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

Neutral Citation: [2022] QIC (RT) 1

IN THE REGULATORY TRIBUNAL
OF THE QATAR FINANCIAL CENTRE

24 February 2022

Case No. 2 of 2011

BETWEEN:

NAZIM ELZEIN ABBAS OMARA

Appellant

v

QATAR FINANCIAL CENTRE
REGULATORY AUTHORITY

Respondent

DECISION OF THE REGULATORY TRIBUNAL

Before:
Sir William Blair, Chairman
Justice Laurence Li S.C.
Justice Muna Al Marzouqi

DECISION

1. This is the Tribunal's decision in an appeal brought by Mr Nazim Omara ("the appellant") against a decision of the Qatar Financial Centre Regulatory Authority ("QFCRA") in a Decision Notice of 28 March 2011. The reason for the delay is explained below, but in summary it is because two sets of criminal proceedings were brought by the authorities in the State of Qatar against the appellant in November 2009 resulting in a stay of the regulatory proceedings against him. The precise course the criminal proceedings took has not been explained to the Tribunal, but the QFCRA accepts that on 4 July 2018, Mr Omara was acquitted before the criminal courts of both sets of criminal charges. It is right to emphasise the fact of the appellant's acquittal at the outset of this decision. These proceedings are solely concerned with the outcome of regulatory proceedings consisting of his own appeal. In the event, the appeal has been decided on the documents, and the appellant has not participated.

2. The background is the failure of Al Mal Bank LLC ("the bank") which was incorporated in the Qatar Financial Centre ("QFC") on 3 December 2008. Regulatory proceedings were brought by the QFCRA against the bank on 18 November 2009, and following the loss of its authorisation on 3 March 2010, it went into liquidation on 6 June 2010.

3. The appellant was the bank's CEO, his roles and responsibilities being set out in a Statement dated 1 January 2009. Under the regulatory regime he had overall responsibility for the conduct of the whole business of the bank as an Authorised Firm and to ensure that it adhered to the Rules and Regulations of the QFC.

4. An investigation was commenced against him on 10 January 2010, and a Decision Notice was issued by the QFCRA on 28 March 2011, imposing a financial penalty of US$250,000 and a prohibition notice prohibiting him from performing any function in a QFC authorised firm.

5. An Appeal Notice was filed on 29 May 2011. It is concerned to ask for a stay pending criminal proceedings that had been brought against the appellant in relation to the bank. It does not deal with the substantive allegations against the appellant, which is not surprising given the ongoing criminal proceedings. The substantive allegations have never been dealt with by the appellant in the regulatory proceedings.

6. The criminal proceedings consisted of case ref: 1681/2010 (relating to alleged forgery of board minutes of the bank) and case ref: 2623/2010 (relating to alleged forgery of minutes and documents required to open bank accounts and use of the forged documents to facilitate the misappropriation of QAR 10,812,348).

7. The QFCRA Response to the Appeal Notice was filed in June 2011 (the copy provided to the Tribunal is undated).

8. The appeal was stayed on 31 October 2011 under Article 25 of the Qatar Criminal Procedures Code because of the criminal proceedings.

9. Regulatory proceedings were also brought against other officers of the bank, but their appeals to the Tribunal were unsuccessful (*Abdelkareem v QFCRA* [2012] QIC (RT) 1; *Chaudhry v QFCRA* [2012] QIC (RT) 2).

10. The position developed differently as regards the appellant. On 4 July 2018, the appellant was acquitted of all criminal charges brought against him. The QFCRA accepts that under Article 319 of the Qatar Criminal Procedure Code these findings are binding upon the Tribunal and on the QFCRA.

11. On 26 October 2020, the QFCRA filed an Amended Response which it said reflected the findings in the criminal proceedings in the light of which a number of allegations including that of fraud were abandoned. The QFCRA does, however, continue to assert that the appellant failed to reach the expected standards of an Approved Individual in the controlled function of Senior Executive for the bank.

12. No new or amended Decision Notice has been issued. As explained below, the QFCRA maintains that this is not necessary.

