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: [2024] QIC (F) 1

IN THE QATAR FINANCIAL CENTRE

CIVIL AND COMMERCIAL COURT

FIRST INSTANCE CIRCUIT

Date: 8 January 2024

CASE NO: CTFIC0019/2023

QATAR FINANCIAL CENTRE AUTHORITY

Applicant

V

HORIZON CRESCENT WEALTH LLC

Respondent

AND

QATAR FINANCIAL CENTRE REGULATORY AUTHORITY

First Interested Party

AND

MOHAMED ABDULAZIZ MOHAMED EL-EMADI

Second Interested Party

JUDGMENT

Before:

Justice Sir William Blair

Justice Ali Malek KC

Justice Dr Muna Al-Marzouqi

Order

1. The Respondent's application to adjourn the hearing of 12 December 2023 be dismissed.

2. The Respondent be wound up by this Court under the provisions of the Insolvency Regulations.

3. The Joint Liquidators be appointed as the joint liquidators of the Company with all the powers and duties of a liquidator as contained in the Insolvency Regulations and any other applicable legislation, and with further powers and duties as conferred by this Order.

4. Any act required or authorised under the Insolvency Regulations, or other applicable legislation or this Order, to be done by the Joint Liquidators, may be done by either or both of the Joint Liquidators.

5. The Respondent and its directors shall deliver the Company's books and records, including a list of its creditors with their names, addresses and amounts owed, to the Joint Liquidators within 7 days of their appointment.

6. For the avoidance of doubt, so far as these records or copies of records are held by the Applicant and the First Interested Party as regulators, such documents are to be made available to the Joint Liquidators.

7. The Joint Liquidators may assume control over any asset of the Company including without limitation bank accounts held at Qatar National Bank, Qatar National Bank – Financial Services, and Mashreq Bank, whether in the name of the Company and/or any of its subsidiaries (The OA Investments LLC; The Criteria Investments LLC; Logistic Horizon LLC; Crescent Capital Investment LLC; Stallway LLC; and New Horizon Investment LLC).

8. The Joint Liquidators may seek directions from the Court and may make any application as required for the amendment of this Order.

9. Pursuant to article 82(1) of the Insolvency Regulations, ongoing proceedings in this case are stayed until further order.

10. All costs, expenses and fees incurred by the Joint Liquidators in the course of the liquidation will be paid out of the assets of the Company.

11. The costs of the Applicant of making the winding up application are to be paid out of the assets of the Company subject to the applicable rules as to priority.

Judgment

Introduction

1. Various applications in this matter have been dealt with by the Court, which now has a number of applications before it for decision:

    i. An application dated 26 April 2023 by Mr Mohammed Al-Emadi (who is in these proceedings as the '**Second Interested Party**') for an order that Qatar National Bank ('**QNB**') transfer sums in various accounts with QNB to him.

    ii. An application dated 29 August 2023 by the Qatar Financial Centre Authority ('**QFCA**') for winding up the Respondent company, Horizon Crescent Wealth

LLC (‘**HCW**’) under the QFC Insolvency Regulations 2005 (the ‘**Regulations**’). The Qatar Financial Centre Regulatory Authority (‘**QFCRA**’) is in these proceedings as the ‘**First Interested Party**’.

iii. An application dated 31 August 2023 by the Second Interested Party to stay the winding up application on the basis that a winding up of HCW is unnecessary to decide the dispute.

2. HCW was incorporated in the Qatar Financial Centre (‘**QFC**’) on 4 February 2015 and licensed by the QFCA to carry out the permitted, non-regulated activity of Administration of Trusts. HCW was not authorised by the QFCRA to undertake regulated activities including asset management activities.

3. The case comes out of payments into so-called trust accounts in HCW’s name at QNB in 2017. The amounts were substantial – about € 12.5m between May and August 2017 (details are set out in the Court’s judgment in the case of *Ms Ileana Mercedes D’Lacoste Agudelo and Ms Eniluz Jhoana Gonzalez Aponte v Horizon Crescent Wealth LLC and others and Qatar Financial Centre Regulatory Authority* [2019] QIC (F) 9 at paragraphs 17 and 18).

4. Following an investigation by the QFCRA which began in February 2018, a freezing order was made by the Qatar Central Bank which resulted in the freezing of HCW’s accounts at QNB on suspicion on money laundering.

