

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

12 ta' Novembru 2025

Appell 2/24

S&D Yachts Limited C 3476

vs.

Malta Financial Services Authority

It-Tribunal

Ra l- Appell interpost mis-socjeta Appellanta datat sbatax (17) ta' Lulju 2025 u li wasal fir-registru tat- Tribunal nhar is- 26 ta' Lulju 2025 tramite liema, l- Appellanta sostniet:

By means of this letter S&D Yachts Limited (C 3476) hereon referred to as "S&D" is hereby submitting an appeal following the decision of the Malta Financial Services

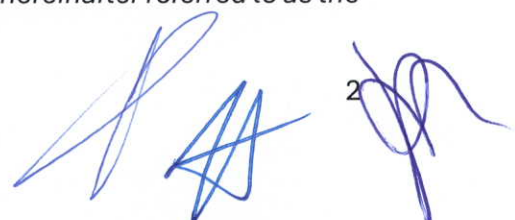
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Authority hereon referred to as “the Authority” dated the 4th July 2024 in relation to the administrative penalty of three thousand three hundred Euro (€3,300) imposed by the same Authority, in view of the fact that the MFSA considers S&D to be in breach of Rule 17.03 of the Rules for Company Services Providers applicable until 15th March 2021, as it had submitted the Audited Financial Statements and the Auditors Management Letter for the year ending 31st December 2020 after the stipulated deadline.

S&D submitted its representations by means of a letter dated 7th September 2023, in which the Company provided the Authority with an explanation of the circumstances which resulted in the delayed submission of the mentioned regulatory documentation to the Authority. Reference was made to the Minded Letter sent by the Authority which proposed regulatory action of a total penalty of two thousand five hundred Euro (€2,500) for the late submission of the Audited Financial Statements and the Auditor’s Management Letter for the year ending 31st December 2019.

S&D explained that until very recently the Company’s auditor was Mr. Anton Chetcuti Ganado, who got seriously ill between 2019 and 2020. During 2019 it appeared that Mr. Chetcuti Ganado could continue fulfilling his duties, however as weeks and months passed it was becoming clear that he was not well enough to do so. The Board of Directors therefore asked his office to appoint another auditor on his behalf however the change could not happen overnight and there was a lapse of time before, Malcolm Mifsud, could take on this role of auditor. Mr. Chetcuti Ganado, unfortunately passed away on the 27th October 2020. Since the demise of Mr. Anton Chetcuti Ganado, the auditor’s office has been disbanded and does not exist anymore. In view of this the company has appointed the office of Charles Scerri to carry out the audited financial statements of the company.

Despite the above explanation, on 6th December 2021, S&D was informed that the Authority will be imposing the penalty of €2,500 on the Company. S&D availed its right of appeal before the Financial Services Tribunal (hereinafter referred to as the



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'Tribunal') respectfully asking the Tribunal to annul the Decision and revoke the penalty. Even though the appeal was rejected, the Tribunal explained that such decision was taken since S&D did not request an extension for the submission of the Audited Financial Statements and the Auditor's Management Letter for the year ending 31st December 2019.

S&D notes that since it was aware that the above-mentioned circumstances may cause delays in the submission of the Audited Financial Statements and the Auditor's Management Letter for the year ending 31st December 2020, on 20th April 2021, S&D requested an extension for the submission of the above-mentioned documents, which request was declined. In this regard, the Authority held that in line with the MFSA Policy Document on Non-Material Enforcement Action¹, "unless specifically required by European legislation, as a general rule, the MFSA will not be granting case-by-case extensions relating to filing deadlines which are explicitly stipulated by law, rules or regulations. The MFSA may however, on a discretionary basis, grant extensions to filing deadlines in very exceptional cases which affect a particular sector or the financial services industry in general." However, S&D notes that this Policy Document was published on 22nd December 2022, whereas the request for extension was made on 20th April 2021. In view of this, the Authority cannot justify its decision on the basis of such Policy Document.

Reference shall also be made to the Decision of the Financial Services Tribunal (FST 07/21) in the names of S&D Yachts Limited vs MFSA dated 13th January 2022 whereby the Tribunal held the following:

"Illi m' hemmx dubju illi c-cirkostazjoni li sabet ruhha fihom is-socjeta Appellanta kienu kemmxajn eccezzjonali u difficili...Illi t-Tribunal jixtieq jiehu spunt minn dan il-kaz u jistieden lill-Awtorita sabiex tara jekk sitwazzjonijiet bhal dawk li sabet

¹ <https://www.mfsa.mt/wp-content/uploads/2022/12/MFSA-Policy-Document-on-Non-Material-Enforcement-Action.pdf>

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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."

