In the name of His Highness Sheikh Tamim Bin Hamad Al Thani,

Emir of the State of Qatar

IN THE REGULATORY TRIBUNAL

OF THE QATAR FINANCIAL CENTRE

27 April 2014

CASE NO: 01/2013

KARIM NOUJAIM

Appellant

v

QFC REGULATORY AUTHORITY

Respondent

DECISION OF THE REGULATORY TRIBUNAL

Members of the Regulatory Tribunal:

Chairman, Rt. Hon. Sir David Keene

Professor Francois Gianviti

Laurence Li

DECISION

The Chairman of the Regulatory Tribunal (with whom Justice Li agrees):

1. This is an appeal by Karim Noujaim against a decision of the Qatar Financial Centre Regulatory Authority ("the Authority") dated 24 September 2013. By that decision the Authority imposed on the Appellant a financial penalty of US$20,000 and made a prohibition order under Article 62(3) of the Financial Services Regulations ("the FSR") prohibiting him from performing any function for any authorised firm in the Qatar Financial Centre ("the QFC") or being employed by any QFC authorised firm.

2. This appeal relates solely to the penalties imposed by the Authority. There is no material dispute as to the facts relating to the Appellant's conduct which gave rise to those penalties and the only evidence that is before this Tribunal at the hearing has been in documentary form. This has been facilitated by the parties agreeing a Statement of Agreed Facts. The Tribunal is most grateful to the parties for so doing and for their advanced submissions put in writing. This Tribunal is established by Article 8(2)(a) of the Law No (7) of 2005 as amended. It is empowered to hear and determine appeals against decisions of the Authority.

3. In so doing, it acts as an appellate body not merely reviewing the Authority's decisions to ensure that it has acted lawfully, and thus, where there are disputed issues of fact, it will approach those issues *de novo*: see its Decision in *Abdelkareem v QFCRA*, Case No. 03/2011, 7 May 2012 at paragraph 29. That 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.

4. We turn to the facts of the present case. The Appellant was at the material time, December 2012, "*Senior Country Officer*" at the QFC branch of J P Morgan. That meant that he was the most senior employee at the branch with responsibility for the conduct of the business of that branch. He had been approved in January 2011 by the Authority to perform the Senior Executive Function and the Customer Facing Function at the QFC branch. As such, he was an "*Approved Individual*" within the meaning of the FSR and the Individuals Rulebook.

5. Under Article 84 of the FSR, such a person is required not to do anything which contravenes any provision of any Law, Regulations or Rules. He also contravenes that Article if he does not do something which he is required to do under any Law, Regulations or Rules. The Individuals Rules 2005 set out a number of Principles of Conduct for Approved Individuals, such as the Appellant. The first principle, entitled "*Integrity*", states that

   > "*An approved individual must act with integrity at all times in the carrying out of controlled functions.*"

   It is that principle, Principle 1, which the Authority's Decision Notice asserted had been breached by the Appellant.

6. He had opened a personal bank account with Doha Bank in March 2011, an account which provided him with, amongst other things, an overdraft, subject to a limit. That limit

was the maximum possible against salary as a result of Instructions to Banks issued by the Qatar Central Bank. However, in late November 2012, the Appellant sought an increase from Doha Bank in that limit because of some financial difficulties into which he had got himself. He was told by that Bank that it might be possible to increase the maximum limit if he could show that he was incurring business expenses on behalf of J P Morgan which he needed to cover. On 29 November 2012 he telephoned J P Morgan's Chief Financial and Operating Officer ("CFO/COO") in the region and asked to be provided with a letter confirming his position and his authority to incur certain expenses on behalf of J P Morgan. He was referred by that officer, Mr. Nijjar, to J P Morgan's HR department.

