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: [2020] QIC (F) 2

IN THE CIVIL AND COMMERCIAL COURT

OF THE QATAR FINANCIAL CENTRE

FIRST INSTANCE CIRCUIT

27 February 2020

CASE No: 11 of 2019

QATAR FINANCIAL CENTRE REGULATORY AUTHORITY

Applicant

v

FIRST ABU DHABI BANK P.J.S.C

Respondent

JUDGMENT

Before:
Justice Bruce Robertson
Justice Arthur Hamilton
Justice George Arestis

ORDER

1. The application made pursuant to Article 18.3.5 of the Regulations and Procedural Rules of the Court for an Order by the Court that the Respondent has been properly served is granted;

2. The Court further orders that, pursuant to Article 59(4) of the Financial Services Regulations, the Financial Penalty of QAR 200,000,000 in the Decision Notice dated 21 August 2019 issued to the Respondent is a debt payable to and recoverable by the Applicant; and

3. Pursuant to Article 10.4.9 of the Regulations and Procedural Rules of the Court, the Court orders for payment of interest (at a rate to be determined by the Registrar) by the Respondent from the date the application was filed, namely 9 September 2019.

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JUDGMENT

1. This application is brought before the Court by the Qatar Financial Centre Regulatory Authority ('the Regulatory Authority') in terms of Article 59(4) of the Financial Services Regulations ('FSR'), which provides:

> "Any penalty that is not paid within the period stipulated by the Regulatory Authority may on application to [the Court] be recovered by the Regulatory Authority as a debt."

The financial penalty of QAR 200,000,000 imposed by the Regulatory Authority by its Decision Notice issued on 21 August 2019 ('the Decision Notice') has not been paid by the First Abu Dhabi Bank PJSC ('the Bank') within the 14 days allowed for payment. No appeal to the Regulatory Tribunal against that Decision Notice has been filed by the Bank. Nor has any application been made to it for stay of execution. The Bank has not participated in any way in this current proceeding.

2. This application gives rise to interesting and difficult questions concerning the role and functions of the Court upon an application being made to it under Article 59(4). To these we shall return. First, it is appropriate to place these questions in the factual context of this case. The following three paragraphs, in so far as containing statements of fact, are based on the uncontested witness statement dated 29 July 2018 by Mr Andrew Lowe, the

Regulatory Authority's Director of Enforcement; the immediately succeeding paragraphs, in so far as containing statements of fact, are based on the findings in the Decision Notice.

3. The currency of the State of Qatar is the Qatari Riyal ('QAR'). It has since 2001 been fixed to the US Dollar ('USD'). Until the events described below, it had low volatility and high stability with a strong correlation between onshore and offshore trading.

4. On 5 June 2017 several countries cut off diplomatic relations with Qatar. These countries included the United Arab Emirates ('UAE'). The Bank has its headquarters in the UAE. Notwithstanding the historical stability of the QAR / USD peg, the QAR depreciated sharply on 23 June 2017 (the weekend leading to the commencement of Eid Al Fitr 2017) to levels which represented record lows against the USD. Subsequent analysis of exchange rates quoted by the Bank over that holiday weekend pointed to unusual frequency and rates. Later that year there was speculation in the press about state-sponsored attacks upon Qatar and its currency. An article in the Washington Post on 16 July 2017 was headed "UAE orchestrated hacking of Qatar government sites, sparking regional upheaval, according to US intelligence officials." An article in the Intercept on 9 November 2017 was headed "Leaked documents expose stunning plan to wage financial war on Qatar- and steal the World Cup." The article spoke of a proposal for currency manipulation (of the QAR). From a few weeks after publication of the latter article, there was a significant decrease in the Bank's quotes of QAR / USD.

5. Improper manipulation of the QAR, if that occurred (or was likely to recur), clearly had serious implications for the Qatar Financial Centre ('QFC'). On 18 March 2018 the Regulatory Authority initiated an investigation into the matter. As the Bank was a licensed body in the QFC, such an investigation was, in principle, clearly within its remit. On 19 March 2018 the Regulatory Authority, in pursuance of Article 52(2) of the FSR, issued to the Bank a written notice to produce certain documents and information. Various enquiries were also carried out, including interviews of certain individual employees of the Bank. Certain documentation and information was provided. An issue, however, arose as to whether the Bank was obliged to produce relevant materials outside the QFC. The Regulatory Authority maintained that the Bank was so obliged, the Bank that it was not.