As per Rule 20.01 of the CSP Rulebook, "A Registered Person is expected to deal openly and in a spirit of co-operation with the Authority and any other relevant regulatory authorities". S&D sought to cooperate with the Authority by requesting an extension and informing the Authority of its circumstances. However, the Authority is of the view that since Mr. Anton Chetcuti Ganado fell seriously ill in 2019, S&D should have taken a more proactive approach and commenced the process to change its auditors at an earlier stage in order to prevent any disruptions in the submission of the regulatory documents for the year ended 31st December 2020. In view of this, S&D clarifies that the circumstances which arose in these years placed S&D in a difficult situation. S&D sought to rectify the position as soon as possible, however the appointment of a new auditor is a lengthy process. Throughout these years S&D was in constant communication with the office of Mr. Anton Chetcuti Ganado and there were ongoing internal discussions in this regard. S&D further notes that certain fulfilment of duties depends on the actions of independent third parties over which the company may have little control on. The office of an auditor within an established company is not an easy role to replace since the due diligence required in assessing prospective candidates to fill in this vacancy necessitates a considerable amount time and effort.

Without prejudice to the above, S&D was already fined for the late submission of the Audited Financial Statements and the Auditor's Management Letter for the year ended 31st December 2019, consequently S&D will be fined on the same facts. The ne bis in idem rule, a principle recognized and codified through important human rights instruments provides for the right not to be tried or punished twice in criminal proceedings for the same criminal offence. In fact,



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Article 39 of the Constitution of Malta provides that “No person who shows that he has been tried by any competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence save upon the order of a superior court made in the course of appeal or review proceedings relating to the conviction or acquittal.” In this regard, even though the penalty imposed is an administrative penalty, as per the Engel Criteria, administrative penalties can have a criminal nature.

As per Article 9(1) of the Corporate Service Provider Act “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”. Consequently, such fines can be regarded as having a criminal nature since they are of a punitive nature. Even though Article 9(1) provides that an administrative penalty shall be imposed for each infringement or failure to comply, this article cannot violate the ne bis in idem rule consequently it cannot be imposed in view of the same infringement arising out of the same facts and circumstances.

Even though the current matters pertain to a different year, in both instances the late filing was caused by the unfortunate demise of Mr. Anton Chetcuti Ganado, which disruption lingered on throughout 2020 and 2021 and was enhanced by the Covid-19 situation. The circumstances did not change hence the ne bis in idem rule shall apply.

Further to the above, S&D always gave its full cooperation with the Authority whenever it was requested by the same Authority to assist in any of its investigations. In this regard, S&D dealt with the Authority in an open and

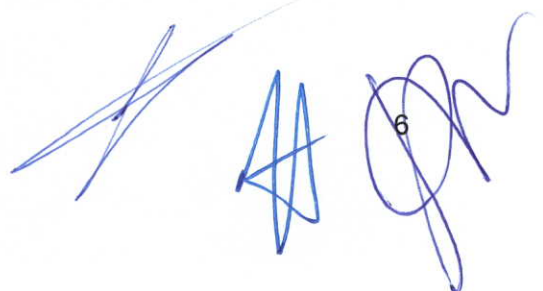
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transparent manner during the process of voluntary relinquishment of its CSP license. S&D was also subject to a compliance inspection carried out by the Authority, which inspection was concluded satisfactorily. Additionally, S&D always acted diligently and in good faith in fulfilling its duties as a company service provider. More importantly, up until the issuance of the penalties regarding the financial statement for the years ended 31st December 2019 and 2020, S&D always complied with MFSA regulations, so much so that it has never been fined in this regard.

Therefore, by virtue of Article 16(2)(b) of the Company Service Providers Act Cap.529 and in view of the above, S&D is respectfully appealing from such decision and requests the Tribunal in terms of Article 21(13)(a) of the Malta Financial Services Authority Act Cap.330, to annul the decision and the consequent penalty as imposed by the Authority under the relevant law and to give directions within its powers under this Act or any other law to the said Authority to implement the decision of the Tribunal.