13. Also on 26 October 2020, the QFCRA applied to lift the stay on the appeal.

14. According to the Ministry of Interior records, the appellant no longer lives in Qatar. On 2 June 2021, the QFCRA applied for an order for substituted service under Article 14.1 of the Qatar Financial Centre Regulatory Tribunal Regulations and Procedural Rules ('the Rules') of its Amended Response to the appellant's Appeal Notice. The application was supported by a witness statement by Mr Andrew Lowe (Director of Enforcement at the QFCRA) dated 2 June 2021. In it, Mr Lowe explains the steps that had been taken to serve the appellant. See paragraph 18 below.

15. Under normal circumstances, this application would have caused no difficulty, since it is the appellant's appeal, and it is up to the appellant to pursue it. However, the Tribunal considered that in the exceptional circumstances of this case, where the case goes back many years, the appellant has been acquitted of criminal charges, and no longer lives in Qatar, the QFCRA should do more to show that it had sought to bring its applications to revive the proceedings to the appellant's attention.

16. On 14 July 2021 the Tribunal directed the QFCRA as follows:

> "The Tribunal is considering the QFCRA's application for substituted service. It draws the attention of the QFCRA to Art 12.4 of the Tribunal's Rules of Procedure, Arts 10 and 11 of the Civil & Commercial Procedures Law of Qatar, and the discussion of service in *Boulbadaoui v QFCA* [2021] QIC (RT) 1 ("the essential consideration is that a Decision Notice is given in a way which effectively brings it to the attention of the subject"). Its preliminary view is that further steps are required to justify an order for substituted service than have been taken to date. In that regard, it notes the enquiries that have been made of the Central Bank of Sudan, which presumably means that the QFCRA believes that Mr Omara is to be found in Sudan. It requests the QFCRA to make further proposals to show that an "appropriate way" of serving him with the application will be adopted taking all the circumstances into account including the time that has passed since the stay was imposed. Advertising the application in both Qatar and Sudan should be considered. The steps to be taken can include

> continuing notification of the lawyers who have represented Mr Omara in the past. In addition, a copy of the amended Response should be sent to the lawyers by registered post."

17. On 16 September 2021, a further witness statement was filed by Mr Lowe stating that on 26 July 2021, the QFCRA contacted the Sudanese Embassy in Qatar to inquire about the whereabouts of the appellant, but despite follow up no response was forthcoming. On 31 August 2021, the QFCRA published a notice in the two most wide-spread newspapers in Qatar, one in English and the other in Arabic to bring to the appellant's attention the fact that the QFCRA was trying to contact him in relation to these proceedings. On 1 September 2021, the QFCRA served by registered post the Amended Appeal Response and the Application to Remove the Stay on Proceedings on the law firm acting for the appellant when he submitted the request to stay the proceedings. On 4 and 7 September 2021, the QFCRA published the notice in Al-Rakoba, said to be a widely read Arabic newspaper in Sudan. The notice was also posted on the newspaper's Facebook page. However, there has been no contact by the appellant, and his whereabouts remain unknown to the QFCRA.

18. That being so, the Tribunal held in its decision of 12 October 2021 that all reasonable steps had been taken to bring these applications to the appellant's attention. The Tribunal found that the QFCRA was entitled to the order for substituted service which it was seeking, and to have the stay lifted.

19. Since it was evident that the appellant would be unlikely to take any further part in the proceedings, the Tribunal stated in paragraph 12 of the decision that the "… QFCRA will however have to satisfy the Tribunal that it has fully taken the result of the criminal acquittals into account, and that it is appropriate to issue a revised Decision by way of Amended Response. The QFCRA should also consider whether permission to amend the Response is required under the Tribunal Rules Article 16."

20. This was given effect to by an order of the Regulatory Tribunal of 26 October 2021 which provided that by 23 November 2021 both parties were required to place any

further material they wish to be considered before the Tribunal after which the Tribunal would proceed to consider the matter on the papers. This date was later extended by the Registrar on the application of the QFCRA. The further material submitted by the QFCRA was to include submissions on the matters identified in paragraph 12 of the Decision issued by the Tribunal on 12 October 2021.

