



محكمة قطر الدولية
ومركز تسوية المنازعات
QATAR INTERNATIONAL COURT
AND DISPUTE RESOLUTION CENTRE

**In the name of His Highness Sheikh Tamim bin Hamad Al Thani,
Emir of the State of Qatar**

**IN THE CIVIL AND COMMERCIAL COURT
OF THE QATAR FINANCIAL CENTRE
FIRST INSTANCE CIRCUIT**

18 November 2018

CASE No: CTFIC1009/2018

QATAR FINANCIAL CENTRE REGULATORY AUTHORITY

Applicant

v

FIRST ABU DHABI BANK P.J.S.C.

Respondent

JUDGMENT

**Before:
Justice Robertson
Justice Hamilton
Justice Arestis**

ORDER

1. The Respondent is ordered to comply forthwith with the Notice dated 19 March 2018 referred to in paragraph 6 of this judgment, including in relation to materials held outside the QFC.
2. The Respondent is ordered to preserve its documents, books and records and not otherwise move or deal with them insofar as they are responsive to the Notice.

JUDGMENT

1. On 18 March 2018 the Applicant, in furtherance of Article 50(1) of the Financial Services Regulations (Regulation No.1 of 2005) ("the FSR") appointed investigators to conduct investigations into certain suspected contraventions of "Relevant Requirements" under these Regulations and to report to the Applicant accordingly. Shortly stated, the suspected contraventions related to financial conduct by First Abu Dhabi Bank PJSC ("the Bank"), including whether some of its activities failed to comply with accepted market practice and were contrary to the principles established by the General Rules 2005 ("GENE") made under the FSR.
2. The Bank is a body incorporated in the United Arab Emirates, its headquarters being in the emirate of Abu Dhabi. It was formerly styled "First Gulf Bank". Under that former style the Bank, being a body corporate not incorporated in the QFC, applied under Article 118 of the Companies Regulations to the Companies Registration Office to establish a "Branch" in the QFC. That application was accepted and on 24 November 2008 a certificate of registration as a Branch was issued under the name "First Gulf Bank-QFC Branch" with Certificate Number 00018. In terms of Article 119(2) of the Companies Regulations that certificate "was conclusive proof that the Non-QFC Company" [namely, the Bank] "is registered with the name, and number specified" [in the certificate]. On 21 May 2017 the name of the registered Branch was certified as having been

changed to "First Abu Dhabi Bank-QFC Branch", the registration number being retained. The scope of the activities authorised to be carried out were of a financial character, involving various aspects of banking.

3. On 18 March 2018 the Applicant, acting through its Chief Executive Officer, gave written intimation that the investigation had been initiated. This was addressed to the Bank at an address ("the address") in QFC Tower 2 in Doha. On the following day the Applicant, acting through its Director of Enforcement, gave, in furtherance of Article 52(2)(8) of the FSR, written notice to produce various documents under identified heads. That notice was likewise addressed to the Bank at the address. The address was that of the principal place in the QFC from which the registered Branch of the Bank engaged in or carried on any business in the QFC, being one of the particulars maintained by the Companies Registration Office under Article 122 of the Companies Regulations.
4. A timely response was received to the notice to produce documents. By letter dated 2 April a Senior Executive writing on behalf of "First Abu Dhabi Bank-QFC Branch" gave a detailed response and produced various documents in relation to each of the heads identified in the Applicant's notice. However, under reference to certain provisions in the FSR, he stated that the search did not encompass, and the documents produced did not include, materials possessed by the Bank and any of its affiliates outside Qatar, it being maintained that the Applicant had jurisdiction only over banking, financial and insurance-related business carried on in or from the QFC.
5. That response did not satisfy the Applicant, which maintained that it was entitled to recover all pertinent documents even though these were held outside the QFC. After further communication, it was made clear that, on jurisdictional grounds, there would be no further production of documents in response to the notice.
6. Against that background the Applicant on 29 July commenced the present proceedings. It was accompanied by two witness statements, one signed by Mr. Andrew Lowe, the Applicant's Director of Enforcement, and the other

by Mr Nurein Said Mohammed, the Head of Bank Supervision of the Applicant. In the application certain orders are sought from the Court, including "(a) Under Article 54(2) [of the Financial Services Regulations] that the Respondent is ordered to comply with the Notice [of 19 March] including in relation to materials held outside of the QFC". The Respondent named in the application was "First Abu Dhabi Bank P.J.S.C.". The place of service of the application was the address (in Doha). Service was not sought or made in any other place.

