Qatar Financial Center Tribunal Acknowledges COVID-19 as Hardship Event

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On 10 August 2020, the Regulatory Tribunal of the Qatar Financial Center issued a decision whereby it recognized COVID-19 as a hardship event in an appeal by a former director (and Senior Executive Function) of a regulated entity against penalties of USD 50,000 for breaches of the AML/CFT and various general regulatory contraventions.

The financial penalty was commuted on grounds of financial hardship and specifically the exceptional situation which the appellant is/was facing due to the COVID-19 pandemic.

The Regulatory Tribunal of the QFC follows English Common Law and is part of the judicial system within an international financial center.

Comparatively, the Abu Dhabi Global Market and the Dubai International Financial Center also operate English Common Law courts and tribunals, with overseeing regulatory bodies such as the ADGM's Financial Services Regulatory Authority and the DIFC's Dubai Financial Services Authority.

On 12 December 2019, the QFC Regulatory Authority issued its Decision Notice to the appellant that the appellant breached Principles 2 (acting with due skill, care and diligence) and 4 (dealing with the Regulatory Authority in an open and cooperative manner), and that the contraventions fall into two areas:

- AML/CFT contraventions: the QFC Regulatory Authority decided that the procedures were entirely inadequate to

properly identify money laundering risks. For example, its risk assessment procedures did not ensure that sources of wealth and sources of funds were properly identified. Many high-risk countries were wrongly rated as lower risk. More generally, the company had not adopted the necessary AML risk assessment and mitigation procedures as is required under the relevant regulatory provisions. Given his senior management position, these regulatory provisions required the appellant to ensure that the company's policies, procedures, systems and controls were adequate. In addition, in July 2014, he was put on notice that there were AML deficiencies. Finally, he personally authorized transactions which should have raised serious questions, and which required substantial additional due diligence.

- General regulatory contraventions: these are based on requirements imposed by the Regulatory Authority, agreed by the company but not properly implemented. The appellant was aware of the requirements and the timescale, and was aware, or should have been aware, of the failures. Many of the concerns related to the company's place within an unusual corporate structure and how to ensure its continued solvency and capital adequacy.

As to the prohibition, the appellant contended that the ban is wholly punitive, extreme and disproportionate. He argued that he had not worked in Qatar since the summer of 2015, and the ban would (effectively) preclude him from finding regulated employment in the UK for a further 3 years.

As to the financial penalty, the appellant argued that he had been unable to find a regulated job in the UK, and lost money investing in the company, so that a USD 50,000 fine is unjust. The appropriate penalty, he submits, is a private warning for his actions, with no ban, and no monetary fine.

The Tribunal found that any prohibition by a recognized financial regulator will inhibit the job prospects of the subject (potentially) anywhere, and certainly in the UK. But that cannot detract from the justification for a prohibition, if otherwise justified. Even accepting that the part which the appellant played was in some respects relatively limited, these matters involved how the firm dealt with AML and capital adequacy, both very significant matters. The Tribunal found that the prohibition imposed is proportionate and fully justified.

The Tribunal was told that the policy of the QFC Regulatory Authority is that it will not (except in exceptional cases) impose a penalty that will lead to bankruptcy. This is in keeping with what the Tribunal understood to be a general principle that a regulatory penalty should not be imposed on an individual which the individual is unable to pay. Sometimes, that principle can be satisfied by allowing payments by instalments. But the commensurate principle is that an individual seeking what amounts to an exceptional dispensation must establish financial hardship by making full and frank financial disclosure of his or her necessary outgoings, and the assets available to meet those outgoings, with copies of supporting documentation.

The Tribunal concluded that the QFC Regulatory Authority in effect accepts that the appellant is unable to pay the penalty at the present time, and found that in normal circumstances, it might be reasonable to start payments at the end of the year, with a 3 year payment period, as the QFC Regulatory Authority had suggested.

But the Tribunal considered that the present circumstances concerning the appellant are far from normal and that it is not necessary to spell out the effects of the COVID-19 pandemic.

The Tribunal took into account that it is entirely reasonable

to suppose that the appellant will find it difficult to obtain employment for the time being, particularly in the financial services industry given the prohibition, and the Tribunal also considered evidence that the appellant's wife is presently unable to obtain employment and that they have a young son.

The Tribunal considered that this is an exceptional case in which financial hardship is established – considering in particular the exceptional effect on him of the COVID-19 pandemic in that regard. The Tribunal found that any period fixed by the Tribunal for time to pay would leave this penalty hanging over the appellant and his family for an unreasonably lengthy time. In the circumstances, the Tribunal decided that the penalty should be commuted in whole.

Case: *Russell v. QFCRA [2020] QIC (RT) 2*

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