6. Thereafter, on 29 July 2018, the Regulatory Authority applied to this Court for judicial assistance in the enforcement of its written notice, including with respect to materials held outside the QFC, and for an order that the Bank preserve any documents, books and records in its possession, custody or control, in so far as they were responsive to that notice. That application was opposed, although by the Bank styling itself as "First Abu Dhabi Bank PJSC- QFC Branch." On 18 November this Court, after a hearing, ordered, among other things, that the Bank preserve documents responsive to the notice and that it comply with the notice. A judgment was issued ('the November Judgment').

7. Thereafter the Regulatory Authority wrote on numerous occasions to the Bank seeking the latter's compliance with the November Judgment. The Bank refused to confirm that it would comply with that Judgment, including preserving documents responsive to the

notice. On 6 December 2018 the Regulatory Authority asked the Bank to provide an affidavit sworn by a board member or senior executive of the Bank setting out the steps which it had taken to preserve relevant documents, and to deliver that affidavit by 10 December 2018. The Bank did not provide any such affidavit. On 12 December, Mrs. James, a senior official of the Bank in Doha, attended a meeting with officials of the Regulatory Authority. The narrative given in the Decision Notice as to this meeting is as follows:

> "5.10 On 12 December 2018, the Regulatory Authority held a meeting with Ms A. [Mrs. James, as anonymised] In the meeting, Ms A was unable to confirm that the documents required by the Notice to Produce were being preserved by FAB, with the exception of those held at the QFC branch office of FAB. Ms A was unable to give any specific details of how, where and what documents were preserved."

8. On 16 January 2019 the Bank applied for permission to appeal the November judgment and for a stay of its execution. On 17 January 2019 the Bank wrote to the Regulatory Authority "representing that the responsive documents to the Notice to Produce were adequately, effectively and properly preserved by [the Bank's] existing policies and procedures (Decision Notice paragraph 5.12)."

9. On 17 February 2019 this Court, after an urgent oral hearing, made an order which included the following:

"That the Application of the Respondent for a stay of execution of the requirement in the judgment of 18 November 2018 to **produce** documentation is **granted** until the final judgment of the Appellate Division of the Court in this matter is delivered;

That the Application of the Respondent for a stay of execution of the requirement in the judgment of 18 November 2018 to **preserve** documentation is **refused**;

That the Application of the Applicant for the Respondent to file and serve an **affidavit** on the procedures and processes that the Respondent has put in place worldwide to preserve the documents ordered to be produced under the judgment of 18 November 2018 is **granted**. The affidavit is to be filed and served by no later than **4 March 2019**."

On 27 February, the Bank filed an application for permission to appeal that judgment ('the February Judgment'). That application and the application for permission to appeal the November Judgment were listed to be heard together on 17 March 2019. They were so heard by the Appellate Division.

10. Meanwhile on 19 February Mrs. James was interviewed. According to paragraph 5.16 of the Decision Notice she "confirmed in her interview that the Representation made by FAB regarding preservation of responsive documents to the Notice to Produce was incorrect,

insofar as existing policies and procedures only covered 'hard copy' documents. As a result, the Regulatory Authority did not know if documents responsive to the Notice to Produce had been, and were being, properly and adequately preserved. The Regulatory Authority also had not received the Affidavit or any other assurances."

11. On 13 May 2019 the Appellate Division handed down its judgment. It granted leave to appeal but, subject only to a qualification with regard to certain of the classes of documents called for in the notice of 19 March 2018, dismissed both appeals.

12. On 14 May the Regulatory Authority wrote to Mrs. James seeking compliance with the Appellate Judgment. On 15 May Mrs. James wrote to the Regulatory Authority setting out, among other things, a purported interpretation of the effect of the Appellate Division's judgment. She suggested that it meant that "documents held outside of the QFC may only be requested if such documents relate to regulated activities carried on in or from the QFC" (underlining in original) and that the notice of 19 March 2018 and the orders of this Court must now be read and construed against that interpretation. As observed in a subsequent judgment of Court in the matter of contempt of court, that interpretation and suggestion were without any foundation. The Appellate Division's judgment could not reasonably be read in that light.

