Neutral Citation:[2012] QIC (RT) 1

In the name of His Highness Sheikh Hamad bin Khalifa Al-Thani, Emir of the State of Qatar

IN THE REGULATORY TRIBUNAL
OF THE QATAR FINANCIAL CENTRE

7 May 2012

CASE NO: 03/2011

SEIFELDIN ABDELKAREEM	**Appellant**
v	
QFC REGULATORY AUTHORITY	**Respondent**

DECISION OF THE REGULATORY TRIBUNAL

Members of the Regulatory Tribunal:

Chairman, Michael Thomas CMG, QC

Francois Gianviti

Laurence Li

DECISION

This Appeal

1. By a Notice of Appeal dated 23 May 2011, the Appellant ("Mr. Abdelkareem") appeals from a decision of the QFC Regulatory Authority (the "Authority") dated 28 March 2011 (the "Decision").

2. In the Decision, the Authority imposed on Mr. Abdelkareem:
   (1) a penalty of US$100,000 (the "Financial Penalty"); and
   (2) an order prohibiting Mr. Abdelkareem from performing any function for, or being employed by, any Authorised Firm in the Qatar Financial Centre (the "Prohibition Order").

3. The QFC Regulatory Tribunal is established by Article 8(2) of the Qatar Financial Centre Law ("QFC Law"), Law No. (7) of 2005 (as amended), and is empowered to hear and determine appeals against decisions of the Authority, as in this case. By consent, the Authority's decision was stayed from taking effect until 14 days after the determination of this appeal. Because of the time required to prepare for the just resolution of this and other related appeals, it proved impracticable to proceed to an adjudication within 90 days of the receipt of Mr. Abdelkareem's Notice of Appeal.

4. Following directions by the Chairman of the Tribunal on 20 October 2011 and 25 and 31 January 2012, the hearing of this appeal took place by agreement in Doha on 7-9, 12, and 13 February 2012 before the Chairman and 2 other duly appointed Judges of the Tribunal, namely Professor Francois Gianviti and Mr. Laurence Li. Mr. Abdelkareem for his own reasons was unwilling to travel to Doha but, as will be recorded later, arrangements were made for him to participate throughout the hearing by telephone as well as to give oral evidence and to address the Tribunal in final submissions by video-link provided at the Tribunal's expense.

Background

5. This case arose from the demise of Al Mal Bank ("Al Mal"). For present purposes, a brief background will suffice.

6. According to the register of the QFC Companies Registration Office (the "CRO"), Al Mal was incorporated on 3 December 2008. Its authorised share capital was stated to be QR218,400,000 (equivalent to US$60 million). Eight directors and a secretary were named.

7. It was well known to all concerned that Al Mal was intended to be a wholly owned subsidiary of a company incorporated in Bahrain named Al Sadd Holdings BSC ("Al Sadd") with no other shareholder.

8. On the day that Al Mal was registered as incorporated, the Authority authorised it to engage in banking business. But this authorisation was only formal in nature. It was subject to a mutual understanding that Al Mal should not in fact commence business without the Authority further assessing its position and giving a "green light" for it to go ahead.

9. Incidentally, this approach struck us as somewhat odd. One of the Authority's witnesses explained that it was the Authority's usual approach in order to facilitate an Authorised Firm to set up basic business necessities. We did not inquire further, as the issue was not material to the present case. But we would suggest that the Authority should review its practice.

10. For Al Mal, the Authority gave the "green light" to commence business on 16 August 2009. Soon thereafter it became known that Al Mal's paid up share capital position was far lower than the Authority had been led to believe. On 18 November 2009, it took steps to shut down the bank's operations.

11. An investigation ensued and revealed a number of forged documents, documents containing false or misleading information, and documents containing important information not previously known to the Authority.

Mr. Abdelkareem

12. Mr. Abdelkareem was Al Mal's Chief Financial Officer ("CFO") from 29 June 2009 until his resignation with effect from 26 November 2009. According to his own signed Statement of Roles and Responsibilities, he was "responsible for the financial accounting within Al Mal Bank, QFCA reporting ... maintaining and monitoring Al Mal Bank's liquidity position and optimising the returns of Al Mal Bank's assets available for investment." The Statement went on to list a number of duties and responsibilities, including to "provide accurate and timely financial analysis", to "ensure adequate financial and internal controls ... for all financial activities", and to "supervise the preparation of the necessary returns required to be submitted to QFCRA."

13. Mr. Abdelkareem was also appointed to be Al Mal's company secretary on 31 July 2009.

14. As CFO, Mr. Abdelkareem had to be approved by the Authority to perform the Finance Function at Al Mal. It did so on 12 August 2009. The Finance Function is defined in Rule 2.1.7 of the Authority's Individuals Rulebook (the "INDI") as "having responsibility for ensuring that an Authorised Firm complies with the Regulatory Authority's prudential requirements".

15. Mr. Abdelkareem worked with the following persons amongst others at Al Mal:
   (1) Mr. Omara, the Chief Executive Officer ("CEO");
   (2) Mr. Chaudhry, the Chief Compliance Officer;
   (3) Mr. Wofford, the Head of Legal; and
   (4) Ms. Hussain, who had worked for Mr. Abdelkareem before at their mutual previous employer, and whom Mr. Abdelkareem had recruited to work at Al Mal as Finance Manager reporting to him.