5. Though some of the funds have been withdrawn, the bulk of the assets have remained frozen ever since. The working through of the consequences of this action, and the resolution of competing claims to the available assets (which it latterly has become clear, include shareholdings) is the subject of these proceedings. It raises some difficult questions of priority, made more difficult because of uncertainty as to the extent of the assets of HCW and/or its clients. It has proved impossible simply to ask HCW itself as to the details of its client holdings, because though it has participated sporadically in these and other proceedings concerning the Company, it seems to have become operationally defunct. HCW’s lawyers themselves have said that HCW has no commercial activity apart from facilitating the collection of funds from abroad.

6. In the *D'Lacoste Agudelo and Gonzalez Aponte* case, the Claimants claimed as the beneficiaries of the trusts which received the funds. They were seeking payment of the balance of the €12.5m which they had not already withdrawn. They applied for summary judgment against HCW for repayment of the funds on the basis that the funds constituted trust money. Summary judgment was refused by the Court in October 2019 on the grounds that the case required consideration of disputed facts and should go to trial.

7. Regulatory proceedings were brought by the QFCRA and the QFCA against HCW based on (among other things) various infractions of the rules particularly in relation to the prevention of money laundering and counter terrorist financing. The seriousness of the matter is shown by the financial penalty of QAR 30,000,000 plus costs of QAR 830,024 which was imposed on HCW by the QFCRA. A financial penalty of USD 280,000 was imposed on HCW by the QFCA.

8. An appeal by HCW to the Regulatory Tribunal in respect of these penalties was dismissed on 9 March 2020, and a further appeal to the Appellate Division was dismissed on 9 June 2020. In giving judgment, the Appellate Division noted that the basis of the decision was that, "*HCW had wholly failed to have regard to its responsibilities to put in place arrangements for due diligence before handling monies from abroad which were, on any view, highly suspect*" ([2020] QIC (A) 2 at paragraph 6(a)).

The proceedings which have given rise to claims to the money

9. The QFCRA brought proceedings for an order that the penalty it had imposed be treated as a debt recoverable by the QFCRA – this is standard enforcement procedure in regulatory matters, and an order was duly made by the Court on 20 September 2020 which included interest at 5% ([2020] QIC (F) 12). However, it was not to be enforced without leave of the Court so as not to prejudice any other claimants to whatever funds there might be in HCW's name. In a judgment dated 29 August 2022, this condition was lifted by the Court.

10. The QFCA followed with further proceedings in respect of the separate penalty it had imposed on HCW, and an order was duly made on 4 August 2021 ([2021] QIC (F) 20) which included interest at 5%. Again, it was not to be enforced without leave of the Court so as not to prejudice any other claimants, and leave was sought and is granted.

11. In 2020, an entirely separate claim was brought against HCW by the Second Interested Party, who is the former Deputy Chairman of HCW. The claim was in respect of QAR 4,292,000 due under an employment contract. Summary judgment plus interest and costs was given in his favour on 14 September 2021 as well as QAR 495,000 in respect of pre-judgment interest and post-judgment interest at a rate of 6%, and costs totalling QAR 1,228,700 ([2021] QIC (F) 23).

12. On 22 November 2022, the Court gave summary judgment to the QFCA against HCW and some of its subsidiaries in the sum of QAR 9,691,013 in respect of unpaid corporation tax, penalties, and late payment charges, and interest at 5% from judgment to payment ([2022] QIC (F) 22).

The non-satisfaction of the judgments

13. The claims by the beneficiaries of the trusts in the *D'Lacoste Agudelo and Gonzalez Aponte* case were withdrawn (i.e. discontinued) in June 2022 before the case had been fixed for trial (the order is reported at [2022] QIC (F) 8). This is notable because the beneficiaries of the trusts are – on the face of it – the parties entitled to the money. No information as to why this claim was discontinued is available to the Court, though one may conjecture that the fact that the Court had indicated that it required to know the source of the funds was a possible factor (see paragraph 35 of the October 2019 judgment – [2019] QIC (F) 9). But although these Claimants are seemingly no longer pursuing the money, there are still issues as to ownership of the funds including whether other investors' funds may be mixed in with the funds and held in trust – a point which was raised by the QFCRA at the time as noted at paragraph 37.