21. The QFCRA submitted further material being written submissions and a bundle of documents on 22 December 2021. No material or communications have been received by the Tribunal from the appellant.

The procedural course

22. As stated above, the Tribunal ordered the QFCRA to satisfy it that it is appropriate to issue a revised Decision by way of an Amended Response. This was because the Decision Notice issued by the QFCRA on 28 March 2011 was based to a greater or lesser extent on the alleged deliberate production by the appellant of false documents. These allegations are no longer pursued so far as they are allegations of deliberate falsity.

23. The Tribunal has not had to consider before the correct procedural course to be followed where, as in this case, the facts change between the time on which a Decision Notice is issued by the Regulatory Authority, and the time when the matter comes to be considered by the Tribunal on an appeal. Its initial view, as indicated by the above directions, was that on the particular facts of this case, and in particular the interposition of the criminal proceedings, a new decision notice might have to be issued, and of course served, effectively restarting the proceedings, and giving the appellant a fresh right of appeal.

24. However, in its submissions, the QFCRA has submitted that this is wrong, and that the correct procedural course was the one taken, namely to amend its Response to take account of the changed circumstances following the appellant's acquittal on the criminal charges. It submits that:

> “Basis for Amended Response
> 36. A review of the Decision Notice has been undertaken and the Regulatory Authority concluded that there remains sufficient evidence that Mr Omara, during the Relevant Period, contravened the INDI Rules based on Al Mal’s accounting and reporting failures as outlined in Paragraph 22 of these submissions.
> 37. The appropriate course of action against Mr Omara was to amend the Regulatory Authority’s response to the Appeal to avoid raising any matter which has been conclusively determined in the Criminal Proceedings. The Amended Response focuses on the accounting and reporting failures for which Mr Omara had responsibility during the Relevant Period.
> 38. As to the procedure adopted by the Regulatory Authority, it considers that the appropriate means of setting out its case is to amend its pleading before the Tribunal, rather than seek to make a fresh Decision Notice. The proper approach was considered by the UK Tribunal in *Jabre v FSA*. The Regulatory Authority should set out a revised case in its pleading in the Tribunal. Its revised case may be more lenient or more severe, so long as it is within the scope of the facts and circumstances set out in the Decision Notice. This results from the language of the “matter referred” used in the UK Financial Services and Markets Act 2000 as also used in Article 66 of the Financial Services Regulations. The “matter referred” is wider than the Decision Notice itself and encompasses all the facts and circumstances in it. Here, the Regulatory Authority relies on the same facts, but contends they give rise to different and less serious regulatory breaches albeit the penalty is appropriate.”

25. The Tribunal’s opinion on this matter is as follows. The case relied on by the QFCRA is *Philippe Jabre v Financial Services Authority* (Decision on Jurisdiction), 10 July 2006. This is a decision of the UK Financial Services and Markets Tribunal (“FSMT”) (now replaced by the Upper Tribunal under the same legislation) to the effect that the FSMT had jurisdiction to consider whether to make a prohibition order against Mr Jabre notwithstanding that, though the warning notice made against Mr Jabre had encompassed a prohibition order, the ultimate decision of the regulator had been to impose a fine only. The FMST held that when a “matter” is referred to it by a party who objects to a decision of the regulator, the tribunal is empowered to direct the regulator to take whatever steps it considers appropriate within the scope of the matter in question. It considers the matter *de novo*, and is not constrained by the terms of the original regulatory decision.

26. The FSMT's reasoning in *Jabre* depended largely on the language of the relevant statute and regulations. The QFCRA points out that the same language is used in the QFC's Financial Services Regulations.

27. There are however differences between the FSMT and the QFC Regulatory Tribunal. In *Jabre*, it was held that the FSMT was not an appeal tribunal but functioned as part of the regulatory process. The Regulatory Tribunal on the other hand is an appeal tribunal, as the language of both the statute, the QFC Law No. (7) of Year 2005 (as amended), and the Financial Services Regulations, make clear.

28. On the other hand, it is correct to state there are also relevant similarities in the function of the tribunals in both instances. In the *Jabre* case, by the UK legislation the statutory function of the FSMT was to determine what (if any) was the appropriate action for the regulator to take in relation to the "matter referred to it", and, on determining it, to remit the matter to the regulator with directions appropriate for giving effect to its determination.