7. An issue then arose as to under what name any response to the application should be filed. Ultimately, a response was filed on 27 August under the name "FIRST ABU DHABI BANK PJSC (A COMPANY FORMED AND INCORPORATED UNDER THE LAWS OF THE UNITED ARAB EMIRATES AND REGISTERED IN THE QATAR FINANCIAL CENTRE AS FIRST ABU DHABI BANK-QFC BRANCH)". It was accompanied by a witness statement signed by the Senior Executive earlier referred to.
8. On 2 September an oral hearing took place before the Court. The Applicant was represented by counsel (Mr Jaffey, QC). There also appeared Mr Lal, Solicitor Advocate. He made it clear that his instructions came solely from "First Abu Dhabi Bank-QFC Branch" and that he had no power to act for or commit the Bank in any wider capacity.
9. Some discussion took place at the hearing but it soon became clear that, among other outstanding issues, there was a question as to whether effective service of the application had been made upon the Bank as such.
10. At the conclusion of the hearing the Court gave the following Directions:
 - "1. By no later than 4pm on Sunday 23 September 2018, the Applicant is to file and serve written submissions addressing the issue of whether or not service of the Application Notice has been effective.
 2. By no later than 21 days thereafter, the Respondent is to file and serve written submissions in Response; and

3. *The next hearing will take place on Sunday 11 November 2018 (and the following day if required). At that hearing the Court will consider the representations filed in furtherance of paragraphs 1 and 2 above and hopes to be in a position to determine the substantive Application. The Parties and their legal representatives shall therefore prepare accordingly".*

11. At the hearing on 11 November Mr Lal appeared again to oppose the grant of the application. Once more he insisted that he appeared only on behalf of "First Abu Dhabi Bank- QFC Branch" and could not confirm that there had been effective service on the Bank as such. There was no other appearance in opposition to the grant of the application, although the Court had indicated that it was prepared to hear submissions from the Bank's "headquarters". So, although there is material before the Court which indicates that the Bank as such is aware of the application, as it as such gave notice at the outset of the proceedings of its intention to oppose this application, the Court nonetheless requires to be satisfied that there has been effective service upon it.
12. Underlying the issue of whether there has been effective service is a question of whether, under the laws of the QFC, a Branch is a legal entity distinct from the Non-QFC Company on whose application that Branch was established in the QFC. There are also issues concerning the scope of the regulatory powers of the Applicant and the jurisdictional reach of this Court.
13. On 23 September the applicant filed further submissions. These were accompanied by a second witness statement by Mr Lowe.
14. On 14 October a second response was filed. It again was under the name "FAB-QFC Branch". Certain documentation in support of that response was filed with it.
15. On 25 October a third witness statement by Mr Lowe was filed by the Applicant.

16. The background to the investigation, in so far as publicly disclosed, concerns dealings, or suspected dealings, on the part of the Bank in the Qatari Riyal ("QAR"), the currency of the State of Qatar. The QAR has since July 2001 been pegged to the US dollar. From at least that date until Eid al-Fitr 2017 (in June 2017) the QAR had a low volatility and high stability and there was a strong correlation between onshore and offshore trading in that currency. Both Monday 26 and Tuesday 27 June were public holidays throughout Islamic countries in the Middle East and banking institutions were closed. However, on both these days there was, according to the Applicant, unusual trading by the Bank in QAR, resulting in a sharp depreciation in the trading value of the QAR as against the US dollar. The Applicant suspects that, between then and December 2017, there were repeated attempts by the Bank to manipulate the QAR to the disadvantage of that currency. In the second response these assertions of unusual trading and of manipulation of the currency are denied.
17. It should be emphasised that at this stage no firm conclusions have been drawn by the Applicant as to any impropriety by the Bank. It is the purpose of the investigation to establish whether or not there has been any such impropriety.
18. The Qatar Financial Centre Authority ("the QFC Authority") was established, by Article 3.1 of the Law No. (7) of Year 2005, with defined powers. These powers included power to prepare and submit to the Minister of Economy and Commerce for his approval Regulations on various matters. The Companies Regulations and the FSR referred to above were in due course so prepared and submitted (and ultimately enacted). By Article 8.1 of the Law the Applicant was established in the following terms:

"Notwithstanding any provision to the contrary in this or any other Law or regulation The Regulatory Authority is hereby established for the purpose of regulating, licensing and supervising banking, financial and insurance-related businesses carried on in or from the QFC..... "

19. Qatar is not the only state to have established a financial centre with a jurisdiction and laws independent of the state in which the centre is established. The Dubai International Financial Centre was established in 2004 and the Abu Dhabi Global Market in 2013. Both continue to operate.
20. Under the Companies Regulations there are a number of mechanisms by which a Non-QFC Company may engage in business activity in the QFC. These include by transfer of incorporation to the QFC (under Article 110) and by the establishment of a Branch (under Article 118). In theory at least, there might also be incorporated in the QFC a company which was or became a subsidiary of another company which was incorporated outside the QFC. In that last case the subsidiary would, as a matter of law, be a legal entity distinct from its parent. An issue which arises in this case is whether a Branch established under Article 118 is similarly distinct from the entity outside the QFC on whose application that Branch was established. It is relevant not only to the question of service but also to other issues arising in this case.
21. In the second response it is stated that this "single legal entity" approach is not relevant to this Application. The correct approach, it is there contended, is "whether FAB-QFC Branch and" [the Bank] "are separate Persons for the purposes of the Applicant's jurisdiction and enforcement power". However, the general question of legal personality requires to be addressed and answered before the particularity of this application is considered.
22. That general question turns, as a matter of QFC law, on the meaning and effect of the Companies Regulations. PART 6 of these Regulations, comprising Articles 117 to 126, is headed "BRANCHES". Article 117(1) provides:
"A Non-QFC Company [defined in Regulation 157 as "a Body Corporate not incorporated in the QFC"] shall not engage in or carry or purport to carry on any trade or Business activity in or from the QFC unless it is registered as a Branch with the [Companies Registration Office] in accordance with Article 119 of these Regulations and shall comply with these Regulations in all other respects."
Article 117(2) imposes certain obligations on a Branch, including having a principal place of business in the QFC to which all communications and notices may be addressed.

Article 118(1) provides that a “Non-QFC Company wishing to establish a Branch in the QFC shall apply to the [Companies Registration Office] for prior approval to establish a Branch in the QFC” and Article 118(2) that an application for such approval shall meet certain requirements.

Article 119 empowers the Companies Registration Office to accept or refuse an application so made. Further provision is made in PART 6, including the imposition of various obligations on Branches.

Article 122 requires the Companies Registration Office to maintain a register of Branches, which register is to include, among other information, “the name of the Branch and, if different, the name of the Non-QFC Company” and “the date and place of incorporation of [the Branch's] Non-QFC Company”.

Article 126 provides:

“Where a Non-QFC Company fails to comply with any provision of this Part 6 and no other financial penalty is provided in these Regulations, the Non-QFC Company, its Officers and any person who appears to the [Court] to be in charge of its affairs in the QFC shall be liable if so ordered by the [Court] to pay the financial penalties prescribed by [the Companies Registration Office]”

23. It is plain that the Companies Regulations do not envisage a Branch registered under Part 6 as being an entity distinct in law from the Non-QFC Company on whose application that Branch was established. Article 117 prohibits a Non-QFC Company from engaging in commercial activity in or from the QFC unless *it* (that is, the Non-QFC Company) is registered. So, it is, as a matter of law, the Non-QFC Company which carries on the regulated activities, although it does so through the established Branch. The second half of Article 117(1) provides that the “*Non QFC-Company shall comply with these Regulations...*” Article 126 tends to confirm that approach, as does the definition of “branch” in the Glossary to GENE. The circumstance that certain obligations are imposed on the Branch is not inconsistent with that approach.