16. The Authority's officer who acted as primary supervisor of Al Mal was initially Mr. Frew and later Mr. Busari.

17. This case turns largely on certain communications between Mr. Abdelkareem and each of Mr. Omara, Mr. Chaudhry, Ms. Hussain, and Mr. Busari. We shall discuss these in detail further below.

The Authority's Allegations against Mr. Abdelkareem

18. By its Decision, the Authority alleged that Mr. Abdelkareem had, whilst performing the Finance Function for Al Mal:
   (1) contravened Principles 1 (Integrity), 2 (Due Skill, Care and Diligence), 4 (Relations with the Regulator), and 5 (Management and Compliance) of the Principles of Conduct for Approved Individuals (the "AI Principles") set out in Part 7 of the INDI;
   (2) contravened Article 84(2)(A) of the Financial Services Regulations (the "FSR") (knowingly or recklessly providing false, misleading or deceptive information to the Authority); and
   (3) procured, or was otherwise knowingly concerned in, the contravention by Al Mal of Article 84(2)(A) of the FSR and of Principle 13 (Relations with Regulators) of the Principles for Authorised Firms set out in section 2.1 of the Principles Rulebook (the "PRIN").

19. In its opening submissions dated 30 January 2012 as well as oral argument before the Tribunal, the Authority confirmed that its allegations against Mr. Abdelkareem are based on his knowledge, not recklessness.

20. In its submissions and oral argument, the Authority also made express an allegation that Mr. Abdelkareem had contravened Article 85(2) of the FSR (being knowingly concerned in the contravention of a requirement by a body corporate). This raised an issue of whether it was too late for the Authority to do so. We will address this later.

21. The Authority's factual case was in summary fourfold.

22. Firstly, the Authority said that Mr. Abdelkareem was aware that Al Mal had an account with Doha Islamic Bank ("DIB") (the "Undisclosed Account") which was not reflected in Al Mal's accounting books and records.

23. Secondly, that Mr. Abdelkareem was involved in the preparation of a prudential return (the "September Return") submitted to the Authority in 2009 that falsely included as Al Mal's paid up share capital:

    (1) US$6,213,238 in Al Mal's bank account, when the sum actually belonged to its intended holding company Al Sadd and derived from subscriptions for shares in Al Sadd; and

    (2) US$5,786,762 in Al Sadd's bank account, which also belonged to Al Sadd as money received for subscriptions of shares in Al Sadd.

24. Thirdly, that Mr. Abdelkareem provided false information to the Authority about Al Mal's capital position during a telephone conversation with Mr. Busari on 2 November 2009. He told Mr. Busari that Al Mal's paid up capital was US$27 million and that there was another US$33 million on fixed deposit with Doha Bank (meaning DIB) in the name of Al Sadd. This was untrue. The extra US$33 million did not exist and had never existed.

25. Fourthly, that Mr. Abdelkareem failed to make proper enquiries to inform himself of Al Mal's true financial and capital position, or to notify the Authority of those matters, despite being aware that:

    (1) Al Mal's capital position was incorrectly recorded on the register of the CRO;

    (2) Al Mal had 3 accounts at DIB which were not reflected in its accounting books and records, viz., the Undisclosed Account; and

(3) Al Mal had received client money as paid into the Undisclosed Account.

26. In its Decision, the Authority also referred to certain Weekly Liquidity Reports ("WLRs") that Mr. Abdelkareem had submitted. But it did not expressly hold Mr. Abdelkareem liable for any problems with their accuracy. This raised a question about whether any such problems may now be counted against Mr. Abdelkareem. We will be addressing this in the course of our discussion.

27. For ease of analysis, we will group the factual issues under 4 headings below: (i) "Undisclosed Account"; (ii) "September Return"; (iii) "November Conversation"; and (iv) "Knowledge of Other Matters".

Standard of Review and Standard of Proof

28. As we have noted earlier, Mr. Abdelkareem is appealing from the Decision of the Authority.

29. The QFC Law as well as the QFC Regulatory Tribunal Regulations and Procedural Rules describe a challenge against any decision of the Authority as an "appeal". The overall language of the legislation, however, indicates that our role is more akin to a tribunal deciding a dispute at first instance. As the parties to the present case accept, the Tribunal is an independent body that conducts a *de novo* hearing of both the Authority's allegations and Mr. Abdelkareem's defence.

30. The Authority also accepts that it bears the burden of proving its allegations against Mr. Abdelkareem.

31. On standard of proof, Counsel for the Authority (Mr. Ben Jaffey appearing with Mr. Shane Sibbel) submitted, and we agree, that it should be the civil standard, i.e., on the balance of probability. Of course, as Counsel also noted, one must have regard to (indeed, start with) inherent probabilities or improbabilities. As Lord Hoffman explained in In re B [2009] 1 AC 11, at 20H-21E:

> "13 … I think that the time has come to say, once and for all, that there is only one civil standard of proof and that is proof that the fact in issue more probably occurred than not …"
>
> "14 … Lord Nicholls said [in In re H [1996] AC 563]:
>
> > 'the court will have in mind as a factor, *to whatever extent is appropriate in the particular case*, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability.'"