29. Similarly, as is pointed out by the QFCRA, under Article 66 of the QFC Financial Services Regulations, "If the Regulatory Authority exercises any of its disciplinary powers under this Part 9, the Person concerned may … refer the matter to the [Regulatory Tribunal]."

30. By Schedule 4, paragraph 6.2, the Tribunal is to "determine what, if any, is the appropriate action for the Regulatory Authority to take in relation to the matter". The Tribunal is to "… remit the matter to the Regulatory Authority with such directions (if any) as the [Regulatory Tribunal] considers appropriate for giving effect to its determination…". Thus it is correct, as the QFCRA has submitted, that the language of the "matter referred" as used in the UK legislation is also used in the QFC Financial Services Regulations.

31. There are further relevant similarities. The language of the UK legislation provides that the tribunal "… may consider any evidence relating to the subject-matter of the reference, whether or not it was available to the Authority at the material time" (see *Jabre* at page 7 line 27). This is materially identical to that used in Financial Services Regulations which provides in Schedule 4 paragraph 6.1(1) that the Regulatory Tribunal "… may consider any evidence relating to the subject matter of the appeal, whether or not such evidence was available to the Regulatory Authority at the material time".

32. As has been established in the case law, on appeal the Tribunal considers the case *de novo* (*Abdelkareem v QFCRA* [2012] QIC (RT) 1 at paragraph 29) – in nontechnical language, it re-makes the decision depending on its view of the evidence and the arguments (*International Financial Services (Qatar) LLC v QFC Employment Standards Office* [2021] QIC (RT) 2 paragraph 40). In *Abdelkareem*, a case which also involved Al Mal Bank, the Tribunal observed at paragraph 29 that although the relevant rules describe a challenge against any decision of the Authority as an "appeal", the "…overall language of the legislation, however, indicates that our role is more akin to a tribunal deciding a dispute at first instance".

33. In reaching its conclusion on this issue, the Tribunal has noted that the *Jabre* case has been followed in the UK (*Fox Hayes v FSA*, 24 September 2007). It was applied in *Kuun v FSA*, 13 October 2009, where the tribunal held that the subject matter of reference is not the actual decision of the regulator, but the allegations made which led to the Decision Notice and that the tribunal must consider those allegations in the light of the evidence before it (paragraph 96). The *Jabre* case was cited in *ITV Plc v The Pensions Regulator* [2015] EWCA Civ 228, and though the court did not comment on the decision since the case before it concerned pensions rather than financial services, the court held at [63] that the tribunal can permit further evidence to be filed and receive fresh arguments, and noted that this supports the conclusion that it must be open to a regulator, in an appropriate case, to adduce additional grounds for its proposed regulatory action on a reference to the tribunal. In none of these cases is there a suggestion that a change in the position of the regulator necessarily requires a new

decision – the determinative point is that the "matter" is referred to the tribunal, and the regulator is not constrained in its case before the tribunal by the terms of the decision provided that it remains within the parameters of the matter.

34. Having considered the above matters, and notwithstanding its initial view, the Tribunal has concluded that the QFCRA has adopted a permissible approach in this case for the following main reasons: (1) the QFC Financial Services Regulations state that it is the "matter" that is the subject of the appeal, not the decision of the regulator; the "matter" is wider than the Decision Notice itself and encompasses all the facts and circumstances in it; (2) since the regulations provide that the Tribunal "… may consider any evidence relating to the subject matter of the appeal, whether or not such evidence was available to the Regulatory Authority at the material time", it follows that it is open to the regulator, in an appropriate case, to change the grounds on which it seeks to justify regulatory action, so long as it is within the scope of the facts and circumstances set out in the Decision Notice; (3) this also follows from the fact that as established by the case law of the Tribunal, it considers matters *de novo*; (4) this conclusion is supported by the UK case law applying similar provisions; (5) in general, allowing the QFCRA to revise its case by an Amended Response would not prejudice the appellant since appellants can amend their Notice or file a further Reply to the Amended Response; and (6) in the circumstance of this case, in fact there is no prejudice to the Appellant. This does not mean that the regulator has a right to raise a new case. It is in the Tribunal's discretion whether or not to allow a new case to be raised, and the exercise of the discretion depends on a consideration of all the relevant factors in the case (*ITV Plc v The Pensions Regulator*, ibid, at [67]).