Ra ir-Risposta ta' l-Awtorita Appellata tat- tmax (12) ta' Settembru 2024 tramite liema wiegbet ghall- Appell bis-segwenti:

- 1. That, preliminarily, the Authority submits that the appeal application lodged by appellant company is null given that it is not based on either paragraph (a) or (b) of Article 21(9) of the Malta Financial Services Authority Act (Chapter 330 of the Laws of Malta), which provision is rendered applicable to the present appeal by virtue of Article 16(3) of the Company Service Providers Act (Chapter 529 of the Laws of Malta);*
- 2. That, also preliminarily, the Authority further submits that the present appeal is unfounded and inadmissible as per the proviso to the same Article 21(9) of the Malta Financial Services Authority Act given that it is effectively requesting that this Tribunal queries the discretion exercised by the same Authority in reaching the decision in question dated the fourth (4th) of July of the year twenty twenty-four (2024) (attached herewith and marked as **Doc. A**);*



3. *That, without prejudice to the above, it is submitted that the merits of the present appeal are unfounded at fact and at law for a number of reasons. Principally, it is an irrefutable fact that appellant company breached Rule 17.03 of the Company Service Providers Rulebook issued by the Authority applicable at the time² on two counts when not submitting the relative Audited Financial Statements and Management Letter within the stipulated timeframes. It is reminded here that by virtue of Article 16(1)(a) of the Malta Financial Services Authority Act, the provisions of such rulebook are binding on licensees of the Authority, rendering the infringements in question breaches of binding statutory obligations;*

4. *That whereas appellant company contends that the breaches in question did not merit the imposition of an administrative penalty given the existence of circumstances outside of its control, i.e. its auditor being taken ill and subsequently passing away, it is further reminded here that the responsibility to adhere to statutory reporting obligations falls on the board of directors of a licensed company. Therefore, the reasons provided by appellant company in an attempt to justify this breach are certainly not excusable or justifiable;*

5. *That, moreover, it is noted that appellant company asserts that in the decision in the names of **S&D Yachts Limited vs MFSA**³, wherein this Tribunal confirmed the Authority's decision to impose an administrative penalty on appellant company following its failure to adhere to its statutory reporting obligations for the year preceding that relevant to the present appeal, this Tribunal indicated that the reason why it dismissed appellant company's appeal in this respect was that it failed to request an extension from the Authority. On this premiss, appellant company contends that owing to the fact that in this case it did request an extension (albeit one which was ultimately rejected), the Authority should have consequently not imposed an administrative penalty in this case. The Authority hereby submits that this line of*

² Such rulebook was superseded by the new Company Service Providers Rulebook which entered into force on the 15th of March 2021.

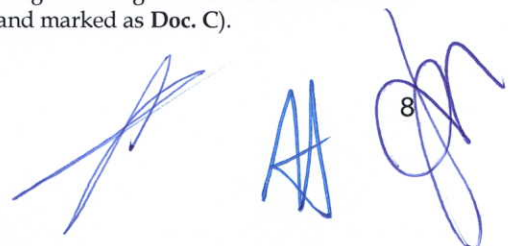
³ 13th of January 2022, FST 07/2021.

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argumentation is deeply flawed and unfounded for a number of reasons, including inter alia:

- i. The possibility of having a request for an extension of statutory reporting obligation deadlines upheld by the Authority on an exceptional basis examined in the aforementioned appeal was one which specifically contemplated by virtue of two (2) circulars issued by the Authority⁴, which circulars were expressly and explicitly tied to the outbreak of COVID-19. Given that none of the reasons put forth by appellant company either in its appeal application or in its representations (hereby attached and marked as **Doc. D**) pursuant to the Minded Letter issued by the Authority beforehand (hereby attached and marked as **Doc. E**), such possibility is irrelevant and extraneous to the issue at hand;*
- ii. In any case, such circulars and the accompanying possibility for an extension of the relative statutory reporting obligation deadlines were expressly and explicitly tied to deadlines falling in the first half of the year twenty twenty (2020). Therefore, they are similarly completely irrelevant to the statutory reporting obligation deadline in question which fell at the end of April of the year twenty twenty-one (2021);*
- iii. Following the Authority's refusal of appellant company's request for an extension of the relative statutory reporting obligation deadlines, appellant company did not contest such decision through any form of judicial review or appeal; and*
- iv. In any case, while appellant company requested an extension of two (2) weeks past the deadline set for end of April, appellant company submitted the relative Audited Financial Statements and Management Letter over four*

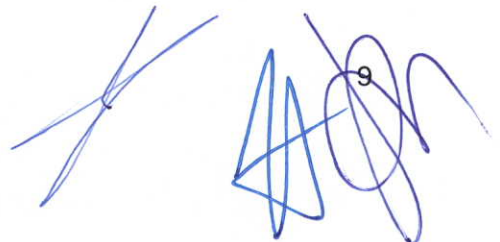
⁴ I.e., the 'Timing of Regulatory Reporting due to the outbreak of COVID-19 Circular' issued on the 20th of March 2020 (hereby attached and marked as **Doc. B**) and the 'Regulatory Reporting following the Outbreak of COVID-19 Circular' subsequently issued on the 30th of June 2020 (hereby attached and marked as **Doc. C**).

