

## ENFORCEMENT OUTCOME

### Revocation of licences – Private Kapital Partners Asset Management (Mauritius) Limited

Ref: ENF/30L2020/E2

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#### 1. Background

1.1. Private Kapital Partners Asset Management (Mauritius) Limited was incorporated on 18 February 2015 as a private company limited by shares. It holds the following licences issued by the Financial Services Commission, Mauritius (the “FSC”) since 24 February 2015:

1.1.1. a Category 1 Global Business Licence under section 72 of the Financial Services Act (“FSA”);

1.1.2. a Collective Investment Scheme (“CIS”) Manager Licence under section 98 of the Securities Act (the “SA”); and

1.1.3. an Investment Adviser (Unrestricted) Licence under section 30 of the SA.

1.2. Mr Aleksei Korotaev (“Mr Korotaev”), [**Edited for Confidentiality**] is the director and the ultimate beneficial owner of the Company since its inception. He became the last director of the Company subsequent to the resignation of the other directors in March 2017.

1.3. The Company’s Category 1 Global Business Licence lapsed on 01 July 2018 and no application for reinstatement has been made to the FSC.

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- 1.4. On 12 October 2018, the FSC conducted an onsite inspection on the business premises of the Company. Thereafter, from November 2018 to December 2019, the FSC has been in continual liaison with the Company and Mr Korotaev regarding the remedial measures to be implemented in view of, inter alia, addressing the issues identified during the inspection. These issues have not been resolved by Mr Korotaev and the Company to the satisfaction of the FSC.
- 1.5. In this regard, the FSC gave a written notice to the Company on 10 June 2020 of its intention to refer the matter to the Enforcement Committee (“EC”). The Company, through its Legal Counsel, submitted written representations dated 29 June 2020 to the FSC. The submissions provided by the Company were not to the FSC’s satisfaction. Consequently, the matter was referred to the EC by the Chief Executive of the FSC in accordance with section 53(1) of the FSA for such action, as it deems appropriate.

## **2. Breaches committed by the Company**

- 2.1. Based on the information submitted by the FSC, the EC has observed that the Company has been conducting its affairs in an unsound way and has committed numerous statutory contraventions as detailed below:

### **2.1.1. Section 30 of the FSA**

The Company has failed to comply with section 30 of the FSA given that it has not filed its Annual Reports for the year ended 31 December 2016 and 31 December 2017.

#### 2.1.2. Section 71 of the FSA

Pursuant to its Category 1 Global Business Licence, the Company is required to be administered by a Management Company (“MC”) and to have, at least two (2) directors, resident in Mauritius, of sufficient calibre to exercise independence of mind and judgement. With the MC and both resident directors having resigned in March 2017, the Company has been in contravention of sections 71(3) (a) (iii) and 71(3) (b) (i) of the FSA.

#### 2.1.3. Section 74 of the FSA

In view of ensuring the validity of its Category 1 Global Business Licence, the Company was required to effect the payment of its annual licence fee in accordance with section 74 (1) of FSA. However, the Company has failed to settle its annual licence fee thereby breaching section 74(1) of the FSA. This has resulted in the lapsing of the Category 1 Global Business Licence on 01 July 2018 in accordance with section 74(2) of the FSA and rule 14 of the Financial Services (Consolidated Licensing and Fees) Rules 2008.

#### 2.1.4. Section 106(2) of the SA

The EC has observed that the Company has infringed section 106(2) of the SA since it has not submitted its Interim Financial Statements to the FSC for the periods ended 31 March 2017, 30 June 2017, 30 September 2017, 31 March 2018 and 30 June 2018 within 90 days of its balance sheet date.

#### 2.1.5. Prevention of money-laundering and terrorism financing (“ML/TF”)

##### 2.1.5.1. Customer Due Diligence (“CDD”)

In relation to 6 entities [**Edited for Confidentiality**], with which the Company entered into consultancy agreements, it failed to maintain

appropriate CDD documentation-related records, thereby breaching sections 17C and 17E of the Financial Intelligence and Anti-Money Laundering Act (the "FIAMLA").

#### 2.1.5.2. Source of funds

The Company has also acted in breach of paragraph 4.2 of the FSC Code on the Prevention of Money Laundering & Terrorist Financing Code (the "FSC Code") as it has failed to establish the source of funds received from 3 entities [**Edited for Confidentiality**].

#### 2.1.5.3. Omnibus Account

In addition, with regard to the establishment of a new omnibus account with Company X in 2015, the Company has failed to obtain the prior approval of its Board of Directors, thereby breaching paragraph 4.5 of the FSC Code.