35. Exercising its discretion, the Tribunal notes that the QFCRA is relying on the same basic facts as those set out in the Decision Notice, and that whilst the acquittals in the criminal proceedings rule out a number of the allegations made therein including those of fraud, the assertion that the appellant failed to reach the expected standards of an Approved Individual in the controlled function of Senior Executive for the bank is not inconsistent

with the criminal verdicts. It considers that the QFCRA may raise this case and to do so by amending its Response.

36. A special circumstance of this case may also be taken into account. This being the appellant's appeal, he should have ensured that he can be contacted by the QFCRA and the Tribunal. As explained earlier, he is now out of reach. If the QFCRA has to reissue a Decision, it may be said that the QFCRA should bear responsibility to make actual service of the new Decision on the appellant. The matter of procedure then becomes a tactical game. This would be most undesirable.

37. Article 16 of the Regulatory Tribunal Regulations and Procedural Rules provides that "The Regulatory Tribunal may at any stage give directions permitting the amendment of the appeal notice, the response or the appellant's reply …". The Tribunal will treat the QFCRA's submissions as seeking permission to amend its Response, and grants permission accordingly.

The QFCRA's case

38. The QFCRA's case relies on the breach by the appellant of various Principles set out in the Individuals Rulebook ("INDI") (version 4, in effect from 7 April 2008 until 5 December 2009) of which the Tribunal considers the following are relevant:

a) INDI 7.1.2 (AI Principle 2) - An Approved Individual must act with due skill, care and diligence in the carrying out of Controlled Functions;
b) INDI 7.1.3 (AI Principle 3) - An Approved Individual must observe appropriate standards of market conduct in the carrying out of Controlled Functions;
c) INDI 7.1.4 (AI Principle 4) - An Approved Individual must deal with the Regulatory Authority in an open and cooperative manner and disclose appropriately to the Regulatory Authority any information of which the Regulatory Authority would reasonably expect notice; and

d) INDI 7.1.5 (AI Principle 5) - An Approved Individual who is a Senior Manager must give appropriate priority to his management responsibilities and ensure that the business of the Authorised Firm for which he is responsible is effectively supervised and controlled and complies with the relevant requirements of the Regulatory System.

39. The following factual allegations against the appellant were made in support of the contraventions set out in the Decision Notice of 28 March 2011:

a) failure to take steps to call meetings of the Board of Directors of the bank;
a) directing the preparation and submission to the QFCRA and QFC Companies Registration Office (CRO) of false minutes of meetings of the Board of Directors;
b) incorrectly stating the capital position of the bank and including false information in relation to notifications made to the QFCRA;
c) acting improperly in relation to a bank account of the bank that was not reflected in its accounting books and records;
d) submitting a false prudential return to the QFCRA; and
e) failing to disclose the existence of a Wakala agreement that he arranged with a customer of the bank to other staff (except the Chief Financial Officer) or to the QFCRA and that he directed payments from the customer into the undisclosed account.

40. The QFCRA further relies on GENE 9.2.1 (General Rulebook) which requires an authorised firm to keep proper accounting records.

41. Following the appellant's acquittal on the criminal charges and in accordance with Article 319 of Qatar Criminal Procedure Code, the QFCRA asks the Tribunal to proceed on the basis that there was:

a) no forgery of company or bank documents by the appellant;
b) no forgery by the appellant;
c) no use of forged documents by the appellant; and
d) no misappropriation of funds by the appellant.

42. On that basis, the QFCRA's case is as follows.

43. As an Authorised Firm, the bank was required to keep proper accounting records in accordance with paragraph 9.2 of the GENE with respect to all sums of money received, expended and all sales and purchases of goods and services and other transactions by the Authorised Firm and the assets and liabilities of the Authorised Firm. Proper Accounting Records are crucial to generate accurate financial reports that are readily available for review by the QFCRA.