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(4) months after such deadline. As such, the granting or otherwise of the requested extension would have been immaterial to the fact that appellant company grossly failed to meet its statutory reporting obligation deadlines in this respect.

6. *That in response to appellant company's claim that the Authority cannot cite the 'MFSA Policy Document on Non-Material Enforcement Action' (hereby attached and marked as Doc. F) to justify its general policy of not granting extensions, seeing as such policy document was published after the relative request for an extension, the Authority submits that this argument is similarly unfounded. While it is true the reference policy document was indeed published following the relative request, such policy document was merely the reduction in writing for further clarity of the Authority's longstanding policy that proper adherence to statutory reporting obligations forms an integral part of the Authority's prudential supervision; 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. Such policy document, therefore, provides neither the legal basis for the imposition of the administrative penalty in question nor does it create the well-known policy adopted by the Authority in this respect. Therefore, the reference to such policy document in the decision in question is not to be construed as a retroactive application of a rule or principle, as appellant company suggests;*

7. *That with respect to the ne bis in idem argument put forth by appellant company, the Authority submits that such contention is not only unfounded, but absurd and frivolous. Appellant company was not, as it asserts, penalised for the same breaches on two (2) separate occasions; on the contrary, it was penalised on two (2) separate occasions precisely because it committed breach of the relative statutory reporting obligations on two (2) separate counts. The fact that the obligations in question are repeated obligations which arise on annual basis does not, naturally, change the fact that each obligation, and, by extension, each breach, is separate and distinct. If anything, the fact that appellant company repeated the breaches committed in the previous year militates against the same appellant company as it suggests that it did*

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not take the requisite steps to rectify any internal issues preventing it from observing its statutory reporting obligations despite having a further twelve (12) months to do so;

- 8. That in light of the above, the Authority cannot agree with appellant company when it contends that it has always acted diligently when fulfilling its obligations as a licensee of the Authority when it has not only breached its statutory reporting obligations, resulting in the imposition of an administrative penalty duly confirmed by this Tribunal⁵, but indeed repeated the same breaches the subsequent year. Nor can it agree with appellant company that its compliance record should have been considered favourably by the Authority in reaching its decision when such decision contemplates a series of repeated breaches;*

- 9. That, in reaching its decision, the Authority exercised its discretion properly, applied the law correctly, and imposed a penalty proportionate to the breaches in question; so much so, that despite the breaches in question being repeated breaches, the Authority classed the same as 'non-material breaches' and only published the relative decision on an anonymous basis. Therefore, it is respectfully submitted that this Tribunal should consequently confirm the relative decision issued by the Authority on the fourth (4th) of July of the year twenty twenty-four (2024) in its entirety.*

Additional pleas are reserved according to law.

With costs against appellant company.

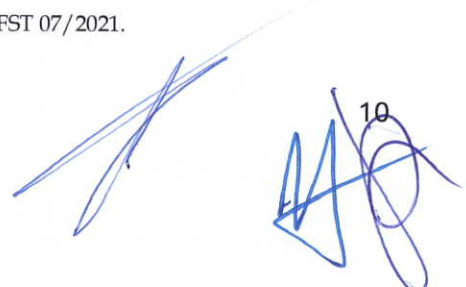
Ra id-dokumenti u l-provi sottomessi mill-partijiet;

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:

⁵ S&D Yachts vs MFSA, Financial Services Tribunal, 13th of January 2022, FST 07/2021.