7. Later that same day he sent an email to the CFO/COO, setting out a possible draft letter to be signed by the latter, something which had been discussed in the telephone conversation. The Appellant also exchanged voicemail messages with J P Morgan's HR Executive Director for the region. He did speak to her, a Ms. Correia, on the following day, the Friday, on the telephone and said that he had temporary financial difficulties and needed a cash advance. The reception on the telephone was not good and so she suggested that the Appellant should send her an email with his proposed wording on a letter. She also told him that she would need to consult other departments on the matter and so would not be able to respond before Sunday. He sent an email with the proposed wording that same afternoon, 30 November. In fact, the HR Executive Director could not make contact with one of the relevant colleagues on the Sunday and she did not make contact that day with the Appellant. On Sunday 2 December, Ms. Correia was unable to contact the Compliance Officer about the matter. She and Mr. Noujaim had no contact that day. Indeed the Appellant made no attempt to contact either Ms. Correia or Mr. Nijjar to check on the progress of his request.

8. That was 2 December. On that same day the Appellant submitted a letter to the Doha Bank, bearing that day's date. He subsequently stated that he had received several calls from Doha Bank asking when the letter would be available. The letter is at the heart of these proceedings. It was addressed to the Manager of Doha Bank, Qatar. It was produced on paper bearing the letterhead "J P Morgan" at the top and it read as follows:

> *"To whom it may concern,*
>
> *This is to confirm that Karim Noujaim is as Senior Country Officer for Qatar, an authorised signatory for our Qatar branch. He is authorised to incur expenses for conferences, client receptions and banquet services within J P Morgan policies for up to QR500,000 and can take the necessary actions in this regard.*
>
> *Kind regards,"*

It then bore the printed name of Sukh Nijjar, COO/CFO, and above that a signature purporting to be that of Sukh Nijjar.

9. In fact, the signature was false. The letter had been prepared, signed and delivered to the Doha Bank by the Appellant. It was, of course, also wholly unauthorised by J P Morgan's COO/CFO.

10. Two days later, on the morning of the 4 December 2012, the Appellant emailed Doha Bank, withdrawing his application for an increase in his overdraft. That withdrawal was, according to his email, because it "*has taken a long time*". There was, perhaps unsurprisingly, no admission that the letter was a forgery. Unknown to him, Doha Bank had in fact been in touch with J P Morgan's Treasury Department in Bahrain, seeking authentication of the signature. On 5 December 2012 that Department told Doha Bank that they could not confirm its authenticity. There is no dispute that the Appellant withdrew his overdraft application before becoming aware that the forgery had been discovered.

11. The Appellant was interviewed on the morning of 5 December by Mr. McNulty of J P Morgan's Global Security Investigations team. The Appellant admitted writing and signing the letter of 2 December and expressed remorse. There was a subsequent internal disciplinary proceeding, with which he cooperated. He was initially suspended by J P

Morgan and then on 11 December 2012 dismissed. On 19 December he requested a meeting with the Authority. This was on his initiative, although by then the Authority was aware of the circumstances. He was interviewed and admitted the forgery and again expressed remorse. He referred to various pressures under which he had been. There is no dispute that he was under financial, personal and work pressures.

12. The Authority in its Decision Notice stated that it regarded his conduct as serious, in that he was the most senior employee of J P Morgan in Qatar, with overall responsibility for the conduct of the whole of the business of the QFC branch of J P Morgan, and yet had acted with deliberate dishonesty. It emphasised that the financial services industry relied heavily on the authenticity of documents and the integrity of senior staff. It concluded that the Appellant was not a fit and proper person to perform any function for an Authorised Firm in the QFC. Consequently, it both imposed the financial penalty to which we have referred and decided also to make the prohibition order as being appropriate and necessary to protect users and prospective users of the QFC, as well as to protect the integrity and reputation of the QFC.

13. Before us the Authority has stressed the same matters, even though it recognises the presence of some mitigating factors. Mr. Jaffey of Counsel submits that a senior executive of a bank cannot be allowed to continue to work in financial services in the QFC when he has prepared a forged document and submitted it to another bank for his own personal benefit. Such an executive has a leadership position and should be an exemplar of high ethical standards. Mr. Jaffey makes the point that a prohibition order is not intended primarily to punish the individual wrongdoer, but rather to protect the public and those businesses in the QFC and to protect the reputation and integrity of the QFC. Consequently, the personal mitigation advanced by the Appellant is of limited relevance. Such an executive needs to be trustworthy, even when under pressure, because the financial services sector depends upon mutual trust.