#### 2.1.5.4. Policies, controls and procedures

In accordance with section 17A of the FIAMLA, the Company was required to establish policies, controls and procedures to mitigate and manage effectively the risks of money laundering and terrorism financing. In breach of this requirement, the Company did not have such documented policies, controls and procedures.

#### 2.1.6. Breach of licensing conditions

Under its licensing conditions, the Company was required to conduct only such business or activity permissible under its licences unless otherwise authorised by the FSC. Based on a review of the Company's bank statements undertaken by the FSC, the EC has formed the opinion that the Company has breached its licensing

conditions, as it has been perceiving income for activities other than the provision of investment advisory services.

2.1.7. Failure to commence business under its CIS Manager Licence

Finally, the Company has failed to commence business within 6 months under its CIS Manager Licence.

**3. Proceedings of the EC**

3.1. In view of the above, based on its assessment of the referral material submitted by the FSC, the EC contemplated the revocation of the CIS Manager Licence and the Investment Adviser (Unrestricted) Licence held by the Company pursuant to sections 7 (1) (c) (vi) and 52(3) of the FSA.

**4. Notice under section 53(2) of the FSA and findings of the EC**

4.1. The EC issued a notice dated 11 November 2020 to the Company pursuant to section 53(2) of the FSA wherein the latter was informed that the EC was contemplating the revocation of the Company's CIS Manager Licence and the Investment Adviser (Unrestricted) Licence pursuant to sections 7(1) (c) (vi) and 52(3) of the FSA.

4.2. The Company was also informed of its right, to make written representations to the EC, within a period of 21 days from the date of the notice, as to why the EC should not revoke its CIS Manager Licence and the Investment Adviser (Unrestricted) Licence. All the referral material provided by the FSC was communicated to the Company along with the notice dated 11 November 2020.

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4.3. The Company exercised its right to make written representations to the EC by way of letter dated 30 November 2020 under the signature of its Legal Counsel **[Edited for Confidentiality]**.

## 5. Findings of the EC

5.1. Following an in-depth consideration of the Company's written representations, the EC has observed the following:

### 5.1.1. Denial of all allegations

The Company has denied all allegations pertaining to having committed statutory contraventions and breaches of its licensing conditions. It also denied having conducted its business in an unsound manner.

### 5.1.2. Statutory breaches

Regarding the statutory breaches that the Company has committed, the latter has taken the stand that these occurred because the FSC failed to approve its transfer to a new MC. In this respect, the Company has claimed that without the approval of the FSC to appoint a new MC, it has been unable to effect payment of the applicable fees and attend all outstanding matters to redress its compliance status, including the preparation and filing of Interim Financial Statements.

### 5.1.3. Prevention of ML/TF

Concerning the prevention of ML/TF, the Company has denied any responsibility and has averred that the duty to implement the appropriate

systems and controls was incumbent upon its board of directors, especially Mr. A and the other local directors.

5.1.4. Breach of licensing conditions and failure to commence business under its CIS Manager Licence

The Company has adopted the same approach in justification of the contravention of its licensing conditions and the failure to commence business under its CIS Manager Licence. It has thus submitted that Mr. A and the other local directors were responsible for these acts and omissions.

5.2. Having examined the written representations submitted by the Company, the EC has noted that the Company has merely claimed the FSC, Mr. A, and the other local directors responsible for these breaches and unsound business conduct. The EC was therefore not satisfied with the Company's written representations.

**6. Decision of the EC**

6.1. In light of the above, the EC has revoked the CIS Manager Licence and the Investment Adviser (Unrestricted) Licence held by the Company pursuant to sections 7(1) (c) (vi) and 52(3) of the FSA.

6.2. This decision shall take effect immediately after a period of 21 days from the date of the decision notice.

**7. Application to the Financial Services Review Panel (the "FSRP")**

7.1. The Company may make an application to the FSRP for a review of the above decision of the EC, within 21 days from the issue of the decision notice. Such an

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application must be made by registered post, specifying the reasons for the review, in accordance with section 53(4) of the FSA. A copy of the application must be sent, by registered post, to the FSC.

**30 December 2020**

This published version of the Decision Notice has been edited for formatting purposes and to remove certain confidential, sensitive or personal information.

The person to whom the decision in this Notice relates may exercise the right to seek a review by the FSRP. Any amendment, cancellation or further update pertaining to the exercise of the aforementioned right in relation to the decision in this Notice will be communicated at the appropriate time.