13. On 20 May the Regulatory Authority again wrote, demanding compliance with the Courts' orders. The response on 21 May was to the effect that the Bank was considering certain correspondence from the Court. An email was sent by the Regulatory Authority on 21 May

again insisting on compliance. There was no compliance, only a letter of 19 June accusing the Regulatory Authority of acting in bad faith. On or about the same date the Bank peremptorily closed its offices in Doha. It did not apply for withdrawal from the QFC.

14. Subsequently proceedings for contempt of court were brought in this Court by the Regulatory Authority against the Bank. In these proceedings the Regulatory Authority initially sought the imposition by the Court of a fine for contempt of court. Ultimately that application for imposition by the Court of a fine was withdrawn, the Regulatory Authority having in the meantime given to the Bank the Decision Notice of 21 August 2019, which is the foundation of the present application under Article 59(4) of the FSR. The Court, by its judgment dated 17 September 2019, restricted the disposal to a finding of contempt of court ('the September Judgment').

15. If the Court is to exercise the jurisdiction under Article 59 it must be satisfied that there has been proper lawful service of all relevant documentation.

16. The January 2020 submissions of the Advocate to the Court contained a comprehensive summary of the attempts made by the Regulator to serve relevant documents on the Bank and is annexed.

17. On 17 December 2019, the Regulator filed an application under Article 18.3.5 of Court's Regulations and Procedural Rules for an order that service had been effected.

18. Counsel in written submissions, and orally, traversed in great detail questions of service, methods of achieving it, practice and procedure in this area, the requirements of service in Abu Dhabi of foreign processes and the need for expert opinion as to foreign law.

19. Despite the considerable and careful work undertaken by all counsel dealing with possibilities and problems, by the conclusion of the hearing before us counsel were agreed that an order for substituted service should be made. We entirely agree. All the regulatory requirements have been complied with and, on the facts, every possible sensible step has been made by the Regulator to inform the Bank about the various steps in the proceedings. There has been a determined and orchestrated campaign to thwart the moves made. We are satisfied on the evidence that the Bank has had notice and if there have been problems they have been entirely of the Bank's making.

20. There can be no doubt that such an order is necessary, just, and appropriate. It is made accordingly.

21. Against the earlier narrative it is necessary to consider the terms of the Decision Notice. Although Mr. Jaffey QC for the Regulatory Authority submitted that the role of the Court on an application under Article 59(4) was narrowly restricted, he accepted that it was legitimate for the Court to have regard to the terms of that Notice. Although it is unnecessary to set out its whole terms, it is appropriate to consider and discuss certain parts of it. It opens with the action taken (imposition of a financial penalty of QAR 200,000,000 and a requirement to pay QAR 45,111.12 by way of reasonable costs and expenses)

followed by a table of definitions. It then sets out a "SUMMARY OF REASONS FOR THE ACTION", identifying three contraventions of Relevant Requirements, namely,

(a) **FSR Article 57**: FAB obstructed, or intended to obstruct, the Regulatory Authority in the exercise of its functions;

(b) **GENE 1.2.2 (Principle 1)**: FAB failed to observe a high standard of integrity in the conduct of its business; and

(c) **GENE 1.2.14 (Principle 13)**: FAB failed to deal with the Regulatory Authority in an open and cooperative manner."

The summary continues:

> "To date, FAB has intentionally failed to comply with the Regulatory Authority's Notice to Produce, and subsequent orders of the Court requiring FAB to comply with the Notice to Produce, and to provide assurance requested by the Regulatory Authority regarding the preservation of the relevant information. In failing to provide the information pursuant to the Notice to Produce and the assurances regarding preservation, FAB has contravened the Relevant Requirements as set out in this Decision Notice. In particular, FAB has demonstrated a fundamental lack of integrity in its response to the Regulatory Authority's investigation into potential wrongdoing concerning manipulation of the QAR.
>
> The Regulatory Authority considers that the Action supports the objectives of the Regulatory Authority and that the Action is appropriate in the

circumstances having regard to the Relevant Requirements and the conduct of FAB.