> "15 I wish to lay some stress upon the words I have italicized. Lord Nicholls was not laying down any rule of law. There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not. Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities. If a child alleges sexual abuse by a parent, it is common sense to start with the assumption that most parents do not abuse their children. But this assumption may be swiftly dispelled by other compelling evidence of the relationship between parent and child or parent and other children. It would be absurd to suggest that the tribunal must in all cases assume that serious conduct is unlikely to have occurred. In many cases, the other evidence will show that it was all too likely. If, for example, it is clear that a child was assaulted by one or other of two people, it would make no sense to start one's reasoning by saying that assaulting children is a serious matter and therefore neither of them is likely to have done so. The fact is that one of them did and the question for the tribunal is simply whether it is more probable that one rather than the other was the perpetrator."

32. With this in mind, we turn to the evidence.

The Evidence

33. Hearing the evidence and submissions took 5 days in all. The Authority presented extensive documentary materials and the witness statements of 13 individuals. At the requirement of Mr. Abdelkareem, it called 6 of them for his cross-examination:

    (1) Mr. Fergusson, a forensic accountant;

    (2) Mr. Adams, a computer expert;

    (3) Mr. Frew;

    (4) Mr. Busari;

    (5) Mr. Emam, a manager at DIB;

    (6) Ms. Hussain.

34. Mr. Abdelkareem then gave evidence himself. He also relied on the witness statements of 5 people. These were mostly in the nature of character references. The Authority required only 1 of them, namely Mr. Wofford, to testify.

35. The Tribunal permitted Mr. Abdelkareem, Mr. Wofford, and Mr. Adams to testify via telephone and/or video-link. Mr. Abdelkareem also participated in the hearing at all times by telephone conference.

36. For reasons that will be obvious, the evidence of Mr. Abdelkareem, Ms. Hussain, and Mr. Busari will feature more prominently in our analysis. The evidence of other witnesses is of relatively less importance to our determination of the issues in dispute.

37. We should also record that, in the course of the hearing, we were mindful of the fact that Mr. Abdelkareem was acting in person. We therefore at times took an unusually proactive approach in probing the Authority's evidence and in assisting Mr. Abdelkareem to make his points. For instance, when the Authority called Mr. Adams as a computer expert in order to show that, according to his findings, Mr. Abdelkareem had opened (and therefore was likely to have read) some particular emails, the Tribunal asked a series of questions about the expert's methodology. It then transpired that a technical matter had been misunderstood. Consequently, as the Authority readily acknowledged, Mr. Adams' well intentioned evidence had little significance.

(i) Undisclosed Account

38. As we noted earlier, Al Mal had an Undisclosed Account with DIB. This appears to have been 1 umbrella account with 3 subaccounts for 3 currencies, viz., Qatari Riyals, US dollars, and UAE Dirhams. The subaccount numbers bore the same 9 initial digits and were differentiated by the suffixes "/001", "/002", and "/003".

39. For present purposes, whether the Undisclosed Account was 1 or 3 accounts does not matter. What is important – and not in dispute – is that Al Mal had a banking relationship with DIB. For ease of discussion, we have decided to speak of the "Undisclosed Account" in the singular.

40. What is also important – and also not in dispute – is that the Undisclosed Account and the transactions and funds therein were not reflected in Al Mal's accounting books and records or reported to the Authority.

41. The issue is therefore whether and when Mr. Abdelkareem knew about the account. It is to this issue that Ms. Hussain's evidence before the Tribunal mostly relates. According to Ms. Hussain, she brought the existence of this Undisclosed Account to Mr. Abdelkareem's attention on several occasions.

42. The first occasion, Ms. Hussain said, was when she saw a fax dated 15 September 2009 on her desk. The fax appeared to show a transfer of money from Mr. Omara's father to Al Mal's account at DIB. Ms. Hussain was concerned to learn in this way about an account at DIB of which she, as Finance Manager, had no knowledge and which was not reflected in Al Mal's financial records.

43. Mr. Abdelkareem was in London at the time. Ms. Hussain brought up the matter with Al Mal's Chief Operating Officer ("COO") Mr. Harun, who said he did not know about the account. Ms. Hussain tried to find out from DIB but was rebuked because she was not a signatory for the account. Mr. Harun then instructed her to contact a certain officer at DIB, whom they knew because Al Mal was recruiting him. That person told Ms. Hussain that there was no money in the account.

44. After Mr. Abdelkareem came back from London, Ms. Hussain recalled showing him the fax. He said he would check with Mr. Omara.

45. The second occasion that Ms. Hussain recalled telling Mr. Abdelkareem about the Undisclosed Account was in October. At her request, the officer at DIB faxed her an account statement dated 11 October 2009. She showed it to Mr. Abdelkareem, who again said he would check with Mr. Omara.

46. The third occasion, according to Ms. Hussain's evidence, was at Mr. Abdelkareem's prompting. He asked Ms. Hussain for the account number of the account at DIB. She sent the information to him by an email dated 21 October 2009.

47. Mr. Abdelkareem does not dispute receiving this email. He also does not dispute that:

(1) in the 2 preceding days, he and Mr. Omara had a series of email exchanges where he told Mr. Omara that he could "*rewire [a sum of money] to AMB Doha Bank account*"; and

(2) after receiving the account details from Ms. Hussain, on the same day he forwarded the information to a banker in London and that the banker later effected a transfer of money to him via the account (being the transfer that he had contemplated in his email exchanges with Mr. Omara).