14. None of the other judgments have been satisfied, though a payment of QAR 3,967,351.34 was made by QNB from the funds to Mr Al-Emadi on 24 July 2022. He is owed further sums in respect of his claims and is pursuing these.

15. The evidence of the QFCA and QFCRA (together the '**Authorities**') is that there are insufficient funds and assets in HCW's name to satisfy all of the judgments, and potentially other claims. So, there are almost certainly conflicting claims to whatever assets are available. The Authorities' evidence estimates that on the basis of the assets that appear to be potentially available to HCW, there will be a very substantial shortfall.

The present proceedings

16. There have been a number of applications made to the Court, but it suffices to mention the following applications:

    i. An application dated 2 March 2023 by the QFCRA and QFCA for enforcement orders.

    ii. An application dated 11 April 2023 by the QFCRA and QFCA to issue a freezing order encompassing QNB (this was further to safeguard the HCW assets), and that the condition that the judgments in their favour are not enforced without leave of the Court be removed.

    iii. An application dated 26 April 2023 on behalf of Mr Al-Emadi that he be joined to the proceedings as an interested party to ensure that he is on an equal footing with the other parties, and that he is otherwise treated justly, and for an order that QNB transfer the sums in the accounts to him. It was said in addition to the sum QAR 3,967,351.34 paid by QNB on 24 July 2022, that he was owed a further sum QAR 2,269,265.74 by HCW, that amount being the balance of sums owed to him by way of court judgments for outstanding salary payments, and costs orders of the related litigation as stated in paragraph 11 of this judgment.

17. On 16 May 2023, the Court granted Mr Al-Emadi's application to be joined as an interested party pursuant to article 24.1.2 of the Court's Regulations and Procedural Rules.

18. On 3 June 2023, on the joint application of the Authorities and the Second Interested Party, a freezing order was issued by the Court to various banks, and directions as to service were given.

19. A Case Management Conference was duly fixed for 30 August 2023. In view of subsequent developments, it should be noted that at this time HCW was represented by Sami Abdullah Abu Shaikha Advocates & Legal Consultants and the Second Interested Party, Mr Al-Emadi, was represented by Sultan Al-Abdulla & Partners.

20. In order to resolve the conflicting claims, clearly it is first necessary to establish what assets are held by HCW and who may have a claim on the assets. When Mr Al-Emadi made his enforcement application which was served on HCW, the Court had not received any objection or submission to stay enforcement procedures from HCW whatsoever. HCW's position, as set out by its then lawyers on 15 April 2023, was that the money in HCW's account (and those of its subsidiaries) is held on trust for HCW's clients and therefore are not available to satisfy debts owed by HCW.

21. On 5 July 2023, the HCW was ordered by the Court to file and serve an affidavit which had to:

> *(i) identify and substantiate, in detail and with evidence, the purported ownership of the funds in HCW's accounts (which HCW claims belong to third parties) in order that the Court can make a decision as to whether or not the funds in the various bank accounts in question are the property of HCW's clients; and (ii) provide disclosure as to its (HCW's) worldwide assets, whether in its own name or not, and whether solely or jointly owned, giving the value, location and details of all such assets.*

22. HCW was given the opportunity to set out its objections to this order, and these were considered by the Court but rejected by an Order dated 31 July 2023, subject to any confidentiality considerations that might arise. These were to be dealt with by redaction or by restricting the disclosure of certain information to named persons.

23. But confidentiality considerations were academic, because HCW has not complied with this Order, though it is fair to say that some further details were provided by letter of 4 November 2023 from its then lawyers within the time frame ordered at the hearing on 2 November 2022. No affidavit or equivalent statement containing the required information has been produced, however, and the details appear to disclose new assets, but do not appear to be comprehensive. It is also fair to add that HCW's then lawyers

have always maintained that the QFCA and QFCRA have the details themselves. The Court comments that while the QFCA and QFCRA undoubtedly have a considerable amount of detail as to the state of HCW's assets, they maintain, and the Court accepts, that their information is not comprehensive. This was the purpose of ordering disclosure by HCW verified by affidavit.