The Regulatory Authority considers the Financial Penalty is appropriate after taking into account the following factors:

(a) FAB's obstruction of the Regulatory Authority's investigation to date has been intentional, extends over a significant period of time and has frustrated the Regulatory Authority in conducting its statutory functions;

(b) the seriousness of the subject matter of the underlying investigation, including alleged manipulation of the QAR;

(c) the impact the obstruction to date has had, and continues to have, on an ongoing investigation of the Regulatory Authority under Article 50(1) of the FSR;

(d) the Financial Penalty represents an appropriate penalty for FAB's obstruction to date and failure to comply with the Notice to Produce from 2 April 2018 to the date of this Notice;

(e) the need to punish and encourage immediate compliance by FAB for its conduct and to deter any further obstruction of the investigation;

(f) the value of the Financial Penalty as a proportion of FAB's key financial indicators as (sic) the last financial year 2018, as outlined in Table A below. FAB is a major financial institution of global importance and scale. Any penalty imposed on FAB needs to reflect the seriousness of its conduct and amount to a meaningful sanction that will deter further misconduct:

Table A: Financial Penalty as a proportion of key financial indicators

Financial indicators (as at end of 2018)	AED	USD	Penalty in USD	%
Market Capitalisation	153,655,000,000	41,839,346,494	55,000,000	**0.13%**
Net profits	12,066,389,000	3,284,471,086	55,000,000	**1.67%**
Net assets	101,973,000,000	27,766,643,975	55,000,000	**0.20%**

(g) the Financial Penalty is consistent with fines imposed by other international regulatory bodies as set out in **Appendix 3**; and

(h) deterrence.

Taking into account the factors outlined above, in particular that FAB's misconduct identified in this Decision Notice is of an entirely exceptional level of seriousness and gravity, the Financial Penalty imposed is fair and reasonable."

After references to the Relevant Provisions it sets out in paragraphs 5.3-5.34 under "FACTS AND CIRCUMSTANCES RELIED ON" (These constituted, in substance, the historical narrative given at paragraphs 6 to 13 above). Under the heading "CONTRAVENTIONS" there are set out in fuller details the bases for the stated contraventions of FSR Article 57, Principle 1 and Principle 13. That section is in the following terms:

"FSR Article 57

Based on the matters outlined in paragraphs 5.3 – 5.34 of this Decision Notice, FAB contravened the FSR Article 57 by obstructing, or intending

to obstruct, the Regulatory Authority in the exercise of its functions because:

(a) FAB failed to give or produce information or documents, specifically:

i. during the period 2 April 2018 to present, FAB failed to comply with a Notice to Produce;

ii. during the period 18 November 2018 to present, FAB failed to comply with Court orders to preserve responsive documents; and

iii. during the period 4 March 2019 to present, FAB failed to provide an Affidavit ordered to be produced by the Court to confirm whether responsive documents are properly preserved;

(b) FAB failed to give assistance in relation to an investigation, specifically:

i. during the period 2 April 2018 to present, FAB failed to comply with a Notice to Produce;

ii. during the period 18 November 2018 to present, FAB failed to comply with Court orders, to preserve responsive documents; and

iii. during the period 4 March 2019 to present, FAB failed to provide an Affidavit ordered to be produced by the Court to confirm whether responsive documents are properly preserved.

GENE 1.2.2 (Principle 1)

Based on the matters outlined in paragraphs 5.3 – 5.34 of this Decision Notice, FAB contravened GENE 1.2.2 (Principle 1), in that FAB failed to observe a high standard of integrity in the conduct of its business because:

(a) FAB deliberately and intentionally engaged in obstructive conduct and deliberately breached the orders of the Court, knowing that such conduct would likely harm the Regulatory Authority's ongoing Investigation; and

(b) FAB made the Representation to the Regulatory Authority which was materially incorrect.

GENE 1.2.14 (Principle 13)

Based on the matters outlined in paragraphs 5.3 – 5.34 of this Decision Notice, FAB contravened GENE 1.2.14 (Principle 13), in that FAB failed to deal with the Regulatory Authority in an open and cooperative manner because:

(a) FAB failed to comply with the Notice to Produce and properly and adequately preserve responsive documents to the Notice to Produce; and

(b) FAB made the Representation which was materially incorrect."