48. Ms. Hussain also recalled asking Mr. Abdelkareem on a couple of other occasions around that time whether she should monitor the account or include it in Al Mal's financial records. His response was that he would get back to her.

49. Mr. Abdelkareem strenuously challenged the truth of Ms. Hussain's evidence. He leveled a host of accusations of falsity at her, putting to her motives of greed, self-interest, and personal animosity as well as bad memory. He also sought to make a point from certain differences in wording in the Authority's documents recording Ms. Hussain's version of events.

50. We are impressed by Mr. Abdelkareem's mastery of details. But his attacks did not detract from Ms. Hussain's evidence in the least. Her testimony was balanced, careful, and reliable. In our opinion, she is a thoroughly honest and convincing witness to the facts that she related.

51. There is also undisputed documentary evidence to the effect that Mr. Abdelkareem knew about the Undisclosed Account. This provides an independent basis of proof supporting Ms. Hussain's version of events.

52. On 8 July 2009, Mr. Chaudhry emailed Mr. Abdelkareem a copy of a letter under DIB's letterhead dated 2 April 2009 certifying that Al Mal had US$61,312,500 in an account with DIB (the "April Certificate"). In the email, Mr. Chaudhry stated, *"Hi Seif, As discussed pls find the certificate attached."*

53. Mr. Chaudhry had submitted the April Certificate together with other documents to the CRO. On 9 July 2009, he emailed a set of the submitted documents to Mr. Abdelkareem. In the email, he stated, "*Hi Seif, Please find the soft copy of the submission to QFC with regards to the above for your information and records.*"

54. Mr. Abdelkareem admits that, as Mr. Chaudhry mentioned in the email of 8 July 2009, the two had had a discussion, during which Mr. Chaudhry told him that Al Mal had some US$60 million with DIB, told him about the April Certificate, and told him that he (Mr. Chaudhry) had sent the certificate to the QFC authorities.

55. According to Mr. Abdelkareem, Mr. Chaudhry wanted him to include the money at DIB in Al Mal's financial records, but he insisted that he could not rely on a certificate and required proper bank statements. He was obviously uncomfortable with the purported existence of that substantial sum of money. To the Tribunal he even said, "*I thought it was clever that I wouldn't allow this [i.e., the inclusion of the sum in the financial records].*"

56. Mr. Abdelkareem also said that he had followed up with Mr. Omara several times throughout the months up to October to obtain access to the statements, and the fact that he was never given such access was a reason for his eventual resignation from Al Mal.

57. Mr. Abdelkareem further accepts that Mr. Chaudhry sent him the 2 emails on 8 and 9 July 2009. He said he did not open the first email because he knew from its subject line that it contained the April Certificate, and he had already told Mr. Chaudhry he would not rely upon it. He did not open the second email because he was about to leave for a holiday.

58. Given what Mr. Abdelkareem accepts and has admitted, it is not critical whether he had opened those emails. We are inclined to think he more likely did than did not. Common sense suggests that a businessperson would both check and read his emails regularly. If he goes on holiday, he would do so remotely or upon return to the office. Moreover, emails from the Chief Compliance Officer must be of some importance to a bank's CFO. All the more so when the emails are about the bank's capital position.

59. There is yet further documentary evidence of Mr. Abdelkareem's knowledge of the Undisclosed Account. By an email on 28 July 2009, Mr. Chaudhry circulated the draft minutes of a meeting between Al Mal and the Authority that day. Mr. Omara was recorded as having stated that the funds which raised Al Mal's capital position were "*right now with Doha Islamic Bank*". Mr. Abdelkareem was not at the meeting. But he, together with Mr. Omara and COO Mr. Harun, was sent the minutes.

60. The minutes of the first meeting of Al Mal's Assets and Liabilities Committee dated 29 July 2009 (the "1st ALCO Minutes") stated that "*the attendees agreed on starting the Treasury Operations with the current banking relationships we have for the time being, <u>namely QNB and Doha Islamic</u>*" (underlining added). "QNB" refers to Qatar National Bank. Mr. Abdelkareem attended that meeting and signed the minutes.

61. The minutes of a meeting of Al Mal's Management Credit Committee dated 30 September 2009 (the "MCC Minutes") recorded as item 4, "*Our current Capital is US$60,000,000. This means we cannot lend more than US$6,000,000 to one party or a group of closely related parties.*" That figure of US$60 million was only possible by taking into account the sum purportedly at DIB. Mr. Abdelkareem attended the meeting and signed the minutes.

62. Mr. Abdelkareem faintly suggests that the MCC Minutes had been falsified, noting that the signature page was separate. Such a suggestion is not supported by any evidence. In any event, an email on 1 October 2009 circulating the draft minutes to the attendees including Mr. Abdelkareem for comment shows that item 4 was already in the draft.

63. The Authority's minutes for a meeting on 12 October 2009 (the "October Minutes") recorded that "*Mr Abdelkareem said we should receive their application for over 25% bank limits with less than one year to maturity in the next few days. It will consist of QNB and Doha Islamic*" (underlining added). The "25% bank limit" refers to a restriction on Al Mal that it should not maintain more than 25% of its assets with any one bank.