The CMC hearings of 30 August and 2 November 2023

24. On 23 August 2023, so shortly before the CMC fixed for 30 August 2023, the QFCA invited the Court to stay all pending litigation for 14 days to allow an application to be made for an order winding up HCW, supported by evidence. It was submitted that the issues were (i) who owns the funds held by HCW in its bank accounts and whether they are held on trust, (ii) the priority of any claims as between the QFCRA, QFCA and Mr Al-Emadi, and (iii) the amounts to be paid to each party in satisfaction of their outstanding debts. However, it was submitted, there is an overarching question of whether the issues are more appropriately determined in an insolvency process rather by the Court in this litigation.

25. In submissions on behalf of Mr Al-Emadi also of 23 August 2023, it was submitted that the Court had to determine, first, whether the money in HCW's QNB account belonged to HCW or its clients, and, second, whether Mr Al-Emadi has the right to recover his debt in priority to the QFCRA and the QFCA. There was, it was submitted, no evidence before the Court in support of HCW's contention that the money in its QNB account belongs to its clients, and the second question is a short point of law as to priority which should be determined in Mr Al-Emadi's favour as an employee of HCW.

26. The application by the QFCA for winding up under the Regulations was made on 29 August 2023.

27. In view of the late submission by the Applicant of these proposals to wind up HCW, the hearing of 30 August 2023 was adjourned by consent to 2 November 2023.

28. On 31 August 2023, an application was filed on behalf of Mr Al-Emadi to stay the winding up application on the basis that a winding up was unnecessary to decide the dispute so far as it related to him.

29. In its Order of 5 September 2023 formally adjourning the hearing of 30 August 2023, the Court among other things:

    i. Directed the Authorities to consider whether any further steps are necessary so that the Court can be confident that there is no possibility of money and/or assets being moved without the Court's permission, and to take such steps if any as may be required. If there are doubts on the position, consideration should be given to the appointment of a provisional liquidator.

    ii. Asked the parties to consider the following issues in their submissions for the adjourned hearing:

        a. Whether the Respondent should be wound up.

        b. Whether the claims to the funds be determined in the liquidation of the Respondent or outside the liquidation.

        c. Whether all possible competing Claimants had been identified, and if there are potential trust Claimants, who should represent them.

        d. Which other solutions to the main issues in this case are there if the Court rejects the winding up of the Respondent (any solution must be legally substantiated).

30. On 18 October 2023, the QFCRA applied for a Worldwide Freezing Order against HCW. This was a precaution because information had been provided by HCW's then lawyers as to assets outside Qatar. It was granted on 2 November 2023.

31. On 27 October 2023, so just before the adjourned hearing on 2 November 2023, Mr Al-Emadi's lawyers notified the Court that the firm was no longer representing him. He appeared at the hearing unrepresented. At the Court's suggestion, he took steps to obtain alternative legal representation, and a short adjournment was ordered to enable him to do so. He is now represented by Mr Adel Chahine of the Shahin Law Firm.

HCW's application for an adjournment

32. The CMC was refixed for 12 December 2023. On 11 December 2023, the Court received a letter from Orso Avocats of Geneva to the effect that it had been appointed lawyers for HCW in place of Sami Abdullah Abu Shaikha Advocates & Legal Consultants. The letter was to the effect that a settlement proposal put forward by those lawyers, "*contained errors about the Company assets*" (the Court notes that at the 2 November 2023 hearing, however, Mr Sami Abu Shaikha mentioned that this is a draft which was never agreed by the Applicant, as the Applicant confirmed.). The letter referred to funds of the clients of HCW. The letter requested an adjournment of the hearing to 15 February 2024 to allow the production of audited financials since 2017. It was proposed that other lawyers would be appointed for HCW clients. Apologies were given for the late contact because of circumstances of "*force majeure*".

33. At the hearing on 12 December 2023, an application for an adjournment was made on behalf of HCW on this basis, opposed by the Authorities. The Court refused the adjournment, with reasons to follow. Orso Avocats continued to participate in the hearing and had a full opportunity to put their case.

34. The reasons for refusing the application for an adjournment are now given. The lateness of the application, the lack of any explanation of what was meant by force majeure, and the lack of any explanation of why the application had been made so late are all relevant considerations. Further, in the Court's view, the reference to the time needed for the production of audited financial statements of the company lacks credibility. No financial statements have apparently been prepared since 2017, and the company has not complied with the order of 31 July 2023 (see paragraphs 22 and 23 above) to produce an affidavit setting out details of the alleged third-party interests and the whereabouts of its worldwide assets. The Court considers that the orderly resolution of the case would be seriously prejudiced by a further adjournment, in circumstances where the lack of transparency about the affairs of HCW gives rise to continuing risk. It is important that a reliable and independent assessment of the Company's affairs takes place without further delay. This is a matter going to the public interest and is in the interests of creditors of HCW.

