

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

Mr. Robert Ducker B.Sc.(Hons) Financial Services (UMIST), ACIB
Membru

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

FST 04/24

Jorge Insurance Ltd

vs

Malta Financial Services Authority

30 ta' Lulju 2025

It- Tribunal

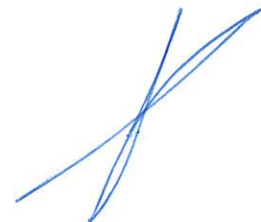
Ra l-appell intavolat mill-Appellanta li fih l-appellanta ssostni:

By means of the present, Jorge Insurance Limited C-98357 (“Appellant”) is submitting an appeal in terms of law from a decision communicated by the Malta Financial Services Authority (hereinafter “MFSA”) in a letter dated 11 September, 2024 (Doc J1: the “Decision”). By means of the Decision, MFSA imposed an administrative penalty of two thousand four hundred Euro (€ 2,400) on Appellant, for allegedly failing to observe reporting requirements.

Appellant contends that the imposition of the penalty is not reasonable and/or justified, for the reasons which will be set out in this appeal.

1. FACTS OF THE CASE

- 1.1 *In a minded letter dated 23 November, 2023 (Doc J2), MFSA informed Appellant that given that it failed to submit its Solo Regular Supervisory Report (Solo RSR) in terms of section 8.6 of Chapter 8 of the Insurance Rules issued by the MFSA for financial year ending 31.12.2021, it was minded to impose an administrative penalty of EUR 2,400. It gave Appellant two (2) weeks to submit its representations.*
- 1.2 *Appellant filed representations contesting the finding of the MFSA on the 07 December 2023 (Doc J3). In essence, Appellant argued that the alleged late submission – assuming that it was indeed, a “breach of report requirements” – was unintentional and the result of a misunderstanding which arose out of exchanges between Appellant and MFSA. In an ironic twist, the exchange which led to this misunderstanding was specifically intended to ensure compliance with any requirement to submit a Solo RSR for Appellant.*
- 1.3 *The MFSA issues an annual letter informing each individual insurance company of its reporting requirements for the year (Doc J4). Appellant’s insurance manager (SRS Management Europe PCC Limited – “SRS”) emailed MFSA to get their confirmation of their understanding as to what needed to be submitted (Doc J5). In their reply, MFSA stated that “(...) Only a group SFCR, group RSR and group ORSA apply to the group.” The insurance managers SRS, on this basis, prepared the three reports at Group level and submitted them only for the group. It turned out, however, that while SRS was clearly referring to Appellant in directing the question to MFSA, MFSA understood that SRS were referring to the holding company Jorge Holding Limited. This miscommunication was discovered only when Appellant was made aware of the alleged late submission, when the Compliance Officer contacted Mr Alfred Parnis of MFSA who explained verbally on the call that Neil Formosa’s email of the 7 March 2022 wherein he stated that “2. Correct. Only a group SFCR, group RSR and group ORSA apply to the group” was a misunderstanding and that Neil must have understood that the Insurance Manager was referring to Jorge Holding Limited’s requirement to submit a solo RSR.*
- 1.4 *When Appellant realized that a misunderstanding had occurred, it very promptly submitted the Solo RSR. To give an idea of timelines:*
- (a) The group RSR was submitted within the deadline (03.04.2022);*
 - (b) MFSA notified Appellant of the alleged non-submission of the Solo RSR on the 10.10.22, **more than six months** after the deadline;*
 - (c) Appellant thereafter submitted Solo RSR on the 18.10.2022. In other words, within just **eight (8) days** of being notified of non-submission, Appellant had*



not only clarified the matter with MFSA, but it also made the requested submission.

1.5 It is worth noting that there were no material differences between the Solo RSR and the Group RSR. The only difference between the Solo RSR and the Group RSR which was submitted by Jorge Holdings was a 5k capital contribution in its equity reserves. The rest of the technical information was identical. So there was no discrepancy of note in the information submitted by the Group RSR which was submitted within the deadline and the Solo RSR.

2. GROUNDS OF APPEAL

2.1 In the factual context described above, Appellant contends that the imposition of a fine is unreasonable and unjustified.