22. So far as drawn to our attention, there is no existing judicial guidance in the QFC as to the approach of the Court to an application under Article 59(4). Although *QFCRA v Recardo* [2015] QIC (F) 1 was concerned with that Article, those proceedings were by way of claim and summary judgment. In any event, there was no discussion in that judgment of the judicial role in an application under Article 59(4). Although the FSR draw much from the Financial Services and Markets Act 2000 (a UK statute), it is clear and accepted that there is a significant difference between section 390(9) of that statute and Article 59(4). It is implicit (as was accepted by Mr Jaffey for the Regulatory Authority) in the Article's provision for an application being made to the Court that it is envisaged that a judicial act is called for. It is not an administrative "rubber stamp". Both Mr Jaffey and the Amicus (Professor Qureshi QC) spoke of there being a "discretion" in the Court, although they differed sharply as to the scope of such a discretion. Whether or not it is appropriate to refer to the Court's role as being one of "discretion", it is clear that some form of judicial scrutiny is called for.

23. Before addressing the question of what that might be, it is appropriate to clear the ground by stating what it is not. It is not an appeal against the Decision Notice. The FSR makes provision by Article 66 for a right of appeal to the Regulatory Tribunal. On an appeal to it, that body (which is expert in financial matters) has wide-ranging powers to consider anew all factual and legal issues with respect to which a decision notice may be challenged. The Bank, having had due notice in the Decision Notice of its right of appeal to the Regulatory Tribunal, has chosen not to exercise it. It is not for this Court to take to itself any appellate function.

24. Mr Jaffey's submissions, put shortly, as to the scope of the Court's "discretion" was that it was akin to that where a court was invited to enforce a judgment of a foreign court or of an arbitral tribunal. Only if enforcement of the Decision Notice would be contrary to public policy or involve a breach of natural justice or fraud would the Court be justified in acting otherwise than to give judgment for the financial penalty imposed by the Regulatory Authority. There was, it was submitted, no such vitiating factor here.

25. Professor Qureshi's submission, put shortly, was that a test of "proportionality" was appropriate. "Rationality" was also referred to. It was in the nature of a judicial review, although not strictly such a procedure.

26. We are not satisfied that either of these submissions accurately identifies the scope of the Court's function in an application under Article 59(4). As to Professor Qureshi's submission, it may be that, notwithstanding the English courts' current reluctance to adopt proportionality as a test for judicial review (*R (Keyu) v Secretary of State for Foreign and Communication Affairs* [2016] AC 1355), this Court might be prepared in an appropriate case to adopt it. Lord Diplock in *CCSU v Minister for the Civil Service* [1984] 3 All ER 935 envisaged it as a possible development of English law. It has had a long history in the civilian tradition (see *Bank Mellat v HM Treasury (No.2)* [2013] 4 All ER 533, per Lord Reed at paragraph 68). But, the real difficulty with Professor Qureshi's approach is that it smacks of an exercise of judicial review in the conventional common law sense. The jurisdiction under Article 59(4) cannot involve a detailed critique of the reasoning in the Decision Notice of the kind familiar in common law judicial review. Mr Jaffey's analogy

with the enforcement of foreign judgments and arbitral awards is closer to the mark but does not strike it. In such situations one is concerned with enforcing decisions arrived at following a judicial or, in the case of arbitration, a quasi-judicial process. Quite properly and in accordance with international practice, the very restricted categories referred to by Mr Jaffey there apply. Here, on the other hand, at least in a case where the financial penalty has not been scrutinised by any appellate body, there may be more room for flexibility. It is not easy to identify a precise test. But, as a broad principle, it may be sufficient if on judicial scrutiny the translation of the Regulatory Authority's determination of the amount of the penalty would manifestly offend the Court's sense of justice. This test may not easily be satisfied. However, if it should appear, using a broad brush, that there is a fundamental error of approach by the Regulatory Authority which inevitably goes significantly to the quantum of the financial penalty, that may be sufficient to entitle the Court to decline to grant judgment in the sum fixed by that Authority.

27. Lest it be overlooked, we should mention that the determination of the penalty of QAR 200,000,000 proceeds on the basis that there is an *allegation* of improper conduct in respect of manipulation of the currency, *not* on the basis that any such manipulation, or attempt at manipulation, has been established. This is clear from the terms of the Decision Notice itself. It was confirmed orally by Mr Jaffey.