24. This is in conformity with the connotation of the word "branch" both as a matter of English language and as a matter of international common law usage. A branch is an arm, often a subordinate office, of a larger establishment but is, like an arm, an integral part of the body as a whole.
25. It is also consistent with decided authority. As earlier mentioned, independent financial centres have been established in states other than Qatar. One such financial centre is the DIFC in the emirate of Dubai. There a company incorporated outside the centre may be registered as a "Recognised Company" in much the same way as a "Branch" may be registered in the QFC. In *Corinth Pipeworks SA v Barclays Bank Pic* [2011] DIFC CA 002 a Greek company carrying on business in Athens sought to bring proceedings in the DIFC courts against a bank incorporated in England and Wales but registered as a Recognised Company in the DIFC. The proceedings were a claim for damages for loss caused by allegedly false and misleading representations made to the Claimant by an employee of the Defendant. These representations had been made outside the DIFC by a person employed by the Defendant at an office elsewhere in Dubai. No wrong was said to have been committed within the DIFC. The issue before the court was whether it had jurisdiction to entertain the claim. The Defendant's contention that there was no such jurisdiction was successful at first instance but that contention was rejected on appeal. The essential issue addressed was whether the branch (or "Centre Establishment") of the Defendant in the DIFC was, for the purposes of jurisdiction, an entity independent of the bank incorporated in England and Wales.
26. The Appeal Court held that it was not. Hwang CJ said at paragraph (59):
- "Where a bank is licensed to carry on business in a place outside its country of incorporation, it is necessary for that bank to carry on business either through an unincorporated branch of the bank or through a separate legal entity which is a subsidiary of the bank. Bank regulators frequently, if not typically, require foreign banks to carry on mainstream banking business through a branch rather than a local subsidiary. However, it would be*

uncommon for an unincorporated branch of a foreign bank to be treated under local law as a legal entity separate and distinct from its head office unless it has been separately incorporated as a subsidiary."

At paragraph (63) he added:

"It is a fundamental principle of company law that the only way for a company to create another entity under its control (and yet legally separate from it) is to incorporate a subsidiary".

Justice Sir John Chadwick, agreeing, said at para (85):

"For the reasons explained by the Chief Justice, Barclays Bank PLC, the corporate body incorporated in England and Wales, is the entity licensed or authorised by the DFSA to provide financial services. There is no other entity-relevant to the circumstances in the present case- which has been licensed or authorised by the DFSA to provide financial services or conduct any other activities. In particular, it seems to me impossible to reach the conclusion that the entity or enterprise licensed or authorized by the DFSA is the unincorporated branch through which Barclays Bank PLC provides services or conducts activities within the DIFC."

H.E. Justice Ali Al Madhani agreed with both judgments.

27. That decision is not binding on this court. Further, it is concerned with the interpretation and application of provisions in another jurisdiction. However, the structure of the DIFC provisions (as at the date of the decision in *Corinth Pipeworks*) in relation to the basis on which a body incorporated outside the financial centre may be licensed to carry on business within it is very similar to the structure in the QFC. The reasoning of the judges is compelling and persuasive. In *Investment Group Private Limited v Chartered Bank* [2015] DIFC CA 004 the decision and reasoning in *Corinth Pipeworks* were challenged; but that challenge was, both at first instance and on appeal, rejected.

28. This approach is consistent with decision of the Privy Council in *The Appeal Commissioners v The Bank of Nova Scotia* [2013] UKPC 19 affirming the decision of the Court of Appeal in Grenada on an issue in relation to withholding tax, and with that of Hamblen J in *Teekay Tankers Ltd v STX Offshore Shipping Co* (2015) Bus LR 731 (an issue of service on an overseas company) and in this Court with the description by it of the Defendant in *Network Electrical and Mechanical Contracting Company v Takaful International Company (Qatar Branch)* (12 August 2018), though that description was not a contested issue in that case.

It is contended by the Respondent that the "single legal entity" approach is not relevant to this application since *Corinth Pipeworks* was concerned with the jurisdiction of the DIFC courts in an issue of whether they could entertain an action in tort while the present case is concerned with the jurisdiction of the Applicant (and this Court) in relation to the production of documents. But, in order to address the latter, it is important to identify the relationship between a Non-QFC Company and the Branch in the QFC established on its application. We are satisfied that they comprise a single entity.

29. It does not follow that for all purposes a Non-QFC Company and its QFC Branch will be treated as a single unit. Under Part 7 of the Insolvency Regulations a Branch may in certain circumstances be wound up, although the relative Non-QFC Company may continue in operation outside the QFC. Under the Tax Regulations a Branch may be treated for the purposes of taxation "as if it were a distinct and separate entity", the implication being that otherwise it is not such an entity. These are, however, exceptional circumstances.
30. It follows that, for ordinary purposes, including the service of documents, the Bank (with its headquarters in Abu Dhabi) is not, as a matter of QFC law, an entity distinct from First Abu Dhabi Bank-QFC Branch. The principal place in the QFC from which First Abu Dhabi Bank-QFC Branch engages in or carries on business is accordingly a place at which service of documents may, for the purposes of proceedings in this Court, be effectively made upon the Bank. Accordingly, there has been effective

service of the present proceedings upon the Bank.