*2.2 The **first ground** on which this appeal is based is that a fine cannot and should not be imposed when it is clear that the alleged failure to report was a result of a genuine and unfortunate misunderstanding, resulting ironically from exchanges with the MFSA which were meant to clarify the position.*

2.3 The imposition of a fine involves a “punitive” element, in that a fine is meant to punish a failure to observe regulatory obligations, and to act as a disincentive both for the subject of the fine, and for any potential malfeasors, to disregard such obligations. This purpose behind the imposition of fines, however, is not present in a situation where there was a miscommunication, for which MFSA should also shoulder blame. What is the point of imposing a “disincentive”, in a situation where the Appellant clearly had every intention to observe the law, and even sought the MFSA’s guidance on this? What justice is there in “punishing” the Appellant, when clearly it was going the extra mile and asking for clarifications from the MFSA?

2.4 Appellant’s willingness to abide by applicable regulations clearly results from the fact that (i) group RSR was filed within deadline and (ii) once it was clarified that a Solo RSR was required, it was submitted within a matter of days.

2.5 In this context, the imposition of the fine is even more egregious than might appear at first glance, when one considers that of the total sum of € 2,400, four hundred Euro (€ 400) was imposed for the delay in submission (beyond the original alleged failure to report). However, as has been stated, it took MFSA more than six months to draw Appellant’s attention to the failure to submit, and thereafter, it only took eight days for Appellant to effect the submission as requested.

*2.6 The **second ground** on which this appeal is based is that the alleged late submission led to no prejudice to MFSA. As explained, there was no material difference between the Group RSR and the Solo RSR, and therefore the reporting requirement –*



although, according to MFSA, not formally met – had certainly been effectively met as the information in the Group RSR was practically identical.

3. REQUEST FOR RELIEF

In the light of the above, Appellant respectfully requests that this Honourable Tribunal, having made any declarations which it deems necessary or opportune:

3.1 Declare that the MFSA's finding regarding the alleged lack of reporting by Appellant is unjustified and/or unreasonable;

3.2 Revoke the Decision, including the imposition of the fine.

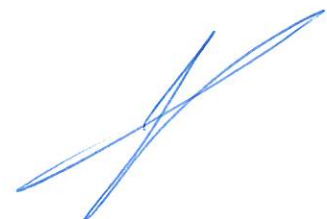
3.3 Award the Appellant all costs associated with these proceedings and any further relief this Honourable Tribunal deems just and equitable.

Ra r-risposta imressqa mill-Awtorita Appellata li fiha, rrispondiet ghall-appell interpost u sostniet:

1. That with regard to appellant company's first grievance, it is respectfully submitted that such grievance is unfounded at fact and at law. The breach which gave rise to the decision subject to appeal is that appellant company failed to submit its regular supervisory report (or "SOLO RSR") pursuant to paragraph 8.6.8 of the Financial Statements and Supervisory Reporting Requirements (Chapter 8 of the Insurance Rules issued under the Insurance Business Act, Chapter 403 of the laws of Malta) by the deadline of the eighth (8th) of April of twenty twenty-two (2022), which failure is an undisputed fact;

The reasons presented by appellant company in an attempt to justify such failure (i.e. misinterpreting correspondence with the Authority concerning group-level reporting requirements, and not reporting requirements related to individual companies, to suggest that the SOLO RSR, an individual company reporting requirement, need not be submitted) are certainly not acceptable. Firstly, the correspondence in question specifically concerned group-level reporting requirements, and not reporting requirements pertaining to individual companies, such as appellant company. Secondly, statutory reporting requirements emerge from the law, and the necessity to submit the aforementioned SOLO RSR could have been easily verifiable had appellant company exercise the prudence and diligence expected from an entity licensed by the Authority;

2. That, in any case, and without prejudice to the above, such grievance is also inadmissible in that it essentially requests that this Tribunal queries the discretion



exercised by the Authority in issuing the decision subject to this appeal, an exercise which is prohibited by Article 21(9) of the Malta Financial Services Authority Act (Chapter 330 of the Laws of Malta);

3. *That with respect to the second grievance raised in appellant company's appeal application, it is respectfully submitted such grievance is inadmissible as, even assuming for the sake of argument that the claim that the "late submission led to no prejudice to MFSA" is true, this does not fall within the parameters of this Tribunal's scope of review as contemplated in Article 21(9) of the Malta Financial Services Authority Act;*
4. *That in any case, and without prejudice to the above, such argument is also unfounded in that the proper adherence to statutory reporting obligations forms an integral part of the Authority's prudential supervision function. In the absence of adherence to such statutory reporting obligations, the Authority's supervisory work can be seriously hindered as it would not have accurate and up-to-date visibility of its licensees' affairs.*
5. *That in any case, and similarly without prejudice to the above, in issuing the decision subject to the present appeal, the Authority exercised its discretion properly, applied the law correctly, and imposed a penalty proportionate to the breach committed. Therefore, it is respectfully submitted that this Tribunal should consequently confirm the same decision.*

Additional pleas are reserved according to law.