28. The Decision Notice proceeds on the basis that there was breach by the Bank of the Relevant Requirements in three respects: (i) obstruction or intention to obstruct the Regulatory Authority in the exercise of its functions, contrary to Article 57 of the FSR, (ii)

breach of GENE Principle 1 by failure to observe a high standard of integrity in the conduct of its business and (iii) breach of GENE Principle 13 by failure to deal with the Regulatory Authority in an open and co-operative manner.

29. There is no doubt whatsoever that, on the basis of the narrative in the Decision Notice (which is not challengeable for present purposes), there was breach of Article 57. A reading of that narrative leads to the immediate and inevitable conclusion of such a breach. It was also, of its kind, a serious breach since the investigation under way was into an allegation of what was, on any view, a matter of prime importance.

30. A greater difficulty may arise with respect to breach of GENE Principle 1. The judgment of the Regulatory Tribunal in *Abdelkareem v Qatar Financial Centre Regulatory Authority* [2012] QIC (RT) 1 gives useful guidance on what may constitute breach of a Principle of this kind. At paragraphs 130-136 the Regulatory Tribunal, having referred to equivalent principles then used by the regulator in the UK and to certain determinations of the Financial Services and Markets Tribunal, said this:

> "134. We respectfully agree with the learned members of our UK counterpart.
>
> 135. Integrity is premised fundamentally on, but also goes beyond, honesty. A person is "honest" when he speaks no falsehood- perhaps by not speaking at all. But in some circumstances, integrity requires him not to hide behind silence. He has to step forward, e.g., to raise an issue, press for a proper

response, or even sound an alarm. As we discern, it is for this reason that the FSA's APER 4.1.6 regards an approved person's deliberate failure to correct a known material misunderstanding of a client, employer firm, or the regulator as falling short of acting with integrity.

136. We believe that it is also for this reason that the requirement of integrity is set out in the beginning of the principles of conduct. So much of financial service is about mutual trust and reliance. Moreover, as the modern regulator strives not to impede legitimate business, regulated persons must accept a corresponding positive duty to act appropriately- not merely a negative duty not to act inappropriately."

So, in accordance with ordinary language, integrity connotes honesty and other aspects of moral rectitude. A failure to be honest or otherwise be of moral rectitude may amount to a failure to observe a proper standard of integrity. However, as noted in paragraph 135, honesty may in some circumstances demand that the person speak up, not remain silent. In such circumstances, "integrity requires him not to hide behind silence". A deliberate failure to correct a known material misunderstanding may fall short of acting with integrity. [In passing it may be noted that "AI Principle 1 discussed in *Abdelkareem* is not in precisely the same terms as the current Principle 1; but the difference seems immaterial for present purposes.]

31. When Mr Jaffey was asked by the Court whether the findings of fact in the Decision Notice could properly support a conclusion of breach of Principle 1, his initial reaction was that the Court was now enquiring into factual matters with respect to which, if pursued, he might have to lead evidence. But, of course, it was not. The Court was only concerned to ensure that there was, on the undisputed facts, a proper basis for inferring conduct which could amount to failure to observe a proper standard of integrity. As his submissions in the opening speech developed, Mr Jaffey acknowledged that a failure to observe a proper standard of integrity could not be inferred merely from the Bank's challenge, on jurisdictional grounds, to the Regulatory Authority's calls in so far as they sought documents and other information from outside the QFC. Such a challenge might not of itself infer dishonesty or lack of integrity. So, in that respect, he conceded, lack of integrity might be restricted to the period between the delivery of the Appellate Division's judgment in May 2019 and the issuing of the Decision Notice in August of that year. But, while such continued conduct in the light of the judgment of the higher court can readily be seen to constitute obduracy, that of itself might not amount to lack of integrity. A litigant who fails all the way to the highest court in the land and continues thereafter to claim that he is in the right may be wrong-headed (and exposed to the consequences of having lost at all hands) but that does not of itself render him dishonest or lacking in integrity- though it may, of course, exacerbate any breach with respect to obstruction. However, in the circumstances of this case, that may not be the end of the matter.

