

## **Chapter 3 – Decision Making**

### ***Introduction***

- 3.1 The purpose of this Chapter is to set out the Registration Authority's approach and procedure for making decisions which give rise to an obligation to give a statutory notice – i.e. a warning notice, decision notice, final notice, supervisory notice or notice of discontinuance.
- 3.2 The types of decisions which give rise to an obligation to issue a warning notice, decision notice and final notice are explained in Chapter 4 and are listed in Annex 1 to this Manual. They include, for example, decisions made by the Registration Authority to impose a fine and to exercise its own-initiative action to cancel or suspend a licence.
- 3.3 The types of decisions which give rise to an obligation to issue a supervisory notice are explained in Chapter 6 and are listed in Annex 2 to this Manual. They include decisions made by the Registration Authority to vary or impose a requirement on a licence.
- 3.4 The Registration Authority's exercise of certain powers may affect the rights, interests and liabilities of a person or persons on whom those powers are being exercised. As a result, decisions made by the Registration Authority to exercise those powers require the Registration Authority to give an affected person notice of the proposed action and offer them the right to make representations before a final decision is made. The procedures for these types of decisions is covered in this Chapter.
- 3.5 The person subject to a decision notice or supervisory notice may have the right to refer the matter to the ADGM Courts.

### ***The Decision Maker***

- 3.6 The principal decision maker at the Registration Authority is the Registrar. The Registrar may delegate his decision-making power to a member of senior management of the Registration Authority. For the purposes of this Chapter, a reference to the Registrar is also a reference to a delegated decision maker, if any.
- 3.7 The Registrar makes a decision as to whether to give a statutory notice.

### ***General procedures***

- 3.8 The Registrar follows the procedure described in this Chapter to enable him to determine matters under consideration fairly and efficiently.
- 3.9 In each case the Registrar makes decisions based on all relevant information available to him by applying the relevant statutory tests, having regard to the context and nature of the matter, that is, the relevant facts, law and the Registration Authority's priorities and policies.
- 3.10 The Registration Authority will make and retain appropriate records of those decisions, including records of meetings and the representations (if any) and materials considered by the Registrar.

### ***Warning notices and first supervisory notices***

- 3.11 A warning notice is issued in relation to proposed disciplinary action such as imposing a fine, suspending a licence or imposing a restriction on the carrying on of a controlled activity by a licensed person. Please refer to Annex 1 to this Manual for further information.
- 3.12 Supervisory notices are issued in relation to supervisory actions, namely varying a licence or imposing or varying a requirement. Please refer to Annex 2 to this Manual for further information.
- 3.13 If Registration Authority staff consider that action is appropriate, they will make a recommendation to the Registrar that a warning notice or a supervisory notice should be given.
- 3.14 If the Registrar considers it relevant to his consideration, he may ask Registration Authority staff to explain or provide the following:
- a. additional information about the matter (which Registration Authority staff may seek by further investigation); or
  - b. further explanation of any aspect of the Registration Authority staff recommendation or accompanying papers.
- 3.15 The Registrar will consider whether the circumstances warrant a warning notice or supervisory notice being issued, having regard to the following considerations:
- a. whether the material on which the recommendation is based is adequate to support it – the Registrar may seek additional information about or clarification of the recommendation from Registration Authority staff; and
  - b. whether the recommendation is appropriate in the circumstances.
- 3.16 If the Registrar decides that he should give a warning notice setting out details of the action he proposes to take, then he will:
- a. ensure that the notice complies with the relevant provisions of the CLR;
  - b. determine:
    - i. the period for making representations (which may not be less than 14 business days);
    - ii. whether to give a copy of the notice to any third party and, if so, the period for the third party to make representations;
    - iii. whether to refuse access to Registration Authority material, relevant to the notice, under section 53 of CLR.
  - c. ensure that the relevant Registration Authority staff make appropriate arrangements for the notice to be given.
- 3.17 If the Registrar decides that he should give a first supervisory notice, then he will:

- a. ensure that the notice complies with the relevant provisions of CLR; and
- b. determine the period for making any representations; and
- c. ensure that the relevant Registration Authority staff make appropriate arrangements for the notice to be given.