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1. Illi dan l- Appell huwa naxxenti mid-Decizjoni tal- 4 ta' Lulju 2024 li hadet l- Awtorita Appellata fil- konfront ta' l-Appellanta, tramite liema imponiet multa ta' tlett elef u tlett mitt Euro (€ 3,300) fuq is-socjeta Appellanta.
2. Illi tali azzjoni ittiehdet minhabba il- fatt illi s-socjeta Appellanta kienet tardiva fis- sottomissjoni tal- *Audited Financial Statements* u l- *Management Letter* tas-sena finanzjarja 2020.
3. Illi mill- fatti jirrizulta illi s-socjeta Appellanta, li hija, jew ta' l-anqas fiz-zmien in kwistjoni kienet, licenzjata bhala *Company Service Provider*, kellha l-obbligu li tissottometti l- *Audited Financial Statements* u l- *Management Letter* fi zmien erba' (4) xhur mill- eghluq tas-sena finanzjarja. Dan ifisser illi ghas-sena finanzjarja li ghalqet f' Dicembru 2020, tali dokumenti kollhom jigu sottomessi sat- 30 ta' April 2021.
4. Jirrizulta illi dawn fil- fatt gew sottomessi fid-disgha (9) ta' Settembru 2021, u cioe 132 -il gurnata tard.
5. Illi l- Awtorita Appellata, a bazi tal- Policy Document tat- 22 ta' Dicembru 2022 kif ukoll ghall- Guidance Note minnha ippublikata u li fihom hemm stabbilit il- principji ta' kif l- Awtorita tiehu azzjoni bl-imposizzjoni ta' multa amministrattiva, ikkalkulat tal- multa bis-segwenti metotologija:

Ghal dak li jirrigwardja l- Audited Financial Statements:

<i>Multa Bazi</i>	€ 2000
<i>Multa marbuta maz-zmien</i>	€ 400
<i>Multa marbuta mal- fatt li kien hemm nuqqasijiet precedenti</i>	€ 240
<i>Total</i>	€ 2640

Ghal dak li jirrigwardja l- Management Letter:

<i>Multa Bazi</i>	€ 500
<i>Multa marbuta maz-zmien</i>	€ 100
<i>Multa marbuta mal- fatt li kien hemm nuqqasijiet precedenti</i>	€ 60
<i>Total</i>	€ 660




6. Illi l- Appellanta targumenta illi hija kellha diffikolta sabiex tipprezenta dawn id-dokumenti fil- hin peress illi l-Awditur taghha, u cioe is-Sur Chetcuti Ganadao kien marad serjament matul is-sena 2019 u gie nieqes f'it taz-zmien wara. Wara li kienet diga esperjenzat diffikulta sabiex tlahhaq ma' l-obbligi regolatorji taghha ghas-sena 2019 ⁶, bidlet l- Awditur ghas-sena 2020, li xorta wahda ma lahhaqx lesta l-istess Audit ghas-sena 2020 fil- hin. Tant illi bhal ma kien gara fis-sena precedenti, id-dokumenti gew prezentati f' Settembru minflok f' April.
7. Illi skond Mark Darmanin Kissaun, id-Direttur tas-socjeta Appellanta, huwa kien infurma lill- Appellata b' dawn il- problemi, tant illi kien talab estenzjoni tarmite email tal- 20 ta' April 2021. Illi f' din l- email, skond dak li qal Alistair Cuschieri, ufficjal ta' l-Awtorita, l- Appellanta talbet estenzjoni ta' gimghatejn wara l-iskadenza tat-terminu tat- 30 ta' April 2021, liema talba kienet giet michuda mill- Appellanta.
8. Illi l- aggravji ta' l-Appellanta, in succinct huma is-segwenti:
 - a. Illi hija ghamlet minn koloz sabiex tkun f' posizzjoni li tonora l-obbligi regolatorji taghha, u ma kelliex tigi ikkastigata fuq materja li ma kelliex kontroll fuqha;
 - b. Illi hija diga kienet soggetta ghall- azzjoni regolatorja a bazi ta' l-istess cirkostanzi ghad-dokumentazzjoni tas-sena 2019, u ghaldaqstant applikati il- principji ta' *ne bis in idem*, hija ma tistax terga tkun soggetta ghall- azzjoni regolatorja ohra;
 - c. Illi hija dejjem agixxiet in buona fede u dejjem assitiet lill-Awtorita Appellata, tant illi anke site visit li kienet saret mill- Awtorita Appellata wasslet ghal- ezitu posittiv.