31. There remains for consideration whether this Court can and should make any of the orders sought in the application. That involves consideration of the scope of the regulatory authority of the Applicant and of the powers of this Court.

32. Part 8 of the FSR empowers the Applicant, if it appears to it that there is a good reason for doing so, to appoint investigators to conduct investigations into a suspected contravention of a Relevant Requirement (Article 50). The Applicant has made such an appointment. It is not suggested in the present proceedings that such an appointment was invalid. Indeed, some documents have already been produced under it. Under Article 52(2) the Applicant may, in support of an investigation, require, by written notice, "any *Person:*

.....

(B) to produce at a specified time and place any specified document or documents of a specified description; and/or

(C) provide such information or assistance as the Investigator may require and the Person is able to give."

Article 110 (Definitions) provides that "Person" includes "a natural or legal person, body corporate, or body unincorporate, including a branch, company, partnership, unincorporated association or other undertaking, government or state" -a comprehensive list. Although that list includes "branch" it does not follow that "Person" in Article 52 is restricted to a branch. It includes bodies corporate such as a company incorporated in the QFC or which has migrated there. As a matter of language, it could also include a Non-QFC Company. Nor does it follow from the inclusion of "branch" within a list of bodies "unincorporate" that a branch is a body distinct in law from the company which establishes it.

33. Under Article 8.1 of the Law, as earlier noted, the Applicant is established

for the purposes of regulating, licensing and supervising certain classes of business “carried on in or from the QFC”. The expression “carried on in or from the QFC” is not further defined in the Law. Paragraph 17 of Schedule 4 to the Law identifies the objectives of the Applicant as including:

"17.1 the promotion and maintenance of efficiency, transparency and the integrity of the QFC;

17.2 the promotion and maintenance of confidence in the QFC of users and prospective users of the QFC;

17.3 the maintenance of the financial stability of the QFC, including the reduction of systemic risk relating to the QFC;

17.4 the prevention, detection and restraint of conduct, which causes or may cause damage to the reputation of the QFC, through appropriate means including the imposition of fines;"

These objectives are repeated in Article 12(3) of the FSR.

34. Article 8.1 of the Law also provides for the making, subject to the provisions of the Law, including the provisions set out in Schedule 4, of regulations. The FSR are such regulations. Article 15 of those Regulations empowers the Applicant to make rules, including rules in relation to conduct. Article 26(1) (headed “Activities conducted in and from the QFC”) is a deeming provision which, for the purposes amongst other things of the FSR, provides that a Person who would not otherwise be regarded as carrying on activities in or from the QFC shall be deemed to be carrying on activities in or from the QFC in certain circumstances, including if “(E) the activities are conducted in circumstances that are deemed to amount to activities carried on in or from the QFC under Rules made by the Regulatory Authority in accordance with Article 26(2)”. This provides that the Applicant may from time to time issue Rules as to the circumstances in which activities capable of having an effect in the QFC are or are not to be regarded as conducted in or from the QFC. Rules have been issued under that power, including GENE, which has been amended from time to time. In its current form it identifies principles relating to the conduct, operation and standing of authorised firms. The Bank is an

authorised firm within the meaning of these Rules.

Rule 1.2.1 (Application of the Principles) provides:

"(1) The principles in this Part apply to an authorised firm in relation to its conduct of regulated activities in or from the QFC.

(2) The principles also apply to the activities of such a firm carried on outside the QFC, if the activities relate to regulated activities carried on by the firm in or from the QFC and are capable of having effect on:

(a) confidence in the financial system operating in or from the QFC;

.....

(c) the firm's fitness and propriety."

35. The GENE application provisions make it clear that, for the purposes of the principles there referred to, these principles apply to activities carried out by an authorised firm in and from the QFC and also apply, in certain defined circumstances, to activities carried on by such a firm outside the QFC. The Applicant's regulatory and supervisory functions accordingly explicitly embrace, for conduct and related purposes, consideration of activities of authorised firms carried on outside the QFC where the condition specified in para 1.2.1(2) is met. Where an issue arises as to whether an authorised firm has acted outside the QFC in a way which engages that condition, the Applicant may, in order to form a concluded view, require to have access to documents held outside the QFC. In particular, it may require to have access to such documents in order to reach a confident and duly informed view as to whether any of the principles (which include market conduct and regard to customers' interests) have been breached.