### ***Representations***

- 3.18 A warning notice or first supervisory notice will specify the time allowed for the recipient to respond in writing to the Registrar.
- 3.19 The recipient of a warning notice or a first supervisory notice may request an extension of the time allowed for making representations. Such a request must normally be made within seven business days of the notice being given.
- 3.20 If a request for an extension of time is made, the Registrar will decide whether to allow the extension, and if so, how much additional time is to be allowed for making representations. In reaching his decision the Registrar will take into account all relevant factors including any factors outside the control of the recipient of the notice that would impact on their ability to respond within the period set out in the warning notice or first supervisory notice, as well as any comments from the relevant Registration Authority staff.
- 3.21 If the recipient of a warning notice or a first supervisory notice indicates that he wishes to make oral representations, the Registrar will fix a date or dates for a meeting at which the Registrar will receive those representations. The Registrar will ensure that the meeting is conducted so as to enable:
- a. the recipient of the notice to make representations;
  - b. the relevant Registration Authority staff to respond to those representations;
  - c. the Registrar to raise with those present any points or questions about the matter; and
  - d. the recipient of the notice to respond to any points made by Registration Authority staff or the Registrar.
- 3.22 The Registrar may ask the recipient of the notice or Registration Authority staff to limit their representations or response in length or to particular issues arising from the warning notice or first supervisory notice.
- 3.23 The recipient of the warning notice or supervisory notice may elect to be legally represented at the meeting, but this is not a requirement.
- 3.24 Where the Registrar deems appropriate, he may ask those present at the meeting to provide additional information in writing after the meeting. If the Registrar does so, he will specify the timeframe within which that information is to be provided.
- 3.25 Registration Authority staff responsible for making a recommendation to the Registrar will continue to assess its appropriateness in the light of any new information or representations they receive and any material change in the facts or circumstances relating to a particular matter.

### ***Decision notices and second supervisory notices***

- 3.26 If the Registrar receives no response or representations within the period specified in a warning notice, the Registrar may regard as undisputed the matters in the notice and a decision notice will be given accordingly.
- 3.27 If the Registrar receives no response or representations within the period specified in a first supervisory notice, the Registrar will not give a second supervisory notice. If the action under the first supervisory notice:
- a. took effect immediately, or on a specified date which has already passed, it continues to have effect (subject to any proceedings on a referral to the ADGM Courts);
  - b. was to take effect on a specified date which is still in the future, it takes effect on that date (subject to any proceedings on a referral to the ADGM Courts); and
  - c. was to take effect when the matter was no longer open for review, it takes effect when the period to make representations (or for referral to the ADGM Courts, if longer) expires, unless the matter has been referred to the Court.
- 3.28 In any case in which representations are made, the Registrar will consider whether it is right in the circumstances to give the decision notice or a second supervisory notice (as appropriate). In doing so, the Registrar will:
- a. consider all material before him;
  - b. consider all representations made (whether written, oral or both) and any comments by Registration Authority staff or others in respect of those representations; and
  - c. decide whether to give the notice and the terms of any notice given.
- 3.29 If the Registrar decides to give a decision notice or a second supervisory notice, the Registrar will ensure that:
- a. the notice complies with the relevant provisions of the CLR;
  - b. the notice includes a summary of the key representations made and how they have been taken into account; and
  - c. the Registration Authority staff make appropriate arrangements for the notice to be given.
- 3.30 If applicable, the Registrar will determine whether the Registration Authority is required to give a copy of the notice to a third party and, if so, facilitate the giving of the notice.

### ***Notice of Discontinuance***

- 3.31 If the Registrar decides not to take the action proposed in a warning notice, or to which a decision notice given by it relates, the Registrar will issue a notice of discontinuance to the person to whom the warning notice or decision notice was given.

### ***Final Notices***

3.32 If the Registrar has given a person a decision notice and the period for referral to the ADGM Courts lapses, the Registrar will issue a final notice in accordance with the relevant provisions of the CLR.

### ***Right to refer matters to the Court***

3.33 A decision to give a decision notice or supervisory notice may lead to a referral to the Court under the CLR.