With costs against appellant company.

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

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

Ra' l-atti kollha tal-kaz

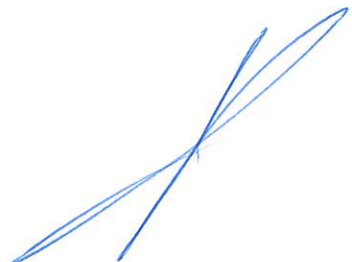
Kunsiderazzjonijiet tat-Tribunal:

1. Illi s-socjeta Appellanta qeghdha tilmenta mill-multa ta' elfejn u erba' mitt Euro (€2,400) fuqha imposta mill-Awtorita permezz tad-decizjoni tal- 11 ta' Settembru 2024 liema multa giet imposta minhabba nuqqas ta' sottomissjoni ta' *Solo Regular Supervisory Report (Solo RSR)* fit-terminu stabbilit.
2. Illi in succinct, dak li wassal lill-Awtorita' appellata sabiex tiehu il-mizuri li wasslu ghall-kontestazzjoni odjerna kien il-fatt illi s-socjeta' appellanta sottomettiet l- dan is-Solo RSR tard. Illi skond il- paragrafu 8.6.8 tal- *Financial Statements and Supervisory*

Reporting Requirements (Chapter 8 tal- Insurance Rules mahruga taht il- Kap. 403)
dan is- Solo RSR kellu jigi sottomess sat- tmienja (8) ta' April 2022.

3. Illi mhux ikkontestat illi tali rapport effettivament ma giex sottomess sa tali data u li l-istess gie sottomess fit-tmintax (18) ta' Ottubru 2022.
4. Illi l- Appellanta tghid illi dan in-nuqqas kien rizultat ta' nuqqas malintiza fil-kommunikazzjoni bejnha u l- Awtorita u zball genwin ghaliex hija kienet minn ghalija illi s-sottomissjoni ta' Group RSR biss kien dak li kien mehtieg.
5. Illi l- Appellanta ssostni, u dan mhux ikkontestat, illi hija ssottomettiet Group RSR fit-tlieta (3) ta' April 2022, u cioe fit- terminu stabbilit. Kien biss meta fl- ghaxra (10) ta' Ottubru 2022 li l- Awtorita ikkomunikat mal- Appellanta sabiex tinfirmaha illi ma kienx gie sottomess Solo RSR illi s-socjeta Appellanta giet a konoxxenza ta' dan in-nuqqas, u irrimedjat ghall-istess meta issottomettiet l-istess Solo RSR fit- tmintax (18) ta' Ottubru 2022, u cioe tmient ijiem wara tali komunikazzjoni.
6. Illi l- Awtorita tiribatti ghall- aggravju imressaq mill- Appellanta billi tghid illi l-obbligu tas-sottomissjoni ta' Solo RSR johrog car mill- Ligi. Illi oltre dan, lanqas ma kien minnu dak li tghid l- Appellanta dwar il- komunikazzjoni li kien hemm bejnha u l- Appellanta dwar is-sottomissjonijiet mehtiega, stante li tali komunikazzjoni kienet cara li kienet dwar is-sottomissjoni fil- livell ta' Group u fl- ebda mod ma kien hemm xi komunikazzjoni li a bazi taghha l- Awtorita setghat taghti x' tifhem illi is-sottomissjoni ta' Solo RSR ma kienetx mehtiega.
7. Illi s-socjeta Appellanta giet licenzjata fit- 22 ta' Marzu 2021 mill- Appellanta sabiex tipprovdi servizz ta' Captive Insurance. Illi l- Appellanta hija sussidjarja ta' Jorge Holdings Limited, li hija, da parti taghha sussidjarja ta' Jorge SL, socjeta Spanjola.
8. Illi minhabba tali struttura, is-socjeta Jorge Holdings Limited hija ikkunsidrata bhala insurance holding company. Filwaqt illi l- Appellanta u Jorge Holdings Limited jikkostitwixxu insurance group u dan dejjem skond dak li jipprovdi il- Kap. 403.
9. Illi l- Appellanta targumenta illi dan il- malintiz kien naxxenti minn email mibghuta minn rappresentant tas-socjeta SRS Management Europe PCC Limited. Illi din is-socjeta hija awtorizzata sabiex tamministra Insurance Companies bhal ma hija s-socjeta Appellanta. Illi din l- email, esebita bhala dok. AP02 mal- affidavit ta' Alfred Parnis, intbghatet fl- 4 ta' Marzu 2022. Izda qabel din l- email, l- Awtorita kienet bghatet komunikazzjoni datata 27 ta' Jannar 2022 lill- Appellanta (Dok. AP 01), tramite liema gie spjegat l-obbligi varji ta' sottomissjonijiet li kellhom isiru skond il- Ligi.
10. Illi f' din l-ittra kien car illi ¹:

¹ Ara l- ahhar paragrafu ta' Parti A tal- ittra (fol 2 ta' l-istess ittra)



Please note that the Undertaking has not been exempted from:

- (i) the group annual reporting under Solvency I (where applicable), and
- (ii) the solo annual reporting under Solvency II.

The Undertaking is also required to submit the solo regular supervisory report and where applicable the group regular supervisory report for financial year 2021.

11. Illi minkejja li tali ittra intbghatet lis-socjeta Appellanta, l- Awtorita targumenta illi tali komunikazzjoni kellha tigi komunikata mill- Appellanta lis-socjeta SRS Management Europe PCC Limited li kienet l- amministratur taghha.
12. Illi Alfred Parnis, fl- affidavit tieghu, jispjega illi l-ittra tas- 27 ta' Jannar 2022 kienet intiza sabiex tfakkar u tispejga obbligi naxxenti mill- Insurance Rules. Jghid ukoll illi l- email tal- 4 Marzu 2022 kienet qed titlob kjarifiki dwar l-obbligi ta' reporting fil- livell ta' Group, u li l- Awtorita rrispondiet ghall-istess email fil- kuntest ta' l-obbligi tal- Group.
13. Illi hawn issir referenza ghad-domanda numru 2 kontenuta fl- email tal- 4 ta' Marzu 2022:

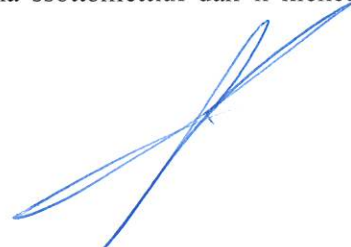
2. When I login to LH Portal and select "Jorge Insurance Group", the below reporting templates are available for upload. However, our understanding is that only the highlighted in yellow applies to the group. Can you please confirm?

14. Illi fir-risposta taghha, l- Awtorita, tramite l- email tas- 7 ta' Marzu 2022 (parti minn dok AP 02) irrispondiet ghal din id-domanda bis-segwenti:

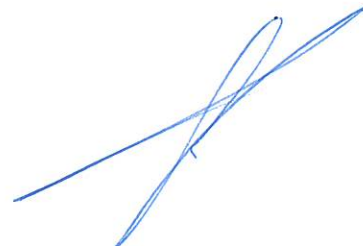
Below please find our clarifications in relation to your email below (our replies are numbered as per your enquiries):

2. Correct. Only a group SFCR, group RSR and group ORSA apply to the group.

15. Illi fil- fehma tat-Tribunal, id-domanda kienet cara li kienet tirrigwarda l- obbligi fil- livell ta' Group u t-twegiba kienet daqstant cara li kienet tirrigwardja il- livell ta' Group.
16. Illi ma kien hemm l- ebda malintiz f'din il- komunikazzjoni u certament illi l- Appellanta m' ghandiex ragun meta targumenta illi hija kienet b' xi mod femhet illi l- obbligu tar-rapportagg kien fuq il- livell ta' Group u mhux fuq il- livell taghha ukoll (Solo RSR). Dan izjed u izjed meta jinqara ma dak komunikat mill- Awtorita tramite l-ittra tas- 27 ta' Jannar 2022.
17. Illi oltre dan, kif diga inghad, tali obbligi huma naxxenti mill- Ligi (tramite ir-Rules) u certament m' hijiex skuzata l- Appellanta meta hija ma ssottomettitx dak li kienet obbligata li tissottometti.