64. In the early morning on the following day, i.e., 13 October 2009, Mr. Chaudhry sent an email, including to Mr. Abdelkareem, where he stated, "*We need to send the letter on the Bank's limits today. Peter if you could finalize the same after getting input from Seif [i.e., Mr. Abdelkareem]. This will be signed off by Nazim [i.e., Mr. Omara].*"

65. A chain of emails followed, with a Mr. Peter Stockwell circulating a draft, then Mr. Wofford and Mr. Stockwell amending it. The emails were all copied to Mr. Abdelkareem (the "13 October Emails"). The amended draft and the final letter dated the same day and signed by Mr. Omara stated:

> "*... we are applying for the exemption based on the fact that these banking institutions holding our capital on deposit are QCB [Qatar Central Bank] regulated entities ...*
>
> *Al Mal currently has its capital placed with two local Qatar banks; QNB Al Islamic and Doha Islamic. This decision had been based upon our detailed credit analyses for both institutions ... The new [proposed] limits for Money markets will be 50% of our capital base for each ...*
>
> *... A detailed credit analysis recommends a Money Market maximum limit exposure of USD 30m for each institution (Refer to the detailed credit analysis attached)*
>
> *... the attached credit analysis and exposure limit recommendations were reviewed and approved by Al Mal Senior Management and the ALCO Committee (see minutes attached) ...*"

66. On the same day, Mr. Abdelkareem indeed chaired a meeting of Al Mal's Assets and Liabilities Committee. The minutes (the "2nd ALCO Minutes") recorded that "*Based on Government declaration and action and based on our own assessment, we feel that our partners institutions*

(QNB and Doha Bank), where our capital is placed on deposit, are solid and we don't need other counterparty. For time being, 100% of our capital is safely invested with top Qatari banks and we think 50% (instead of 25%) maximum exposure of our capital on each of this bank is reasonable and safe" (underlining added). Mr. Abdelkareem signed these minutes.

67. In an email to Mr. Abdelkareem on 12 November 2009, Ms. Hussain referred to the Undisclosed Account, that she had not received statements from DIB and had only obtained statements through the contact person whom they knew at DIB, and that "*as discussed*" she could not account for the transfer of funds from Mr. Omara's father into the account. She asked Mr. Abdelkareem whether he had "*a confirmation as yet*" and sought his instructions for going forward. Although this email came later, it provides some support for her recollection that she had earlier told these matters to Mr. Abdelkareem.

68. In the light of all of the above, and in spite of Mr. Abdelkareem's denials, we are driven to conclude that he knew about the Undisclosed Account as early as 8 July 2009. Indeed, he took some steps to follow it up, by asking Mr. Omara for access to the account statements. But there is no evidence of further action. As he must have known, it was not reflected in Al Mal's financial records.

(ii) September Return

69. On 29 October 2009, Al Mal submitted to the Authority the September Return that it required for the period from July to September 2009. The return recorded cash and liquid assets of US$25,728,000 and stated the bank's ordinary share capital to be US$27 million. Al Mal's true share capital position was only US$15 million; this return overstated the figure by US$12 million.

70. The parties agree that the US$12 million comprised 2 components:
    (1) US$6,213,238 in Al Mal's account, when the sum actually belonged to its intended holding company Al Sadd derived from subscriptions for shares in Al Sadd; and
    (2) US$5,786,762 held in Al Sadd's account, which also actually belonged to it as money received for subscriptions of shares in that company.

71. There were 2 drafts of the September Return. Ms. Hussain said that she prepared the successive drafts under Mr. Abdelkareem's instructions and supervision. Mr. Abdelkareem at one point denied having seen the first draft. But as we understand it, he does not seriously maintain this.

72. In any event, it would have been unrealistic for Mr. Abdelkareem to argue that Ms. Hussain prepared the draft returns without his knowledge or without showing them to him. He was the person approved for the Finance Function at Al Mal; he was responsible for the bank's compliance with the Authority's prudential requirements, including the preparation and submission of prudential returns.

73. Moreover, the documentary evidence shows that Ms. Hussain emailed the second draft to Mr. Abdelkareem on 29 October 2009. In the email she stated, "*This is the soft copy as requested. Adjusted the figure at other assets.*"

74. The first draft of the return included only the US$6,213,238. The second included also the US$5,786,762.

75. In the normal course of events, Mr. Abdelkareem as CFO would be the person to sign the return. In this instance, he did not. Mr. Omara signed the return.

76. Mr. Abdelkareem admits that he knew about the provenance and nature of both sums and about their inclusion in the final return. He raised 2 defences.

77. Firstly, regarding the US$6,213,238, he raised a defence that the money was in Al Mal's account and he genuinely thought it had been contributed to Al Mal's share capital. This explanation might have been plausible in the context that Al Mal was a "start-up" company. But one must also take into account the fact that Mr. Abdelkareem was its company secretary.

78. As company secretary, Mr. Abdelkareem was responsible for maintaining Al Mal's share register and issuing share certificates. For whatever reasons, he did not do so. We are not concerned with faulting his conduct in this respect. But given his responsibility, and given that he did not know (as he should) whether Al Sadd had been registered as holding shares and had been issued share certificates for the US$6,213,238, he could not have genuinely thought that the sum had been duly contributed to Al Mal's share capital.