32. In the final speech Mr Jaffey raised for the first time an argument that a breach of Principle 1 could be found in other matters, namely those mentioned in paragraphs 5.6, 5.9, 5.10 and

5.11 of the Decision Notice. Although these submissions could in no way be regarded as a response to anything which Professor Qureshi had submitted in argument, the Court, regard being had to the fact that the question of a basis for lack of integrity had been raised for the first time by the Court itself in the course of the hearing, allowed them to be developed. In substance, these were contentions that failure to produce an affidavit vouching that steps had been taken to preserve documents or otherwise to give assurances as to their preservation amounted to a lack of integrity. It was further suggested that the Bank's application to stay the November Judgment, pointed to an intention, if that were granted, to destroy with impunity the documents in question.

33. We have come, in the end, to the view that in the particular circumstances of this case as set forth in the Decision Notice, the Regulatory Authority was entitled as at the date of that Notice to conclude that the conduct of the Bank amounted to a failure to observe a high standard of integrity in the course of its business. As at August 2019 the Bank had for some weeks stood in defiance of the orders of the highest court in the jurisdiction and had closed its office in that jurisdiction. Looking at matters retrospectively at that time it was a possible and legitimate inference that, whatever ruling a court of law in this jurisdiction might make, the Bank had no intention of ever producing, for the purposes of the investigation, any documents or other materials held outside the QFC. It was prepared to flout the courts and accordingly to act in defiance of the rule of law. As Mr Jaffey pointed out, it is critical to the sound functioning of any financial system that the rule of law be observed. Blatant defiance of that rule could in such circumstances amount to a lack of due integrity. The Regulatory Authority was, we are satisfied, entitled to reach that conclusion.

34. Breach of Principle 1 is also stated in the Decision Notice to have occurred because the Bank made a representation to the Regulatory Authority which was manifestly incorrect. That is a reference to matters mentioned in paragraphs 5.10 and 5.16 of the Decision Notice (see paragraphs 7 and 10 above). The representation referred to in paragraph 5.10 was contained in a letter of 17 February 2019 signed by Mrs. James., "For and on behalf of First Abu Dhabi Bank, Qatar Financial Centre". Mrs. James was then interviewed on 19 February 2019, as referred to in paragraph 5.16. Although the Decision Notice refers to a representation said to have been made in the letter of 17 January as being "materially incorrect", it is nowhere stated that that representation was made dishonestly (either by Mrs. James personally or the Bank). There may be a question whether any inference of lack of integrity could properly be drawn from the representation referred to; but in light of our conclusion as regards lack of integrity in paragraph 33 above, it is unnecessary to reach a conclusion on that matter or to discuss it further.

35. The Decision Notice also relied on a breach of Principle 13. In so far as it refers to the representation by Mrs. James, reference is made to paragraph 34 above. Otherwise, the breach is essentially a repetition of the charge of breach of Article 57 in relation to the production and preservation of documents. It adds little, if anything, for present purposes to the breach of that Article and of Principle 1 as discussed above. It is unnecessary to discuss this further.

36. Consequently, in substance the Regulatory Authority was entitled, on the whole material before it, to conclude that there had been a persistent failure over a substantial period (and

continuing) by the Bank to produce and preserve information and documents lawfully required by the Authority with respect to an inquiry into an important matter and that the Bank had in the conduct of its business failed to observe a high level of integrity. That was, from the viewpoint of the Authority charged with the regulation of the QFC, a very grave matter justifying the imposition of a substantial financial penalty. The figure of QAR 200,000,000 might at first sight seem high. But, regard being had to the nature and extent of the breaches, to the importance of preserving the integrity and reputation of the QFC and to the substantial financial penalties in recent times imposed by other regulators internationally, it cannot be said to be of such an amount as could justify this Court refusing to give judgment for it, on an application to it under Article 59(4). The application, including the claim for interest on the penalty, is accordingly granted.

37. Encouraged by an earlier observation of this Court, we heard argument in relation to the enforcement abroad of financial penalties. In the event, this matter, as both counsel agreed, does not require any decision by this Court.

38. We are much obliged to both counsel for their assistance in this matter.

By the Court,

AC Hamilton

Justice Arthur Hamilton

Representation:

For the Applicant:	Mr. Ben Jaffey QC and Ms. Naina Patel, Blackstone Chambers, London.
For the Respondent:	The Respondent did not appear and was not represented.
Amicus Curiae:	Professor Khawar Qureshi QC, McNair Chambers, Doha, Qatar.