14. It is contended on behalf of the Authority that a prohibition order should normally apply in cases of dishonest conduct in the banking and financial services sector, especially in the case of a person holding a senior position. In support of that proposition, Mr. Jaffey has referred us to the well-known passage in the judgment of Sir Thomas Bingham, MR,

in *Bolton v Law Society* [1994] 1 WLR 512, at 518-519. That was an appeal which resulted from a decision of the Solicitors Disciplinary Tribunal, which had dealt with the case of a solicitor whose conduct had been naïve and foolish, though not deliberately dishonest. At page 518 C, Sir Thomas noted that in cases of proven dishonesty by a solicitor, the Tribunal had almost invariably ordered that the solicitor be struck off the Roll of Solicitors, no matter how strong the mitigation advanced on his behalf. The reason for that, he explained, was the need to maintain the reputation of the solicitors profession as one in which every member might be trusted and to sustain public confidence in the integrity of the profession. Often that would require not only a striking-off but also a denial of re-admission (page 518 H). Sir Thomas went on to say this:

> "*Because orders made by the tribunal are not primarily punitive, it follows that consideration which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness.*"

15. Mr. Jaffey makes the point that the present case was one where a clear degree of premeditation was involved in the preparation of the letter of 2 December 2012. He draws attention to the fact that the Appellant produced the letter on J P Morgan notepaper bearing at the foot of it an address and contact details not of his own Qatar branch of that bank, but of the Dubai branch based in the Dubai International Financial Centre where

Mr. Nijjar worked. Mr. Jaffey seeks to distinguish certain decisions of the Dubai Financial Services Authority which have been put before us. In those, that Authority had accepted an enforceable undertaking by a wrongdoer. However, it is pointed out that that Authority's powers to exclude such a person from the financial services sector in Dubai are limited to exclusion from senior posts and that it is only by the mechanism of an enforceable undertaking that the more general scope of a QFC prohibition order can be achieved. Finally, it is submitted on behalf of the Authority that the financial penalty imposed in this case of US$20,000 is proportionate being below 1 month's salary enjoyed by the Appellant while employed by J P Morgan. No evidence of financial hardship resulting from the imposition of that penalty has been adduced.

16. The Appellant accepts that he failed to act with integrity, contrary to Principle 1. His case on this appeal is that there are a number of mitigating factors present, which render the penalties imposed disproportionate. He seeks first and foremost the substitution of a private warning, or alternatively the provision of an enforceable undertaking by him. Failing that, he asks for a reduction in the scope and duration of the prohibition order and in the amount of the financial penalty.

17. Like the Authority, the Appellant has made reference to the Enforcement Policy Statement ("EPS") issued by the Authority. That notes various factors which may be relevant in such cases. In emphasising the mitigating factors present, Mr. Qureshi QC for the Appellant has noted how many of those factors are recognised by the EPS. Thus he stresses the Appellant's conduct was an isolated event. He is of previous good character and withdrew the application of 2 December 2012 on his own initiative on 4 December 2012. The Appellant expressed remorse from a very early stage and cooperated both with his employer and with the Authority. No loss was suffered by Doha Bank or by anyone else. Mr. Qureshi emphasises also the pressures which the Appellant was under at the time of forging the letter and lodging it with Doha Bank.

18. Mr. Qureshi adds that his client brought his misconduct to the attention of the Authority before being notified of any investigation. That, it is said, reinforces the genuineness of his remorse. It is argued that the Authority appears to have worked on the basis that any dishonesty automatically requires a lifetime prohibition order, which is a crude and

unjustified approach. And counsel has referred to some of the earlier Decisions of this Tribunal as indicating that a lower or shorter penalty is appropriate. Thus he relies on the Decision in *Chaudhry v QFC Regulatory Authority* (Case No. 1/2011) where this Tribunal upheld a 12 months prohibition order in a case where the Appellant had failed to act with due skill, care and diligence, contrary to Principle 2 of the Individuals Rulebook.