79. Secondly, Mr. Abdelkareem argued that it was permissible or at least arguable as a question of accounting to treat the 2 sums (US$6,213,238 and the US$5,786,762) as part of Al Mal's capital. His reasoning, he said, was as follows. Al Sadd held, or was entitled to hold, 100% of Al Mal's

share capital and had no other business of its own. Investors in Al Sadd would only be interested in Al Mal, so that when they subscribed for shares in Al Sadd, they were "really" subscribing for shares in Al Mal. Thus as a matter of "substance over form", moneys paid for subscriptions for shares in Al Sadd were effectively Al Mal's capital and could be so treated in Al Mal's accounts.

80. We are not persuaded that a professional accountant and financial controller with Mr. Abdelkareem's knowledge and experience (including in the financial services industry) would seriously accept, let alone rely on, such a line of reasoning. The essential difference between a holding company's capital and a subsidiary's capital is obvious and follows necessarily from the fact that the two are separate entities. Moreover, as Mr. Abdelkareem accepts, prudence and neutrality are 2 important principles of accounting. On the evidence, he had done nothing to satisfy either of these principles.

81. Furthermore, according to Mr. Abdelkareem's own testimony before the Tribunal, he knew Mr. Omara had had difficulty in procuring Al Sadd to transfer the sum of US$5,786,762 to Al Mal's account. Al Mal obviously did not have an unfettered right to the funds. It follows that the sum could not be counted as part of Al Mal's capital.

82. Mr. Abdelkareem said that he was including the US$5,786,762 only in Al Mal's Tier 2 capital. But he admitted that even this was questionable. Had Mr. Omara agreed to it, he claimed, "*I wouldn't have done it straightforward. I would have written to the Regulatory Authority and get their permission first and then we send them the PIIB return ...*"

83. Mr. Omara wanted to count the US$5,786,762 not as Tier 2 capital but as part of Al Mal's ordinary capital. Mr. Abdelkareem said he disagreed and would not sign the return. Mr. Omara signed it himself.

84. It struck us as both artificial and extremely irresponsible for the CFO of a bank to say that he was so uncomfortable with an accounting treatment of a major sum of capital that he would not attach his name to it, yet would let the CEO sign and submit the information to the regulator. We find as a fact that Mr. Abdelkareem knew that the inclusion of the US$5,786,762 was improper. What he did was an attempt to avoid personal liability (by not putting his name to the return) while also to avoid arousing the Authority's interest in what he knew to be a problem (by keeping quiet about it).

85. This was, in fact, much the same attitude that he took towards the Undisclosed Account. He refused Mr. Chaudhry's request to include US$60 million purportedly in DIB in Al Mal's financial records because he was uncomfortable with the sight of a mere letter, viz., the April Certificate. But nor did he sound any warnings about the existence of this undisclosed account and the purported US$60 million, despite knowing that Mr. Chaudhry had stated this as a fact to the QFC authorities.

86. Mr. Abdelkareem's defence case relies heavily on 13 WLRs that he submitted to the Authority in August through to November 2009. These weekly returns were much briefer than the periodic prudential returns including the September Return. Their submission was an administrative measure which the Authority had put in place during a period of uncertainty in the world financial markets. As their name suggests, the WLRs were intended for routine monitoring financial firms' liquidity positions.

87. At one point in this appeal, Mr. Abdelkareem appeared to argue that, by a WLR which he submitted on the same day as the September Return, he had disclosed the "difference of opinion" between Mr. Omara and himself to the Authority. But he later clarified his argument as that "*the WLRs certainly should have alerted the Regulatory Authority to the fact that materially difference [sic] capital amounts were being reported to [it]*".

88. The Authority contended that the WLRs are of no assistance to Mr. Abdelkareem's case since they too were inaccurate and misleading by the wrongful inclusion of the US$6,213,238 and US$5,786,762 actually belonging to Al Sadd.

89. As we have noted earlier, in its Decision, the Authority did refer to the WLRs. It also specifically mentioned that "the WLRs did not accurately reflect the assets of Al Mal". But the Authority did not specifically hold Mr. Abdelkareem culpable for any shortcomings in the WLRs. It would not be fair to do so now.

90. This is not to say one must now disregard the WLRs or turn a blind eye to their contents when considering matters for which the Authority in its Decision had held Mr. Abdelkareem liable. The Authority stated in its Decision that the WLRs were inaccurate. Moreover, Mr. Abdelkareem himself places much reliance on the WLRs in his defence. The WLRs were in the hearing bundles,

supplied to Mr. Abdelkareem in advance. Their problematic aspects were canvassed during the hearing.

91. The WLR that Mr. Abdelkareem submitted on 29 October 2009 reported Al Mal's "Cash and Liquid Assets" to be US$25,127,000. This amount included both the US$6,213,238 of Al Sadd's funds in Al Mal's account and the other US$5,786,762 in Al Sadd's own account. The full amount was stated to be "Third Party Assets". As the Tribunal pointed out and Mr. Abdelkareem agreed, even if he were right to treat the US$5,786,762 as Tier 2 capital, that sum should be under "Related Party Assets", in the same way as liabilities to Al Sadd were recorded as "Related Party Liabilities".

92. Thus, far from disclosing a "difference of opinion", the WLR actually tended to confirm the September Return.

93. Regardless of the WLR, Mr. Abdelkareem cannot make light of the gravity of the false inclusion of the US$5,786,762 in the September Return and his knowledge of it. His own evidence is that, even if the inclusion were in a lower tier capital only, he would still have written to the Authority to explain its inclusion and to obtain approval. That it was in fact included in the highest tier of ordinary share capital must have rung alarm bells in his mind. It was certainly a serious enough matter for him not to sign the return as it stood.