35. Moreover, the Court is required to manage cases in accordance with the Overriding Objective. This involves "*ensuring that litigation before the Court takes place expeditiously and effectively, using appropriately no more resources of the Court and the parties than is necessary*" (article 4.3.1 of the Court's Regulations and Procedural Rules). There is no basis for vacating a hearing at short notice with the consequent delay in the absence of compelling reasons. For the reasons explained above, none exist in the present case and so the Court rejected the application to adjourn.

Discussion and reasons as to the application to wind up HCW

36. At the end of the hearing on 12 December 2023, the Court informed the parties that it had decided to make a winding up order in accordance with the QFCA's application. It did so in the interests of concluding these disputes without further delay and safeguarding the assets. It informed the parties that reasons would be given, and this judgment now sets out those reasons.

37. As the case has developed, currently three routes have emerged to resolve the dispute as to the funds that have been suggested at one time or another by one or other of the parties. They are:

    i. An agreed overall settlement by which, by agreement, all of the known debts of HCW are paid from the assets held in its name. This is advanced on behalf of HCW.

    ii. A partial settlement by which the further sums owing to Mr Al-Emadi are paid first and paid now, and the case as regards the other parties continues without him. This is advanced on behalf of Mr Al-Emadi.

    iii. A winding-up order by which the available assets and claims of HCW are ascertained and paid by liquidators. This is advanced on behalf of the QFCA.

<u>Agreed overall settlement</u>

38. This possibility has been raised from time to time on behalf of HCW. The only details which the Court has seen are in a letter dated 10 September 2023 from HCW's then lawyers to the QFCRA with the subject, "*Horizon Crescent Wealth (HCW) Global*

Settlement New Proposal". Though not marked "*Without prejudice*", the context appears to be without prejudice discussions with the Authorities. The letter was produced to the Court with the letter of 2 November 2023 and included in the bundle of documents for the hearing. No objection has been made to the Court seeing it.

39. In short, it proposes that HCW's assets are sufficient to meet all its obligations including to the beneficial owners of three trusts (these do not appear to be related to those in respect of Ms D'Lacoste Agudelo and Ms Gonzalez Aponte) said to be clients of HCW. It also requests that the settlement will include the lifting of sanctions on HCW's directors, Mr Baeriswyl and Mr Mantegani (their appeals against penalties imposed by the QFCRA were dismissed by the Regulatory Tribunal on 17 May 2023 – see [2023] QIC (RT) 2 and [2023] QIC (RT) 1).

40. The Court considers that there are some real attractions to the agreed overall settlement route, if it could be achieved, particularly in saving the costs of a liquidation, and potentially saving time.

41. This way of solving the matter is in line with the national laws of Qatar as well. In a nutshell, if the shareholders or creditors have not asked the Court to proceed with liquidation, and there are several creditors and the assets are not sufficient to cover all the debts, then the Court gives the parties a chance to agree on the best way to divide the amount. In case of non-agreement between the parties, the Court will divide the amount among them depending on the type of the debt (creditors who have lien rights will be paid first).

42. In the present case, however, deciding what assets are available for division among the creditors is not a question which the Court could determine without a detailed investigation of the facts. Further, a realistic view has to be taken as to the possibility of agreement. The parties would have to be sure that there is a proper understanding of HCW's assets and liabilities, and which of the assets – if any – are trust/client assets. An approach as in the letter of 10 September 2023, which in effect treats all assets as available to go into a pool to satisfy the company's creditors, is (among other objections) inconsistent with HCW's permission to carry on the activity of Administration of Trusts.

43. As the Authorities have pointed out, HCW's then lawyers themselves stated in a response dated 15 April 2023 that, "*The money in the accounts of my client, HCW, does not belong to it. These money owned by the clients of my client*".