19. It is accepted on the Appellant's behalf that whether any loss results from the dishonest conduct is not relevant to the question whether the person concerned is someone fit and proper to be an "Approved Individual" within the meaning of the FSR. Mr. Qureshi acknowledges that his client was in a position of trust. But he argues that the Authority has behaved in a Draconian manner and that a more temperate approach was required in the circumstances of this case. In particular, if a prohibition order was to be imposed at all, it should be of a limited duration. While it is open to someone subject to such an order to apply at any time for its revocation or for approval from the Authority as an Approved Individual, there should be a proportionate and transparent approach as a matter of principle to such orders, reflecting the gravity of the conduct. An order without limit of time would be seen generally as an enduring barrier to employment in the financial services sector. Indeed, Mr. Qureshi described such an order as a "lifetime ban".

20. This Tribunal recognises the existence of the mitigating factors in this case and it gives due weight to them where appropriate. It also has read and had regard to the various authorities in this jurisdiction and elsewhere which have been put before us. We shall refer to some of those decisions in this judgment.

21. In taking account of the various mitigating factors, we bear in mind that such matters as the absence of financial loss to anyone, while relevant to financial penalty, can have little bearing on whether or not a prohibition order is appropriate. There the principal consideration must be the protection of the integrity of the QFC and whether the person in question is a fit and proper person to perform any function for an Authorised Firm or to be employed by such a firm in the QFC.

22. Moreover, against the various mitigating factors there have to be weighed those features of the Appellant's conduct which make this a serious case. First, he did not merely

represent (as at one time Mr. Qureshi seemed to suggest) that he had Mr. Nijjar's authority to send the letter of 2 December by, for example, signing in his own name but allegedly on behalf of Mr. Nijjar. He actually forged the signature of that individual. It may not have been a good forgery, but it purported to be the signature of Sukh Nijjar. That is why it is to be seen not merely as an unauthorised letter, but as a forgery. Moreover, the letter was typed not on the notepaper of J P Morgan's Qatar branch but on that of its Dubai office.

23. Secondly, this was no mere reckless act, as in the *Chaudhry* case, it was a deliberate piece of dishonesty. That is recognised as a relevant factor in the Authority's EPS. Thirdly, the Appellant was in a position of responsibility and trust. He was the most senior officer of J P Morgan in Qatar. That aspect of this case is something which we regard as rendering this a particularly serious piece of dishonesty. Someone in such a position has to be a person who can be trusted to act with integrity. As this Tribunal said in the *Abdelkareem* case at paragraph 136, the financial services industry depends upon trust. The Appellant must have been aware of that. He was someone with many years of experience in the financial services sector.

24. Fourthly, while he eventually withdrew his application to the Doha Bank, it took him at least a day and a half to do so. This was not a moment of madness, instantly rectified. While there is no dispute that he was under various pressures, that factor can only be given very limited weight. In modern commercial life, pressures of one kind or another are not uncommon. Officers in his position have to be people who can be relied upon to act with honesty and integrity even while under pressure.

25. In the light of those considerations, this Tribunal has concluded that there was nothing wrong or excessive in the financial penalty imposed. It was proportionate and no evidence has been adduced to suggest that it would cause financial hardship to the Appellant.

26. It is also clear to us that a person who has acted in this way cannot be regarded as a fit and proper person at the present time to operate in the QFC in any Authorised Firm. In those circumstances, a prohibition order was entirely justified. Neither a private warning

nor an enforceable undertaking would be appropriate given the seriousness of this case. The QFC and the public need the protection provided by a prohibition order.