94. If he ever meant to inform the Authority about his perception of problems in the September Return, he could have, and we find that he would have, called and/or written to the Authority or brought it up in his conversation with Mr. Busari just a few days later (to which we will turn shortly).

95. On the evidence, we find that Mr. Abdelkareem knew that the September Return improperly contained inaccurate and misleading information but was content for it to be submitted as long as his signature did not appear on it.

(iii) **November Conversation**

96. Mr. Busari of the Authority reviewed the September Return. As we will discuss below, by such time, Al Mal had informed the Authority that it had increased its share capital to US$60 million. Mr. Busari noticed the discrepancy between this and the figure shown in the September Return, i.e., US$27 million.

97. The parties are on common ground that Mr. Busari spoke by telephone with Mr. Abdelkareem on 2 November 2009 to inquire about Al Mal's share capital position (the "November Conversation"). It is also common ground that Mr. Abdelkareem told Mr. Busari about a forthcoming board meeting and that US$60 million would become Al Mal's share capital. The issue is what else was said.

98. In his evidence before the Tribunal, Mr. Busari said that he called Mr. Chaudhry to inquire about the discrepancy. Mr. Chaudhry directed him to Ms. Hussain, who directed him to Mr. Abdelkareem, who said he (Mr. Abdelkareem) had to ask Mr. Omara about it. After a pause, during which Mr. Busari assumed Mr. Abdelkareem spoke to Mr. Omara and received an answer or instructions, Mr. Abdelkareem replied that the paid up capital at the time was US$27 million and that there was another US$33 million on fixed deposit with DIB in the name of Al Sadd.

99. Mr. Abdelkareem accepts that Mr. Busari called him and that he put Mr. Busari on hold while getting an answer from Mr. Omara, which he repeated to Mr. Busari. But according to Mr. Abdelkareem, Mr. Busari's question was simply when was Al Mal going to increase its capital to US$60 million, and his answer (which he obtained from Mr. Omara) was that there would be a board meeting at the end of November to increase the capital to such amount. Mr. Abdelkareem denied that Mr. Busari asked about any discrepancy or that he said the paid up capital was US$27 million with another US$33 million at DIB in the name of Al Sadd.

100. Mr. Abdelkareem's version seems rather unlikely. He does not dispute that, by the time of the conversation, Al Mal had told the Authority and it was in Mr. Busari's mind that Al Mal's share capital position was US$60 million. Indeed, as we will touch upon below, there is a wealth of documentary evidence to this effect. It was, in fact, the basis on which the Authority had given Al Mal the "green light" to commence operations.

101. That being so, it was only natural that when Mr. Busari saw the figure of US$27 million in the September Return, he would be concerned about the discrepancy. His inquiry with Al Mal must have focused on the discrepancy and not the timing of any future increase to US$60 million. After all, so far as Mr. Busari understood, the capital already stood at such a figure.

102. It is even more unlikely that Mr. Abdelkareem's only answer was that there would be a board meeting at the end of the month to increase the share capital to US$60 million. Such would have

provided little comfort to Mr. Busari. He would have had to ring an alarm within the Authority, perhaps even to cause it to revoke the permission given for Al Mal's active operations.

103. The contemporaneous documentation also supports Mr. Busari's version of events. There is an email from Mr. Chaudhry to Mr. Abdelkareem on 2 November 2009 in the early afternoon, apparently after Mr. Chaudhry received Mr. Busari's call and having directing him to Mr. Abdelkareem. In the email, Mr. Chaudhry wrote, "*As spoken please find attached below the contact numbers of Raz [i.e., Mr. Busari], please have a word with him with regards to <u>the capital and our recent financial return</u>*" (underlining added). Evidently, Mr. Busari was inquiring about what he saw on the September Return.

104. Moreover, upon making his inquiry and receiving an answer, Mr. Busari wrote in a Returns Review Report as follows.

> *"Al Mal Bank's CFO, Mr. Seifeldine Abdelkareem, was contacted by telephone on 02/11/09 in order to seek clarification on what the bank's current paid up share capital is, as it had been suggested in the past that it was USD $60M (in contrast to the USD $27M on the balance sheet). Mr. Abdelkareem explained that the current paid up capital is USD $27M. There is an extra USD $33M on fixed deposit with Doha Bank, in the name of Al Sadd Company (Al Mal Bank's Holding Company based in Bahrain). Mr. Abdelkareem stated that there would be a Board meeting on 28/11/09, at which the Board will approve the transfer of the capital to Al Mal Bank. Mr. Abdelkareem said he was confident that Al Mal Bank's capital would be USD $60M by 31/11/09."*

105. Mr. Busari signed the report on 2 November 2009. Mr. Frew, as the secondary or "back-up" supervisor of Al Mal, reviewed the report and signed on the same day.

106. Mr. Abdelkareem hinted at suggesting that the report was made later to cover up the Authority's or its staff's failure to supervise. We cannot accept this suggestion. The inherent probability of 2 professional regulators fabricating the content of a report, backdating it, and putting it into the internal files must be very low. In any event, there is simply no evidence to support such an accusation.

