtorita spjegat illi il- Company Services Providers, bhal ma hija is-socjeta Appellanta, kellhom estenzjoni "blanket" sal wiehed u tletin (31) ta' Mejju 2020 in segwitu tac-cirkolari tal-20 ta' Marzu 2020 li kienet inharget minhabba il-Covid 19.



14. Tramite ic-cirkolari ulterjuru tat- tletin (30) ta' Gunju 2020, l-Awtorita infurmat lill-entitajiet regolati, bhal ma hija is-socjeta Appellanti, illi l-istess Awtorita kienet disposta taghti estenzjonijiet ulterjuri jekk issir talba ghal dan il-ghan, liema talba kienet ser tigi ikkunsidrata on a case by case basis.
15. Illi s-socjeta Appellanti ma ghamlet l-ebda talba ghall-estenzjoni ulterjuri mit-terminu li kien awtomatikament estiz sal- 31 ta' Mejju 2020.
16. Illi rigward il-problemi illi l-istess Appellanta kienet qeghda tesperjenza minhabba is-sitwazzjoni ta' l-awdituri, l-Awtorita irrimarkat illi l-Appellanta setghat hadet mizuri qabel sabiex tahtar awdituri godda, u li f' kull kaz tali dewmien ma kienx iggustifikat.
17. Illi tenut dan kollu, fil-kunsiderazzjoni ta' dan it-Tribunal, il-kwistjoni allura tikkoncentra ruhha, dwar jekk tali azzjoni kelliex tittiehed minhabba d-diffikolta li l-awdituri tas-socjeta Appellanta kellhom u l-problemi li l-istess socjeta Appellanta kellha minhabba il-pandemija. Jibqa ukoll il-fatt illi s-socjeta' appellanta naqset li tinforma lill-Awtorita bil-problema li hija kellha sabiex tonora l-obbliga taghha fil-hin minhabba dawn il-problemi, u n-nuqqas li hija titlob ghall-estenzjoni stipulata fic-cirkolari tat- 30 ta' Gunju 2020.
18. Issir referenza ghal Rule 20.1 li jghid:

*A Registered Person is expected to deal openly and in a spirit of co-operation with the Authority and any other relevant regulatory authorities*

19. Hija ghaldaqstant kemmxejn skorretta is-sottomissjoni ta' l-Appellanta li ma kelliex obbligu illi tinforma lill-Awtorita bil-problemi li kienet qeghdha tiffaccja. Apparti ir-Rule fuq indikata, huwa principju bazilari illi entita regolata ghandha jkollha komunikazzjoni miftuha u kontinwa mar-regolatur taghha, u s-sitwazzjoni li sabet ruhha fiha l-Appellanta kien kaz klassiku ta' fejn wiehed kellu jiftah djalogu ma' l-Awtorita Appellata kemm sabiex tipprovdi l-informazzjoni, u kemm sabiex possibilment tinghata certu gwida. Dan apparti il-fatt illi ic-cirkolari ta' Gunju 2020 kient titkellem car illi kellha ssir talba specifika ghall-estenzjoni.
20. Oltre dan, minkejja li c-Cirkolari tal-20 ta' Marzu 2020 kienet provdi estenzjoni "blanket" fil-kaz ta' CSP's sal- wiehed u tletin (31) ta' Mejju 2020, ic-Cirkolari tat-tletin (30) ta' Gunju 2020 kienet tobbliga lill-entitajiet regolati bhal ma hija s-socjeta' appellanta sabiex huma jaghmlu talba ghall-estenzjoni ulterjuri tat-terminu. M'



hemmx dubju illi dan kien miktub car fl-istess cirkolari. U ma inghatat l-ebda spjega ghalfejn tali talba qatt ma saret.

21. Illi l-pandemija gabet sitwazzjonijiet eccezzjonali ghal kullhadd u certament illi wiehed jifhem illi certu dewmien kien attribwit ghall-fatt illi bosta employers kienu kawti u taw izjed importanza lis-sahha tal-haddiema u l-klijenti taghhom u ghalqu l-ufficini u l-postijiet tax-xoghol. Zgur illi s-socjeta Appellanta ma tistax tigi ikkritikata illi hija hadet posizzjoni f' dan ir-rigward. Pero, l-Awtorita, l-ewwel harget estenzjoni awtomatika ta' xaghrejn, u sussegwentement hadet mizuri sabiex tinghata estenzjoni ulterjuri f' kazijiet specifici fejn issir talba ghal dan il-ghan. Jidher illi tali talba ma saritx u jibqa il-fatt illi is-sottomissjonijiet saru kwazi xaghrejn tard mill-ewwel estenzjoni.
22. Illi rigward is-sitwazzjoni ta' l-awdituri huwa car illi is-socjeta Appellanta soffriet konsegwenzi li ma tantx kellha kontroll fuqhom. Din kienet sitwazzjoni kemmxejn sfortunata u bir-rispett kollu, l-Awtorita trid tkun ferm izjed kawta f' sitwazzjonijiet bhal dawn. It-tribunal ma jifhimx il-posizzjoni ta' l-Awtorita meta fir-risposta taghha tghid illi s-socjeta Appellanta kellha tiehu mizuri qabel sabiex tbiddel l-awdituri u dan meta kien hemm negative media fuq l-awdituri taghha. L-Awtorita taf daqs, jew izjed minn, kullhadd illi hawn si tratta ta' materji serji u sensittivi hafna, u bidla ta' awditur hija materja serja u ta' certu portata. M' huwiex xi process illi ghandu jittiehed b' mod legger u lanqas ma hija gusta l-osservazzjoni ta' l-Awtorita illi n-negative media messa xprunat lill-Appellanta sabiex tiehu mizuri minn qabel. Bidla ta' awditur tehtieg iz-zmien u hija process elaborat u zgur illi din m' hijiex materja li setghat tigi solvuta fi ftit granet jew gimghat.
23. Jibqa' allura l-punt tal-proporzjonalita', izjed u izjed meta hawn si tratta ta' mizura punittiva ghaliex dina giet imposta wara illi s-socjeta' appellanta ghamlet dak li kien mitlub minnha li taghmel, u cioe' wara s-sottomissjoni tad-dokumentazzjoni. Illi tali proporzjonalita' trid tigi ukoll ikkunsidrata a bazi tal- fatt illi l-Awtorita tippublika l-azzjoni minnha, tant illi f' dan il-kaz inhareg Avviz ippublikat fit- 3 ta' Dicmebru 2021 <sup>1</sup>.
24. Illi m' hemmx dubju illi l-Awtorita' ghandha d-diskrezzjoni li mhux biss tiehu azzjoni punittiva, izda li wkoll taghzel x' tip ta' azzjoni hija ghadha tiehu.
25. Skond l-artikolu 9 ta' l-Att li jirregola l-Appellata:

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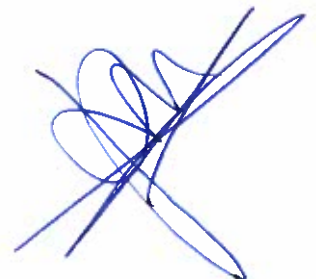
<sup>1</sup> <https://www.mfsa.mt/publication/regulatory-action-reliance-management-ltd-the-company/>





*Where any person contravenes or fails to comply with any of the provisions of this Act or of any regulations or rules issued thereunder, with any of the conditions imposed in an authorisation issued by the Authority, with any directive issued by the Authority, or fails to cooperate with the Authority in an investigation, the Authority may, by notice in writing and without recourse to a court hearing, impose on any such person an administrative penalty which may not exceed fifty thousand euro (€50,000) for each infringement or failure to comply, as the case may be.*

26. Illi dan it-Tribunal ma jhossx illi ghandu jiddisturba hafna id-diskrezzjoni kif tigi ezercitata mill-Awtorita', filwaqt li pero' jara illi l-istess Awtorita' timxi b' mod gustifikat, proporzjonat u skond il-Ligi. Ir-regolamentazzjoni tal-qasam finazjarju huwa punt delikat u ghandu jkun ibbazat fuq prattici rigoruzi u oggettivi. Izda dan ma jfissirx li ghandu jintilef kull skop ta' proporzjonalita'. Dan izjed u izjed meta azzjoni amministrattiva tigi ppublicizzata.
27. Illi m' hemmx dubju illi c-cirkostazzjoni li sabet ruhha fihom is-socjeta Appellanta kienu kemmxejn eccezzjonali u difficili. Izda ma jinftiehmex kif minkejja tali diffikolta, is-socjeta Appellanta hasset illi m' ghandiex tinforma lill-Awtorita bil-problemi li kellha, li del resto kienu problemi li wiehed seta facilment jispjega. Kienu ukoll diffikultajiet illi sa certu punt kienu impost fuq is-socjeta Appellanta u anke hawn wiehed ma jifhimx l-agir tas-socjeta Appellanta li ma tinfurmax lill-Awtorita Appellanta. Lanqas ma jinftiehem ghalfejn l-Appellanta ma talbietx l-estenzjoni tat-terminu.
28. Illi dan in-nuqqas wahda jimpingi kontra is-socjeta Appellanta u jwassal lit-tribunal sabiex jikkondividi il-posizzjoni li hadet l-Awtorita meta ikkonkludiet li kien hemm ksur ta' l-obbligi tas-socjeta Appellanta.
29. Illi ghal dak li jirrigwardja kemm l-azzjoni li hadet l-Awtorita kienet proporzjonata, it-Tribunal ihoss illi l-Awtorita hadet in kunsiderazzjoni ic-cirkostanzi kollha li sabet ruhha fihom is-socjeta Appellanta, kif ukoll it-track record taghha u imponiet multa amministrattiva li tista tissejjah minima. Certament illi il-portata ta' tali azzjoni trid ukoll tinqara fil-kuntest tal-pubblicita li tali azzjoni tinghata hekk kif fuq deskritt, fejn ovvjament, il-quatum tal-multa kwazi jigi sekondarju ghall-fatt illi l-istess azzjoni tinghata pubblicita.





30. Illi t-Tribunal jixtieq jiehu spunt minn dan il-kaz u jistieden lill-Awtorita sabiex tara jekk sitwazzjonijiet bhal dawk li sabet ruhha fihom is-socjeta Appellanta ghandhomx ikollhom xi forma ta' koncessjoni. Izda pero wiehed ghandu jifhem illi l-Awtorita ghandha tippromwovi il-principju ta' skambju ta' informazzjoni u koperazzjoni bejnha u l-entitajiet minnha regolati. Entita regolata minn naha l-ohra, ma tistax tippretendi koncessjonijiet meta hija tonqos minn element tant baziku ta' koperazzjoni.

Ili in vista tal-premess, it-Tribunal qiegħed jichad l-appell interpost mis-socjeta' appellanta u jikkonferma id-decizjoni ta' l-Awtorita' Appellata tal- 1 ta' Dicembru 2021.

It-Tribunal jordna ukoll illi estratt ta' din id-decizjoni referibbli għall-eccezzjoni preliminari jigi notifikat lill-Ministru tal- Gustizzja.

Tenut kont tac-cirkostanzi tal-kaz kull parti għanda tbghati l-ispejjez tagħha.