18. Stabbilit illi kien hemm nuqqas da parti ta' l-Appellanta, it-Tribunal ser iqis iz-zewg aggravji mressqa mill- Appellanta.
19. Illi fl- **ewwel aggravju** hija tghid illi m' ghandiex tkun penalizzata b' multa meta n-nuqqas kien *result of a genuine and unfortunate misunderstanding, resulting ironically from exchanges with the MFSA which were meant to clarify the position.*
20. Illi dan l- aggravju m' ghandux mis-sewwa. Illi kif diga inghad ma kien hemm l-ebda misunderstanding u lanqas ma jista jinghad illi l- Awtorita zgwidat lill- Appellanta. Jekk kien hemm xi misunderstanding dan kien biss f' mohh l- Appellanta jew f' mohh is- socjeta li tiehu hsieb l-amministratzzjoni taghha.
21. Illi l-obbligi ta' sottomissjoni huma cari fil- Ligi, kienu ben spjegati fl-ittra tas- 27 ta' Jannar 2022 u ma kien hemm xejn fl-iskambju tal- emails ta' Marzu 2022 li seta wassal lis-socjeta Appellanta li tqis li ma kelliex obbligu li tissottometti Solo RSR.
22. Illi l- fatt illi hija ssottomettiet is-Solo RSR mill- ewwel meta giet mgharfa b' tali nuqqas f' Ottubru 2022 certament ma jfissirx illi b' daqshekk l-obbligi li kellha li tissottometti tal- Solo RSR gew onorati. Il- fatt illi l- Awtorita, f' Ottubru 2022, fakret lill- Appellanta illi s-Solo RSR ma kienx ghadu gie sottomess, certament illi ma jistax jintuza kontra l- Awtorita, meta in primis, l-obbligu ta' sottomissjoni kien ta' l- Appellanta li kienet taf b' dan kollu mhux biss ghax huwa obbligi naxxenti mill- Ligi, izda ukoll tramite l- ittra tas- 17 ta' Jannar 2022.
23. Illi ghaldaqstant dan l- aggravju qieghed jigi michud.
24. Illi fit-**tieni aggravju** taghha l- Appellanta tghid illi mis-sottomissjoni li saret tas-Solo RSR irrizulta illi *the alleged late submission led to no prejudice to MFSA. As explained, there was no material difference between the Group RSR and the Solo RSR, and therefore the reporting requirement – although, according to MFSA, not formally met – had certainly been effectively met as the information in the Group RSR was practically identical.*
25. Illi anke dan l- aggravju m' ghandux mis-sewwa.
26. Certament illi l- obbligu tar-rapportagg huwa obbligu oggettiv u obbligu li ma jistax jigi mitigat minhabba l- kontenut ta' dak li jigi rapportat.
27. Illi minkejja li seta kien il- kaz illi materjalment ma kien hemm l- ebda differenza materjali bejn dak rapportat fis-Solo RSR u fil- Group RSR, dan qatt ma jista jfisser illi b' daqshekk in-nuqqas seta jigi mahfur.

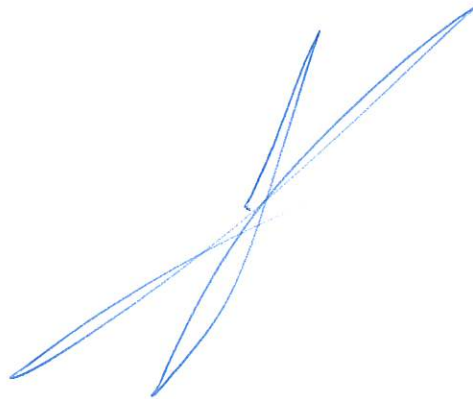


28. Illi l- Awtorita m' ghandha l- ebda seta li tahfer tali nuqqas a bazi tal- materjal hemm kontenut u lanqas ma kienet tkun korretta l- Awtorita kieku ghamlet hekk.
29. Illi dan it-Tribunal ma jhossx illi ghandu jiddisturba hafna d-diskrezzjoni kif tigi ezercitata mill-Awtorita', filwaqt li pero' jara 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 pratici rigoru u oggettivi. Izda dan ma jfissirx li ghandu jintilef kull skop ta' proporzjonalita'.
30. Illi ghal dak li jirrigwardja kemm l-azzjoni li hadet l-Awtorita kienet proporzjonata u ragonevoli, it-Tribunal ihoss illi anke hawn l- Awtorita kienet korretta.

Decide:

Illi in vista tal-premess, it-Tribunal qieghed jichad l-appell interpost mis-socjeta' appellanta u jikkonferma id-decizjoni ta' l-Awtorita' Appellata tal- hdax (11) ta' Settembru 2024.

Bl-ispejjez kontra l- Appellanta.

A handwritten signature in blue ink, consisting of several overlapping, sweeping strokes that form a complex, abstract shape.