44. Such accounting records had to be enough to show and explain all transactions by the bank and had to be such to:

(a) disclose with reasonable accuracy the financial position of the bank;
(b) enable the bank to ensure that any accounts prepared complied with the requirements of GENE; and
(c) record the financial position of the bank as at its financial year end.

45. During the Relevant Period, the QFCRA says that there were various accounting failures by which the bank:

(a) operated a bank account with the Doha Islamic Bank which was not reflected in the bank's books and records (the "undisclosed account");
(b) failed to keep transactional records for payments in and out of the undisclosed account relating to various matters. The QFCRA's submissions detail these, and the Tribunal is satisfied that these were matters which should have been recorded.
(c) failed to keep records of and segregate client funds in the undisclosed account.

46. Board minutes of 21 June 2009 (including those of a subsidiary of the bank) record a resolution to increase the bank's paid up capital to USD 35,000,000.

47. Copies of the relevant minutes were provided to the CRO on 29 June 2009 with a notification of the increase of the bank's paid up capital to USD 35,000,000. The capital notification was signed by the appellant and the total amount paid for the shares is stated to have been received. Acting on this information the CRO amended the public register to reflect the increase in the bank's share capital.

48. The 29 June 2009 capital notification included a copy of a letter dated 2 April 2009from the Doha Islamic Bank certifying that an account in the name of Al Mal Bank LLC had a balance of USD 61,312,150 (the "Certificate").

49. According to the QFCRA, the Doha Islamic Bank has confirmed that the account number in the Certificate was for an account held by the subsidiary, not the bank. The balance in the relevant bank account at June 2009 was in fact approximately QAR 403,385 rather than USD 61,312,150 as was represented on the face of the Certificate.

50. A further capital notification was submitted to the QFCRA on 5 August 2009. This notification included a letter dated 4 August 2009 from the Doha Islamic Bank certifying that an account in the name of Al Mal Bank had a balance of USD 61,312,150 when in fact the balance in the relevant account was zero.

51. On 29 October 2009, the bank submitted a Prudential Return for the period July to September 2009 to the QFCRA in which it represented:

(a) cash and liquid assets of USD 25,728,000; and
(b) ordinary share capital of USD 27 million.

52. This was incorrect as according to the QFCRA during the period July to September 2009 the correct amounts were as follows:

(a) cash and liquid assets of USD 6 million; and

(b) ordinary share capital of USD 5.7 million.

53. Based on the above, the bank failed to maintain proper accounting records in that:

(a) it had an undisclosed account;

(b) it did not keep transactional records for the undisclosed account;

(c) it did not keep accurate accounting records of its share capital.

These accounting failures are a contravention of GENE 9.2.1.

54. The bank and the appellant failed to act in an open and cooperative manner with the QFCRA in that they failed to disclose the undisclosed account, and failed to disclose the bank's correct share capital.

55. According to the QFCRA, on 27 September 2009, AED 3 million was deposited into the undisclosed account pursuant to a Wakala Agreement for a customer, in circumstances where:

(a) The existence of the Wakala Agreement was not generally disclosed to other staff of the bank, and was not reported or disclosed to the QFCRA in the relevant monthly Close and Continuous Report submitted to the QFCRA;

(b) The Wakala Agreement was not in a form approved for use by the bank.

56. In the above circumstances, the bank failed to deal with the QFCRA in an open and cooperative manner in that it did not notify the QFCRA of the existence of the undisclosed account, provided incorrect notifications to the QFCRA with regards to the bank's capital position, and failed to disclose the existence of the Wakala Agreement in the relevant monthly Close and Continuous Report.

57. The QFCRA's case is that these reporting failures are a breach of INDI 7.1.2 – 7.1.5 on the part of the appellant. It is not alleged that the appellant has forged any document or misappropriated any funds. It is alleged that he failed to exercise proper oversight and due care and skill in respect of his activities as the holder of the Senior Executive Function responsible for the business the bank. The contraventions relate solely to the failures to adhere to the accounting requirements in the QFC, as a result of the bank's accounting and reporting failures to the Regulatory Authority.