L- Ewwel Aggravju:

9. Illi is-sitwazzjoni li sabet ruhha fiha l- Appellanta ftit li xejn hemm kontestazzjoni dwarhom. Huwa car illi l- Appellanta, li kellha relazzjoni fit-tul mal- Awditur precedenti taghha, u cioe is-Sur Chetcuti Ganado, iffacjat sitwazzjoni matul is-snin

⁶ Dawn kienu il- mertu tad-Decizjoni ta' dan it- Tribunal 7/21 deciza fit- 13 ta' Jannar 2022



- 2019 u 2020 fejn l-istess Chetcuti Ganado marad serjament u sussegwentement gie nieqes. Illi matul is-sena 2020 is-socjeta Appellanta inkarigat awditur gdid, izda minkejja dan kollu, xorta wahda esperjenzat problemi sabiex tkun puntwali fis-sottomissjonijiet taghha.
10. Illi tenut kont ta' dan kollu, l- Appellanta kienet talbet estenzjoni sal- 15 ta' Mejju 2021 sabiex taghmel is-sottomissjoni tad-dokumentazzjoni ghas-sena 2020, liema talba kienet giet michuda. Illi dwar dan, l- Awtorita Appellata, fir-risposta u s-sottomissjonijiet taghha tghid illi anke li kieku tali estenzjoni kienet giet approvata, is-socjeta Appellanta xorta wahda kienet tardiva fis-sottomissjoni tad-dokumenti, li kif diga inghad, sar f' Settembru 2021. Illi oltre dan, l- Appellata tghid illi dan l- Appell m' huwiex fuq jekk l- Appellata kienet ragjonevoli meta hija cahdet it-talba ta' l- estenzjoni, izda huwa appell mid-Decizjoni li tigi imposta multa fuq l- Appellanta minhabba tardivita.
11. Illi it-Tribunal iqis illi hawn l- Appellata ghadha ragun u l- appell m' huwiex, u lanqas seta jkun fuq ic-cahda ta' l-estenzjoni. Dan johrog car kemm mill- aggravji kif ukoll mill- fatt illi l- Appell huwa mid-Decizjoni ta' Lulju 2024.
12. Illi pero, l- Appellanta tirreferi ghall- episodju tac-cahda tal- estenzjoni bhala materja ta' relevanza fl- argument taghha dwar kemm ma kienetx ragjonevoli l-Awtorita fil-valutazzjoni tac-cirkostanzi li sabet ruhha fihom l- Appellata.
13. Illi fil- fehma tat-Tribunal, ic-cirkostanzi li sabet ruhha fihom l- Appellata kienu cirkostanzi kemmxejn eccezzjonali, izda mhux tant.
14. L- Appellanta hija kumpanija li ilha tezisti, u ghal hafna zmien, minkejja li kienet toffri servizz ta' CSP, ma kienetx regolata ghaliex is-settur ma kienx regolat.
15. Illi fi snin recenti, dawk li joffru servizzi ta' CSP waqghu taht regime regolatorju, b' obbligi specifici ta' rapportagg u sottomissjonijiet lill-numru ta' regolaturi, fosthom lill- Appellata.



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16. Illi dawn l-obbligi kienu fost l- oħrajn jimponu illi l- *Audited Financial Statements*, kellhom jigu sottomessi ma' l- Awtorita Appellata fi zmien erba' (4) xhur mill-egħluq tas-sena finanzjarja, filwaqt li kumpanniji ordinarji u mhux regolati, baqghu bl-obbligu normali li jissottomettu il- Financial Statements fil- Malta Business Registry fi zmien għaxar (10) xhur mill- egħluq tas-sena finanzjarja.
17. Illi jirrizulta illi s-socjeta Appellanta ma tagħmilx biss xogħol ta' CSP, izda hija attivja f' numru ta' oqsmas oħra. B' dan illi l- Audited Financial Statements tagħha ikopru l- attivja kummerċjali kollha tagħha. B' dan illi certament li tali Audit necessarjament huwa iżjed voluminuż u konsegwentement jiehu iżjed hin.
18. Illi dan it-Tribunal, fid-decizjoni tiegħu fl- appell 7/22 diga kien esprima ruħu dwar id-diffikolta logistika li entita kummerċjali tesperjenza fid-dinja tal-lum meta tigi biex tbiddel service provider tagħha stess, bħal ma huwa Awditur. Dan għaliex bħal ma zdieđu jew gew imposti obbligi regolatorji godda fuq soċjetajiet bħal ma hija l- Appellanta, il- bosta service providers li jipprestaw servizzi lil dawn is-soċjetajiet, huma ukoll soġġetti għall- regolamentazzjoni ferm iżjed oneruża. Fost dawn hemm il- processi delikati u elaborate ta' onboarding li tali service providers, bħal ma huma Awdituri, huma obbligati li josservaw. Fil- kaz ta' awditur, stante li mal- hatra tiegħu huwa ser ikun qiegħed jagħmel l- ewwel audit ta' kumpannija li ilha tezisti, tali processi jkunu anke iżjed komplessi.
19. Illi tenut dan kollu, jibqa bħala fatt illi s-socjeta Appellanta kienet taf illi l- Awditur tagħha ma kienx f' posizzjoni li jkompli bl-inkarigu tiegħu. Dan sa mill- anqas mis-sena 2019, u cioe is sena precedenti għall- kaz in dizamina. Ma tressqu l- ebda provi dwar x' diffikolta l-istess Appellanta kellha sabiex issib awditur gdid. Lanqas ma tressaq l- Awditur attwali sabiex jixhed dwar meta inhatar, dwar meta tlesta l- onboarding ta' l- Appellanta, u dwar jekk iltaqax ma cirkostanzi partikolari li wasslu għal tali dewmien. Fin-nuqqas ta' dan, minkejja li it-Tribunal jista' jkollha jassumi li l- process m' huwiex wieħed li jitlesta malajr, kollox jibqa marbut ma kif u meta is- soċjeta Appellanta agixxiet sabiex tbiddel l- Awditur tagħha.