27. We have given careful consideration to the arguments advanced about the scope and duration of the prohibition order. The scope appears to us to be appropriate. As for the duration of the order, we bear in mind what this Tribunal said on this topic in the *Abdelkareem* case at paragraph 191, as well as what was said in the United Kingdom decision of *Massey v Financial Services Authority*. A prohibition order without limit of time does not necessarily operate for all time. It is not a lifetime ban. If at some stage in the future, the Appellant is able to adduce evidence that he is by then a fit and proper person to operate in the financial services sector, in other words that he can be trusted, then it is open to him to apply for approval by the Authority so as to become an "Approved Individual". If he succeeds, that would have the effect in practice of terminating the prohibition order. If he fails in his application, there is a right of appeal to this Tribunal, as was pointed out in *Abdelkareem*. It is also open to him to apply to have the prohibition order revoked under Article 16(5) in circumstances where he does not seek to become an Approved Individual. So it is far from being a lifetime order. It is more appropriately to be characterised as an order of unspecified duration.

28. We accept that the Authority has the legal power to impose a time limit on the duration of such an order as it did in the *Chaudhry* case. That was a very different case, it should be emphasised. Whatever may have been the evidence as it emerged on the appeal to this Tribunal, Mr. Chaudhry had not been accused of breaching Principle 1, Integrity, and it was on lesser charges that the Authority had chosen to impose a 12 month prohibition order. This Tribunal could not increase the duration of that order, despite the way in which the evidence went on the appeal. The present Appellant has been guilty of dishonest conduct and is patently not a fit and proper person as things stand today to be engaged in the financial services industry in the QFC.

29. Whether some time limit should be added to the Prohibition Order is a matter on which the Tribunal has been unable to reach unanimity. Justice Gianviti takes the view, for the reasons set out in his separate judgment, that it is possible at this stage to assess when the appellant can be anticipated to be capable of being seen as a fit and proper person to work

in the financial services sector. He would set a time limit to the Order. The majority of the Tribunal takes a different view on this, and the remainder of this judgment expresses the majority decision on this issue.

30. We can see some force in Mr. Qureshi's argument that the length of any prohibition order should reflect in a public fashion the seriousness of the dishonesty in question. But the principle purpose of such an order is not punishment of the individual. It is the protection of the integrity and reputation of the QFC and the protection of those who deal with individuals and organisations in its financial sector. It has a protective function. Therefore to impose any limit on the duration of such an order would require this Tribunal to be able to make a realistic assessment with some confidence of when at some future date the risk to the QFC and the public would have reduced to such an extent as to render the prohibition no longer necessary. We take the view that we are simply not in the position to make any such reliable estimate. It is not sensible to try to predict the future in such a firm way.

31. The misconduct that is the subject of this case was, without doubt, a serious one. It involved the forgery of a signature on a document presented to a bank. However quickly the Appellant regretted what he had done, and however he tried to remedy his error, his integrity was called into question. The necessary trust was lost.

32. How long and what needs to transpire before that trust is regained is a question difficult to answer now. Mr. Qureshi made a good case that the Appellant is truly remorseful and, in time, deserves a second chance. On our part, we would have thought that in the normal run of events that time would not need to be very long.

33. It is apparent, however, that reasonable minds could differ greatly today on how long that time might be. Further, any attempt at an informed assessment was not assisted by the Appellant's focus in his submissions all along on seeking to avoid a Prohibition Order altogether. There is little information to help us consider the issue of time period for rehabilitation.

34. It is far better for a decision as to risk to be made at a future date when there is or may be evidence available to inform the decision maker as to the extent of that risk as existing at that time. That does not materially prejudice the Appellant, who may apply at any time for revocation or for approval as an Approved Individual, once he is of the view that he has material to indicate that he is no longer to be considered a person whose honesty is in question.

35. Consequently this appeal is dismissed. The financial penalty and the Prohibition Order are upheld, that order to take immediate effect.

Justice Gianviti (dissenting):

36. The main issue in this case is whether the Prohibition Order imposed on Mr. Noujaim by the QFC Regulatory Authority should be reduced in scope or duration.