44. Furthermore, there are other basic objections. The Court now has the submissions of HCW's current lawyers in their letter of 11 December 2023 to the effect that the settlement proposal contains errors about the company's assets, and that therefore the "*Company couldn't validate this Settlement that attempt to the funds of the client of HCW*". The Court has no confidence that the process of establishing the facts can safely be left to HCW.

45. In any case, the Authorities did not accept the proposed settlement, so the agreement route is academic. There is no agreement. It has been made clear in the 12 December 2023 hearing that the Authorities' view is that the correct course is for liquidators to be appointed in a winding-up and they will accept no settlement.

46. The realistic way to approach the case is that an agreed overall settlement looks very unlikely at present. It is possible that this may change once the liquidators have established what the claims are and what the assets available to meet them. The Court does not rule it out in the interests of economy and speed if it could be done in a way consistent with the public interest in a case of this kind where assets have been frozen on suspicion of money laundering in circumstances in which the identity of beneficial owners may be hard to establish for the very reason that the true beneficiaries do not want to be identified.

<u>The further sums owing to Mr Al-Emadi are paid first and paid now</u>

47. It has been submitted by Mr Adel Chahine on behalf of Mr Al-Emadi, and by his previous lawyers in written submissions, that his claim arises under the court judgment in his favour, and that he is entitled to be paid the balance due to him. He should, it is submitted, be permitted to withdraw from these proceedings now, since the ongoing disputes do not affect him. He filed his enforcement application, and was paid in part on 24 July 2022, before enforcement proceedings were begun by the QFCA or QFCRA.

There is still a balance of QAR 2,840,000 owing to him and this should be paid to him now. A liquidation would be prejudicial to him as delaying payment of the money.

48. It is further submitted that, as a former employee of HCW, he takes priority as a matter of law over the QFCRA and the QFCA in the recovery of sums owed to him by HCW. Article 148 of the Regulations provides for this expressly. The Court, it is submitted, has to determine two questions. First, does the money in HCW's QNB account belong to HCW or to HCW's clients? Second, does the Second Interested Party have the right to recover his debt in priority to the QFCRA and the QFCA?

49. As to the first, it is submitted that there is no evidence before the Court in support of HCW's contention that the money in its QNB account belongs to its clients. The Court should draw an "*adverse inference*" from HCW's failure to provide the affidavit that was ordered on 31 July 2023. The second question is a short question of law which can simply be determined without the necessity of a winding up of the company.

50. The Court's conclusion in relation to these submissions is as follows. It is correct that the evidence as to the existence of client funds is presently uncertain. But the evidence is that HCW's permitted business was in trust administration, and accounts were opened nominally as trust accounts. The issue as to beneficial ownership requires factual resolution. The reason is that as a matter of law, the claims against HCW – both Mr Al-Emadi's claim and the Authorities' claims – can only be paid out of HCW's assets, and not out of trust/client assets.

51. The factual picture may turn out to be opaque – it is possible that on examination there is no satisfactory evidence that trusts exist, or that there are no persons who may have a claim as clients as HCW, or there are persons who may have a claim but are not pursuing it. In that case, the assets held by HCW may be available for satisfying the claims against HCW. But again, that is something that needs to be investigated before a decision can be reached as to the payment of these claims. This can be best done by liquidators in a winding up of the company. It cannot be done by the Court drawing an "*adverse inference*". The Court also notes that a QNB Financial Services Company account holds shares in HCW's name which the QFCA says requires a decision as to whether to hold or sell.

52. As regards priority, assuming the availability of assets, Mr Al-Emadi has a judgment in his favour, and the QFCRA and QFCA also have judgments in their favour. The issue as to which judgment takes priority cannot be determined at this stage. It is correct that article 148 of the Regulations (Preferential Debts) may be very relevant in the context of priority. But, this provision applies in the context of the insolvency process under the regulations. As Mr Ben Jaffey KC for the QFCA pointed out in oral submissions, it cannot be carried over to determine priority outside this context. There is an issue between the parties as to the extent of the article 148 priority. The proper forum for that dispute is a liquidation. At this stage the Court expresses no view on how this dispute should be resolved.