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20. Illi ghaldaqstant, it-Tribunal ma jistax iqis illi l- Appellanta, minkejja ic-cirkostanzi partikolari tal- kaz, kellha raguni valida sabiex ma tonorox l- obbligi taghha fil- hin, u ghaldaqstant hija tichad l- ewwel aggravju taghha.

It-Tieni Aggravju:

21. Illi l- Appellanta targumenta illi fis-sena 2020 hija kienet tardiva fis-sottomissjonijiet taghha ghas-sena finanzjarja 2019, u stante li dan kien attribwit ghall-istess cirkostanza, u cioe il- fatt li l- Awditur taghha kien marad u ma setax jitlesta l- Audit fiz-zmien opportun, hija ma kelliex terga tigi ikkastigata ghaliex kienet tardiva anke is-sena ta' wara. L- Appellanta ticcita l- principju tan- *ne bis in idem* in sostenn ta' l- argument taghha.

22. Illi l- Awtorita irrispondiet ghal dan l- aggravju billi tghid illi hija kienet hadet decizjoni dwar dak li gara rigward l- obbligi tas-sena 2019. Izda in-nuqqasijiet dwar is-sena finanzjarja 2020 huma obbligi godda u zgur li is-socjeta Appellanta ma tistax tigi ezentata minn azzjoni amministrattiva minhabba li kienet inadempjenti fis-sena ta' qabel.

23. Illi it-Tribunal iqis illi is-socjeta Appellanta m' ghaniex ragun fl- argumenti imressqa minnha.

24. Illi m' hemm l- ebda dubju illi l- audit tas-sena 2019 m' ghandu x' jaqsam xejn ma' l- audit tas-sena 2020. Daqs kemm kellha obbligu li tipprezenta id-dokumentazzjoni dwar is-sena finanzjarja 2019 fil- hin, daqstant iehor kellha l-obbligi li tipprezenta id-dokumentazzjoni tas-sena finanzjarja 2020 fil- hin. Dawn huma obbligi distinti u separati minn xulxin, u allura l- argument tan- *ne bis in idem* ifalli ma' l- ewwel ostakolu. U zgur li l-azzjoni amministrattivi u regulatorja li ttiehdet fuq il- ksur ta' l- obbligi tas-sena 2019 qatt ma setghu jinnewtralizzaw l- obbligi u kull azzjoni regulatorja li setghat tittiehed fuq is-snin successivi. U dan minkejja li il- ksur ta' l- obbligi seta kellu bhala skuzant jew kawzali l- istess fatt, u cioe il- problemi minhabba l- Awditur. L- ksur tal- obbligi regulatorji sar mis-socjeta Appellanta, u stante li si tratta ta' obbligi distinti u separati minn xulxin, l- Awtorita Appellata kienet korretta fil- mod li bih agixxiet.



25. Illi ghaldaqasant it-tieni aggravju qiegħed jigi michud.

It-Tielet Aggravju:

26. Illi l- Appellanta tghid illi hija dejjem agixxiet in buona fede, dejjem ikkolaborat u ma kelliex nuqqasijiet precedenti.

27. Illi l- Awtorita wiegħbet għal dan l- aggravju billi tghid illi in-nuqqas ta' sottomissjoni kien wieħed oggettiv u l- Appellanta qatt ma weriet li kien hemm ragunijiet validi li setghu jimmitigaw in-nuqqas tagħha.