36. One of the circumstances in which extra-QFC activities of an authorised firm may impinge on the principles is where such activities are capable of having an effect on the firm's fitness and propriety. Schedule 1 to GENE provides guidance on fitness and propriety of authorised firms. Among the matters which the Applicant may consider in assessing the fitness and propriety of such firms are their controllers, close links and other connections, including among other things, whether it or its group is

subject to any adverse effect or considerations arising from its country of incorporation or the country (or countries) of incorporation of its controllers. Assessment of fitness and propriety, accordingly, can have an international dimension.

37. This is particularly likely to be significant in the context of banking activities which, of their nature, have cross-border implications, including implications for customers of the bank in question. As pointed out in *Corinth Pipeworks*, regulators tend to prefer foreign banks to establish branches rather than local subsidiaries. Where banks, as they often do, operate internationally, the need for trust remains paramount. Accordingly, the dealings outside the QFC of a Non-QFC Company with a branch in it may be of direct relevance not only to any breach of principles of conduct but also to the fitness and propriety of such a Company. The Applicant's regulatory and supervisory function accordingly may, in an appropriate case, extend to the extra-QFC activities of such a firm. It may likewise for such purposes reasonably require access to documents held abroad
38. It is unnecessary for present purposes to decide whether in respect of any other suspected contravention of the FSR documents held abroad are reasonably so required. It should, however, be noted that Mr Lal, while advancing various interpretations of the provisions referred to above (in particular of Rule 1.2.1(1) of GENE) did not maintain that any of these provisions were *ultra vires* or otherwise of no effect.
39. This Court is required, under Article 54(2) of the FSR to provide to the Applicant, on its application, such assistance as it considers appropriate in the circumstances and in accordance with (the Court's) powers to assist in the enforcement of the Applicant's powers under Part 8, including in relation to investigations. This duty is independent of the provisions of Article 8(3)c of the Law, which is not exhaustive of the Court's jurisdiction.
40. It is plain that if the Applicant, in the course of an investigation validly set up, is experiencing difficulty in recovering, from a company incorporated in the QFC or which has migrated there, documents pertinent to that

investigation, it can seek the assistance of this Court in recovering such documents and this Court, if it sees fit, has jurisdiction to lend such assistance. The same is true of a Non-QFC Company which has a Branch established in the QFC, that Company's headquarters outside the QFC and its Branch within it being elements of the same legal entity. The circumstances that the Bank is regulated by its "home" regulator (in Abu Dhabi) does not preclude the Applicant (or the Court) having a proper interest in its activities, in so far as they affect or may affect the QFC and banking customers within it. Accordingly, the Applicant's functions and the Court's jurisdiction extend, in this case, to the Bank as such and, at least with regard to conduct and related matters, to any pertinent documents held by it, wherever they might be and wherever they may have been created. As is plain from Article 48(2) of the FSR, the functions of the Applicant and the role of the Court in relation to obtaining documents and information may extend to persons wholly unconnected with the QFC. It must, accordingly, extend, subject to appropriate limits, to companies incorporated outside the QFC which have established branches within it.

41. As mentioned above, Mr Lal advanced a submission on the interpretation of Rule 1.2.1 of GENE. What he described as the "headquarters" of the Bank (situated in Abu Dhabi) was not an "authorised firm" within the meaning of that provision and that, accordingly, any extension of the application of the principles under that provision could not apply to it. This submission must be rejected. Like many of Mr Lal's submissions it is flawed by the refusal to recognise that, for the purposes of QFC law in relation to financial regulation, "headquarters" are not a distinct entity from the Bank's branch in the QFC. Mr Lal's emphasis on the wording of Article 8.1 of the Law ("businesses carried on in or from the QFC") fails to take into account the provision made later in that Article for the making of Regulations and the terms of the Regulations and Rules in fact made and issued thereunder. It also fails to take into account the realities of modern international banking. Mr Lal also relied on the circumstance that Schedule 3 to the Law distinguishes between Regulated Activities (including banking business) and activities not so regulated (including business activities of company headquarters and treasury operations); it was the latter which were situated in Abu Dhabi. But this again fails to recognise

that, for the purposes of QFC law, the Bank is a single entity which carries on in the QFC banking business through a branch.