Annex

Attempts to effect service since August 2019

Date	Means of service	Response if applicable
Decision Notice		
21 August 2019	Attempts made to call six telephone numbers associated with the Respondent in Qatar to advice that the Applicant had a document to deliver	Numbers described as not in service, except one mobile number which rang out.
21 August 2019	Applicant attended the Respondent's principal place of business in the QFC to attempt service – office closed and notice on door that the Respondent no longer occupied premises and queries should be addressed to the address/email address in that notice.	
21 August 2019	Emails sent to prabha.james@bankfab.com; alex.irving@bankfab.com and zulfiqar.sulaiman@bankfab.com attaching Decision Notice	• A quarantined email notice was received from Prabha James' email account which said that the email had not reached its intended recipient. • Delivery failure notices were received in respect of Alex

		Irving and Zulfiqar Sulaiman's email addresses. The Applicant's IT department concluded that the Respondent's server were rejecting these emails.
21 August 2019	Applicant sent three letters by international courier DHL to the Respondent's Head Office in Abu Dhabi to the Legal Department, Alex Irving and Zulfiqar Sulaiman.	• On 28 August 2019, Applicant received a telephone call from DHL stating that the package to the Legal Department had been rejected as it needed a contact name. It was also said that the contract with Applicant was at an end and the Respondent did not need or require the documents any further. • 5 September 2019 – package to Alex Irving was returned. • As at 9 September 2019, package to Zulfiqar Sulaiman was showing as delivered on

		24 August but was in the princess of being returned.
Debt Application		
9 September 2019	Attempts made to call six telephone numbers associated with the Respondent in Qatar to advice that the Applicant had a document to deliver	Numbers described as not in service, except one mobile number which rang out.
9 September 2019	Applicant attended the Respondent's principal place of business in the QFC to attempt service – office closed and notice on door that the Respondent no longer occupied premises and queries should be addressed to the address/email address in that notice.	
9 September 2019	Emails sent to prabha.james@bankfab.com; alex.irving@bankfab.com and zulfiqar.sulaiman@bankfab.com; and also Hamish.lal@akingump.com	• A quarantined email notice was received from Prabha James' email account which said that the email had not reached its intended recipient. • Delivery failure notices were received in respect of Alex Irving and Zulfiqar Sulaiman's

		email addresses. The Applicant's IT department concluded that the Respondent's server were rejecting these emails. • On 15 September 2019, Hamish Lal informed the Applicant that he was no longer on the record
9 September 2019	Applicant sent letter by international courier DHL to the Respondent's Head Office in Abu Dhabi to the Legal Department	DHL has informed the Applicant that it has instructions from the Respondent not to accept any shipments from the Applicant.
28 October 2019	Al Ansari and Associates, acting for the Applicant, sent five emails to different members of the Respondent's management attaching Arabic and English versions of the Debt Application and Procedural Notice.	
28 October 2019	Al Ansari and Associates, acting for the Applicant, sent two facsimiles to	

	two of the Respondent's facsimile numbers addressed for the attention of the Respondent's Management attaching Arabic and English versions of the Debt Application and Procedural Notice.	
6 November 2019	Debt Application and supporting documents served on the Respondent in Abu Dhabi by a delivery by international courier, DHL (documents were sent on 29 October 2019). Documents were served in both English and Arabic.	On 13 November 2019, DHL advised Al Ansari and Associates (representing the Applicant) that an employee of the Respondent had contacted DHL requesting to return the packages on the basis that no shipment from that shipper was being accepted. All packages were unopened except the package to the Group CEO of the Respondent, Mr Abdulhamid Saeed.
November 2019 Submissions		
18 November 2019	Applicant sent five emails to different members of the Respondent's management attaching November	• An email acknowledgment notification was received from atyourservice@bankfab.com

	submissions and instructions to download attachments.	• A quarantined email notice was received from Prabha James' email account which said that the email had not reached its intended recipient.
18 November 2019	Applicant sent two facsimiles to two of the Respondent's facsimile numbers addressed for the attention of the Respondent's Management attaching November submissions.	
18 November 2019	Applicant sent hard copies of the November submissions and annexures to the Respondent through an international courier, DHL, to the Legal Department at the Respondent's head office.	The Respondent initially accepted the package containing the documents, but subsequently returned the package to DHL.

DIGITALLY SIGNED AND VERIFIED
موقّع رقمياً ومعتمد