28. Illi in sostenn ta' dan l- Aggravju, l- Appellanta tagħmel referenza għad-decizjoni ta' dan it-Tribunal fl- Appell 7/22 liema appell kien jitratta sitwazzjoni analoga għal dik attwali pero dwar l- obbligi tal- Appellanta tas-sena 2019. Illi f' dak il- kaz kien hemm ukoll il- kumplikazzjonijiet marbuta mal- pandemija. Illi skond is-socjeta Appellanta, fid-decizjoni tiegħu, dan it-Tribunal kien sab favur l- Appellata sempliciment minhabba in-nuqqas da parti tal- Appellanta li tikkomunika ma' l- Appellata dwar id-diffikolta li kienet qegħdha tesperjenza minhabba l-indisposizzjoni tal- Awditur tagħha.

29. Illi huwa minnu illi f' dik id-decizjoni, it-Tribunal kien ikkummenta (tant illi esprima kemm kien sorpriz) fuq in-nuqqas da parti tas-socjeta Appellanta li tikkomunika ma' l- Appellata dwar il- problemi li kienet qegħdha taffacja. Dan għaliex it-Tribunal, fil-kaz precedenti kien pjuttost sorpriz kif l- Appellanta bħal donnu assumiet illi tali diffikultajiet kienu ser jintitolawha għal xi forma ta' ezenzjoni awtomatika mill-obbligi tagħha.

30. Izda certament li fl- ebda hin jew mument dan it-Tribunal ma qiesx li l- Awtorita kellha necessarjament tezenta lill- Appellanta mill- obbligi tagħha tas-sena 2019, u wisq anqas minn dawk tas-sena sussegwenti, li għal fini tad-decizjoni mehuda fil- kaz precedenti, lanqas biss kienu issemmeu.



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31. Fil- kaz attwali jibqa il- fatt illi is-socjeta Appellanta, hlief b' dak li qal id-Direttur taghha, ma resqet l- edba prova dwar kif il- problema ta' l-Awditur riskontrata fis-sena 2020 rigward is-sena finanzjarja 2019, ma issolvietx matul l-istess sena 2020 u fil- bidu tas-sena 2021. Dan qiegħed jingħad ukoll għal fatt li dan it-Tribunal, fis-sentenza precedenti kien stieden lill- Awtorita sabiex tqis li jkollha xi forma ta' koncessjoni f' kazijiet eccezzjonali bħal meta jigi nieqes l- Awditur u sitwazzjonijiet simili. Izda zgur li hawn it-Tribunal irid jiccara li ma kienx qiegħed jahseb li tali koncessjonijiet jintirtu minn sena għall- ohra, bħal ma donnu qed tippretendi l- Appellanta.
32. Illi għaldaqstant it-tielet aggravju tas-socjeta Appellanta qiegħed jigi michud.

Komputazzjoni tal- multa:

33. Illi l- Awtorita spjegat illi il-multa tikkompreni iz-zewg nuqqasijiet, u cioe is- sottomissjoni fil- hin tal- Audited Financial Statements kif ukoll dik tal- Management Letter. Illi m' hemmx dubju li skond ir-regolamenti dawn huwa zewg obbligi distinti u separati minn xulxin. Illi għaldastant kienet korretta l- Awtorita Appellata li qisithom bħala tali. Bħal ma kienet korretta li tqis in-nuqqas tal- Financial Statements bħal izjed oneruz u serju minn dak tal- Management Letter.
34. Illi dwar il- multa marbuta man-numru tal- granet anke hawn it-Tribunakl iqis bħala korettta tali komputazzjoni li hija ukoll marbuta mal- aspekt punittiv dwar kemm dam in-nuqqas. Illi kienet ukoll korretta l- Awtorita li tqis li dan kien ksur ripetur u li allura kien jimmerita multa ulterjuri.
35. Illi tali multa, u l- quantum taghha irid ukoll jigi mqabbel mal- multa li skond il- Ligi, tista tigi imposta, u it-Tribunal iqis illi anke hawn, applikati il- principji tal- proporzjonalita kif ukoll tal- Linji Gwida ta' l-istess Awtorita, l- Awtorita Appellata kienet korretta fl-imposizzjonmi ta' multa komplessiva ta' tlett elef u tlett mitt Euro (€3,300).

Decide



Ili in vista tal-premess, it-Tribunal qiegħed jichad l-appell interpost mis-Socjeta' Appellanta u jikkonferma id-Decizjoni ta' l-Awtorita' Appellata tal- erbgha (4) ta' Lulju 2024, bl-ispejjez kontra is-Socjeta Appellanta.

A handwritten signature in blue ink, consisting of several stylized, overlapping loops and lines, positioned in the lower right quadrant of the page.