42. The Court, under Article 54(2) of the FSR, has a duty to provide only such assistance "as it considers appropriate". Accordingly, there is a discretion vested in it which must be exercised with due care. At paragraph 4.5 of the second response it is stated that the Court needs to "remain mindful of the wider political issues". The Court is mindful that this Application has been made while there continues to be an unfortunate political dispute between the State of Qatar and certain other states, including the United Arab Emirates. This Court is, however, wholly independent, in the exercise of its powers, of the government of Qatar and exercises those powers, including discretions vested in it, strictly in accordance with law. The Court is also mindful that, even where it has jurisdiction and power to do so, it may be inappropriate to exercise that power when to do so would involve a conflict of jurisdiction with a foreign court or would in some other way impinge on the sovereignty of a foreign state. In this case the documents now sought to be recovered are not only physically within a foreign state but, if they exist, may have been generated in that state. So far as drawn to our attention, there is no authority which gives this Court authoritative guidance as to how it should exercise its discretion in a case such as this.
43. A circumstance which it is relevant to take into account in the exercise of this discretion is whether the Applicant, if it has the concerns it claims, can address them more appropriately by other means than by seeking orders from this Court under Article 48(1) of the FSR requiring production of the documents in issue and, under Article 52(5), preservation of such documents. Mr Lal submitted that the Applicant, if it maintained that it was being obstructed, could rely on Article 57 of the FSR (Obstruction of the Regulatory Authority). He also relied on Article 48(2) of the FSR (a provision which authorises this Court on the application of the Applicant to make a requirement under Article 48(1) in respect of a person outside the QFC and which also empowers the Applicant to request an Overseas Regulator to assist in exercising the powers under Article 48(1)). But, reliance by the Applicant on any breach of Article 57 would not secure the

production of the documents, perusal of which is clearly desirable for a full and confident assessment of whether or not there has been any relevant contravention.

44. As to Article 48(2), the Applicant seeks such an order but only in the event of its application under Article 48(1) being refused; and Mr Lal did not concede that the Court should make an Article 48(2) order. In an ideal world one would expect ready cooperation among regulatory authorities and, against that background, a ready willingness by banks to make available to regulators in countries other than that in which they are incorporated documents which such regulators reasonably seek for the purpose of exercising their functions. But, regrettably, matters are far from ideal. The Applicant at an early stage wrote to the Central Bank of the UAE (the Bank's home regulator) inviting it to exercise its powers to direct that the Bank preserve relevant documents. It received no reply. The prospect of cooperation by that regulator seems remote, at least in the absence of an order by this Court. In these circumstances the mechanism adopted by the Applicant seems in principle reasonable.
45. It remains for consideration whether it is reasonable otherwise. It is clear from the papers before the Court that there is much in dispute factually about the activities of the Bank in relation to QAR during the period referred to in the application. Such disputes cannot be resolved by this Court, at least at this stage. Nor is it possible at this stage to determine whether any action by the Bank was such as to meet the condition stated in Article 1.2.1(2) of GENE or otherwise to involve a contravention of any Relevant Requirement of the FSR. These issues are for the investigators, in the first instance, to enquire into and decide. This Court, however, would consider granting the remedies sought only if the Applicant had laid before it a case where it reasonably required to see the documents in order to carry out its functions and production of the documents did not impose an unnecessary or unreasonable burden on the person required to produce them. Although much is in dispute which cannot at this stage be resolved, there is material before the Court which forms a proper basis for apprehension by the Applicant that there may have been contravention by the Bank of the FSR. The application is not speculative. There is

documentary material which suggests that at least one customer of the Bank in the QFC was adversely affected during the relevant period by the Bank's dealings in the QAR. Mr Jaffey stated that this customer was not the only person affected. There were, according to Mr Jaffey's oral statement to the Court, other affected transactions amounting in value to an estimated 45 million QAR. The documents sought to be produced are reasonably required by it for the purposes of the investigation. It is not suggested that any third party (such as any customer of the Bank) could be prejudiced by the disclosure of these documents. Nor would the production of these documents impose an unnecessary or unreasonable burden on the Bank. In these circumstances this Court, exercising due caution, ought, in the exercise of its discretion, to make the Orders set forth at the outset of this judgment.

46. In the foregoing circumstances the application in the alternative for an order under Article 48(2) of the FSR does not arise for determination. There was no application for costs.

By the Court,



Justice Arthur Hamilton



Representation:

The Applicant was represented by Mr Ben Jaffey QC (Blackstone Chambers, London)

The Respondent was represented by Mr Hamish Lal (Akin Gump Strauss Hauer & Feld, London)