37. Given the gravity of the contravention committed by Mr. Noujaim, the facts of which are not disputed, a reduction in scope would not be justified. Integrity in any position within the QFC is essential to the public trust.

38. On the possibility of a prohibition for a limited period of time, rather than one for an indefinite duration, the position taken by the Regulatory Authority's Counsel at the hearing was that a prohibition limited in time was not permitted by QFC Regulations as "*the legislation here is in the same form as the old legislation in the UK; so a prohibition order is an order which is all or nothing*". What Mr. Noujaim could do, however, would be to apply at a later date for a revocation of the prohibition.

39. This statement contradicts the position taken by the Regulatory Authority and recorded by the Tribunal in a previous case (*Chaudhry v QFC Regulatory Authority*), where the Regulatory Authority had concluded that it did have the power to impose a Prohibition Order for a limited duration.

40. The statement also raises a doubt as to whether in the case at hand the Regulatory Authority's decision was not based on an erroneous belief that a Prohibition Order had to be for an indefinite period and, therefore, could not be subject to a time limit.

41. As this issue was not raised by the Appellant and discussed at trial, however, it cannot be considered here.

42. The most debated point in the present case was whether, given the circumstances of the case, a prohibition for an indefinite period was an appropriate or excessive measure. More precisely, in *Abdelkareem v QFC Regulatory Authority*, the Tribunal found that it could uphold a financial penalty if it was "*within the appropriate range*". The same principle can apply to a Prohibition Order.

43. In the *Chaudhry* case, a one-year prohibition had been imposed, but the contravention involved recklessness rather than dishonesty.

44. In the *Abdelkareem* case, the contravention involved repeated acts of dishonesty and the Tribunal upheld a Prohibition Order for an indefinite period.

45. Although the facts in the *Abdelkareem* case were of a much higher gravity than those in the present case, the Regulatory Authority's position is that there should be no difference in the duration of the Prohibition Order as it is not possible to know in advance whether or when a person found to have been guilty of a contravention of the QFC Regulations should be allowed to work again in the Qatar Financial Centre.

46. Furthermore, at the hearing in the present case, the Regulatory Authority's Counsel explained that the Regulatory Authority was now reconsidering the position it had taken in the *Chaudhry* case and that, on reflection, it might have taken the wrong approach in that case by limiting the duration of the Prohibition Order.

47. The new policy of the Regulatory Authority may well be that in the future all Prohibition Orders should be for an indefinite period, but it will still be the responsibility of the Tribunal to determine whether a Prohibition Order, or any other disciplinary measure, is "*within the appropriate range*" or, to put it differently, is not manifestly excessive or inappropriate.

48. The Regulatory Authority has also pointed out that Mr. Noujaim may, at any time, apply for a revocation of the Prohibition Order.

49. This does not, however, negate the difference between a prohibition for an indefinite period and one for a limited period and, in any case, the stigma attached to a prohibition for an indefinite period is much higher than the stigma attached to one for a limited period, which would be important for Mr. Noujaim when he seeks employment in a different jurisdiction.

50. It may also be noted that a prohibition for a limited period would not allow Mr. Noujaim, when it expired, to return to the QFC to carry out a controlled function without the prior approval of the Regulatory Authority, which would be based on a finding that he is a fit and proper person.

51. In the present case, given all the mitigating factors submitted by Mr. Noujaim during the disciplinary procedure and acknowledged by the Regulatory Authority, I conclude that the imposition of a prohibition for an indefinite period was manifestly excessive. The Regulatory Authority should have limited the duration of the prohibition to about five or six years or, at the very least, included in the Order an indication of its willingness to reconsider its decision after five or six years of good conduct.

Representation:

For the Appellant:	Mr. Khawar Qureshi QC, McNair Chambers, Doha.
For the Respondent:	Mr. Ben Jaffey, Blackstone Chambers, London.

By the Tribunal,

Mr. Christopher Grout

Registrar of the Tribunal