Winding up HCW

53. The third route is a winding-up order by which the available assets and claims of HCW are ascertained and paid by liquidators. This is advanced on behalf of the QFCA and made on two alternative bases, set out in article 77 of the (revised) Regulations (which is part of the section dealing with compulsory winding up). This provides as follows:

> ***Article 77 (Circumstances in which Company may be wound up by the QFC Court)***
>
> *A Company may be wound up by the QFC Court if:*
> *…*
> *(2) the Company is unable to pay its debts;*
> *…*
> *(4) the QFC Authority makes any application under Article 80 and the QFC Court is of the opinion that it is just and equitable that the Company should be wound up.*

54. As regards (2), by article 78(2) of the Regulations, a company is deemed unable to pay its debts if it is proved to the satisfaction of the Court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

55. HCW submits that the company is not insolvent and that the financial claims of the other parties are not justified as based on a wrong assessment of HCW's financial situation. This is why before appointing a liquidator HCW must be audited, and HCW is willing to establish financials since 2017.

56. There is no evidence in support of this, and no affidavit of assets as ordered on 31 July 2023. As stated above, the offer of financial statements lacks credibility in the Court's opinion.

57. The QFCA's evidence in this regard is contained in the witness statement of the Deputy Chief Executive Officer and Chief Legal Officer of the QFCA dated 29 August 2023. It shows that the assets of HCW of which the QFCA is aware total approximately QAR 23,620,304.39 (being amounts held in various bank accounts held by QNB, QNB Financial Services, and Mashreq Bank). Two of HCW's subsidiaries, The Criteria Investment LLC and The OA Investment LLC, hold funds totaling USD 692,220 and USD 1,538,425 respectively. Even if those sums could be attributed to HCW, there is still a large deficit between the assets and the liabilities of HCW.

58. The Court accepts that evidence and is satisfied that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

59. As regards subparagraph (4) of article 77 referred to in paragraph 53 above, article 80 provides that:

> *Where it appears to the QFC Authority that it is expedient in the interests of the QFC that a Company should be wound up, it may make an application for the Company to be wound up under Article 77(4).*

60. The QFCA submits that it is not in the public interest that HCW should continue to operate or exist in the QFC since it is no longer trading and there is no real prospect of it resuming its operations, given its past conduct. It submits that both HCW and its shareholder and officeholders have committed serious regulatory misconduct, and HCW is also in repeated breach of this Court's orders. Its directors and controlling minds cannot be relied upon to act lawfully or properly.

61. In the Court's view, each of these points is valid. For all the above reasons, while the Court recognises that a liquidation has the consequence that the assets will have to bear the costs of the liquidation, it is satisfied that a winding up is the correct course to take.

The facts show, as the QFCA says, classic indicators of the need for an orderly winding up, on the basis both of insolvency and in the public interest. The only alternative is that the Court undertakes the ascertainment of assets and liability itself, but this is unrealistic.

62. In that regard, the QFCA have put forward Steven John Parker and Joanne Kim Rolls of Opus Restructuring LLP as liquidators who have confirmed their willingness to undertake the role. HCW objects on the basis that this firm is put forward by the QFCA and is not neutral, and has suggested other names. However, the Court accepts the QFCA's submission that if a winding up order is made, while the Court will appoint a liquidator to take the initial steps (including the calling of the creditors' meeting under article 83 of the Regulations), it will be a matter for the creditors as a whole to consider who should be appointed as liquidator for the conduct of the liquidation itself. If there is a dispute amongst the creditors on this issue, the Regulations provide that it be resolved by the Court.

63. All claims to the funds are therefore to be dealt with in the liquidation proceedings. If there are potential trust Claimants, a decision will be required as to who should represent them. If there are trust assets there may be an issue of whether any of the liquidators' remuneration or expenses should be paid out of those assets. The liquidators can apply to the Court if they need further directions. The full order is set out at the beginning of this judgment.

By the Court,

[signed]

Justice Sir William Blair

A signed copy of this Judgment has been filed with the Registry.

Representation

The Applicant was represented by its in-house legal department and Mr Ben Jaffey KC (Blackstone Chambers, London, UK).

The Respondent was represented by Jean Orso, Avocat (Orso Avocats, Geneva, Switzerland).

The First Interested Party was represented by its in-house legal department and Mr Ben Jaffey KC (Blackstone Chambers, London, UK).

The Second Interested Party was represented by Mr Adel Chahine (Shahin Law Firm, Doha, Qatar).

DIGITALLY SIGNED AND VERIFIED
موقّع رقمياً ومعتمد