Conclusion and sanction

58. The appellant has not participated in the appeal since the QFCRA filed the Amended Response in 2020. Further, as already noted, his Notice of Appeal is concerned with the stay pending the criminal proceedings, and not the substance of the case against him (which he may have reasonably chosen to deal with at a later stage). As part of the investigation, he did however give a substantial interview beginning on 1 June 2010 in which matters were put to him and he gave his response. The Tribunal has taken this into account and some relevant matters are as follows: It notes that the appellant mentioned that he had long experience in the banking sector and capital markets, and accepted that shortcomings had occurred.

59. However the Tribunal is satisfied that the appellant was in breach of his regulatory duties as CEO of the bank in the respects alleged by the QFCRA in its Amended Response, which it is satisfied do not contradict the appellant's acquittal in the criminal proceedings. They do however show a breach of the duty of due skill, care and diligence in the carrying out of his Controlled Functions as CEO. They also show a failure to deal with the regulators in an open and cooperative manner and to disclose to the regulators information of which they would reasonably expect notice. Issues relating to a bank's capital are very important, and there were clearly serious accounting and reporting failures in this respect for which he must take responsibility. Likewise, the Wakala agreement was a substantial one in the context of this small

bank, and again in the Tribunal's view he must take responsibility for the failures in this respect also.

60. The Decision Notice of 28 March 2011 imposed a prohibition order on the appellant, but considering that over 10 years has elapsed since the alleged conduct and the verdicts in the criminal proceedings, the QFCRA does not consider that a prohibition order is now warranted. The Tribunal agrees.

61. In the Decision Notice, the financial penalty imposed on the appellant was USD 250,000. The QFCRA submits that in view of the appellant's acquittal in the criminal proceedings and the consequent withdrawal of allegations of forgery, a lower financial penalty is appropriate in the sum of USD 200,000. It considers that this is appropriate given the serious nature of the contraventions, the impact and potential impact of the contraventions on the objectives of the Regulatory Authority, and the need to deter others from committing similar contraventions.

62. The Tribunal has considered whether the proposed reduction in the financial penalty adequately reflects the appellant's acquittal in the criminal proceedings. It has concluded that the QFCRA is right to submit that the contraventions are serious and had the potential to cause grave consumer harm and harm to the reputation of the QFC.

63. In *Karim Noujaim v QFCRA* [2014] QIC (RT) 1, the Tribunal said that the fact that appeals are decided *de novo* "…does not mean, however, that in cases where the penalty or penalties are under appeal this Tribunal will pay no heed to the sanction regarded as appropriate by the Authority. It is to be noted that in the *Abdelkareem* case itself, when it came to the question of financial penalty, the Tribunal upheld the figure in question on the basis that that figure was "within an appropriate range": paragraph 188. Indeed, it went on to say that the penalty "might have been on the high side of the range", but it did not interfere with the penalty. That approach appears to us to be the correct one. This Tribunal will not intervene on appeal merely to make minor adjustments to the penalties imposed by the body which has the day to day

responsibility for ensuring compliance with the FSR and the Principles applicable to financial bodies and individuals within the QFC. That sort of tinkering with penalties, if adopted, would merely encourage inappropriate appeals wasteful of the resources of this Tribunal, the Authority, and indeed of many Appellants. Appeals against penalties will be allowed if the penalties imposed by the Authority are judged to be clearly excessive in amount or clearly inappropriate."

64. As to general policy, reference is made to the Financial Services (Financial Penalties and Public Censures) Policy 2009, s. 14. On balance, the Tribunal has concluded that the reduced penalty is neither excessive in amount nor clearly inappropriate. Since the appellant has not participated in the appeal, the Tribunal has no information as to his means that could lead to a further reduction in the penalty.

65. It follows that the appeal will be dismissed, save that in accordance with the Amended Response, the financial penalty will be reduced to USD 200,000.

Decision

IT IS ORDERED THAT:

The appeal is dismissed, save that the financial penalty is reduced to USD 200,000.

By the Regulatory Tribunal,

(signed)

Sir William Blair, Chairman

A signed copy of this Decision is held with the Registry