107. The Tribunal probed Mr. Busari on the possibility that he had misheard what Mr. Abdelkareem said over the telephone. Mr. Busari accepted the possibility that he might have been influenced subconsciously by what he had been told before, viz.: (a) the figure of US$60 million; and (b) that

some funds were held in DIB. He even accepted that he could have deduced the figure US$33 million. But he could not have thought, unless Mr. Abdelkareem said so, that the sum was in the name of Al Sadd.

108. Mr. Abdelkareem urged upon the Tribunal that, he being the man who just a few days before "had stood up to the CEO" about the inclusion of US$5,786,762 in the September Return, it was unlikely that he would tell Mr. Busari an even bigger lie.

109. We were attracted to the argument. But on reflection, we cannot agree with it.

110. Examining more closely what Mr. Abdelkareem was recorded to have said, it was not necessarily a bigger lie. Mr. Abdelkareem's own case is that he did not have access to the bank statements of Al Mal's account at DIB. He could have believed Mr. Omara's information that there were US$33 million at DIB in Al Sadd's name. Indeed, during the conversation, he made clear that he did not know the answer to Mr. Busari's query and had to ask Mr. Omara. Implicit in this must be that he was relying on and relaying Mr. Omara's information.

111. As for the part where he told Mr. Busari that Al Mal's capital was US$27 million, we note that, as he said in his own evidence, he was willing to arrive at this figure by treating US$5,786,762 as Al Mal's Tier 2 capital.

112. In any event, with Mr. Busari asking questions and waiting on the telephone, in reality Mr. Abdelkareem had little choice but to repeat Mr. Omara's instructions on what answer to give. To respond otherwise would be to alert the Authority that the September Return was problematic. As we have noted earlier, we find that Mr. Abdelkareem was quite unwilling to do this.

113. Having heard the oral testimony and examined the documentary evidence, we are of the opinion that Mr. Busari was a truthful and reliable witness who had a good recollection of the relevant conversation. We find that Mr. Abdelkareem did tell Mr. Busari what was recorded on his Returns Review Report.

(iv) Knowledge of Other Matters

114. The Authority alleged that Mr. Abdelkareem had knowledge of, in addition to the issues discussed above, a number of other matters and that, as CFO and the person authorised to discharge the Finance Function, he should have made any necessary inquiries and notified the Authority of the same.

115. Foremost was that Mr. Abdelkareem knew Al Mal had misrepresented its capital position to the QFC authorities. In this regard, we have already noted earlier his knowledge about the April Certificate and Mr. Chaudhry's submission to the CRO, a full set of which Mr. Chaudhry forwarded to him by email dated 9 July 2009. In that submission dated 29 June 2009, Al Mal stated an increase of its capital from US$15 million to US$35 million.

116. The Authority also relies on Mr. Chaudhry's statement where he said he showed Mr. Abdelkareem a letter under DIB's letterhead dated 4 August 2009 certifying that Al Mal had US$61,312,150. According to Mr. Chaudhry, Mr. Abdelkareem instructed him to send the letter to the CRO as part of a submission dated 5 August 2009 notifying the CRO that Al Mal had increased its capital to US$60 million.

117. Mr. Chaudhry is the appellant in QFCRT No. 1 of 2011, which the Tribunal heard immediately before this case. Mr. Abdelkareem was present throughout the earlier case. However, the Authority did not list Mr. Chaudhry as one of its witnesses in Mr. Abdelkareem's case. Nor was Mr. Abdelkareem given an opportunity to cross-examine him. In the circumstances, we shall not rely on or attach significance to Mr. Chaudhry's evidence where adverse to Mr. Abdelkareem's case (apart from emails admitted to be from him).

118. There is, on the other hand, a substantial body of documentary evidence to which Mr. Abdelkareem was privy. We have already referred to the 1st ALCO Minutes, the MCC Minutes, the October Minutes, the 13 October Emails, and the 2nd ALCO Minutes. We are driven to find that Mr. Abdelkareem did have knowledge of the matters stated in those documents. He took no steps to bring to the Authority's attention the true facts as to Al Mal's share capital.

The Regulations and AI Principles

119. As we noted earlier, by its Decision, the Authority alleged that Mr. Abdelkareem had:

(1) contravened Principles 1 (Integrity), 2 (Due Skill, Care and Diligence), 4 (Relations with the Regulator), and 5 (Management and Compliance) of the AI Principles set out in Part 7 of the INDI;

(2) contravened Article 84(2)(A) of the FSR (for knowingly providing false, misleading or deceptive information to the Authority); and

(3) procured, or was otherwise knowingly concerned in, the contravention by Al Mal of Article 84(2)(A) of the FSR and of Principle 13 (Relations with Regulators) of the Principles for Authorised Firms set out in section 2.1 of the PRIN.

120. The phrase "knowingly concerned in the contravention of Al Mal" refers to Article 85(2) of the FSR (liability of officers of a body corporate).

121. AI Principle 1 requires:

> "An Approved Individual must act with <u>integrity</u> at all times in the carrying out of Controlled Functions." (underlining added)

122. AI Principle 2 requires:

> "An Approved Individual must act with <u>due skill, care and diligence</u> in the carrying out of Controlled Functions." (underlining added)

123. AI Principle 4 requires:

> "An Approved Individual must deal with the Regulatory Authority in an open and cooperative manner and disclose appropriately to the Regulatory Authority any information of which the Regulatory Authority would reasonably expect notice."

124. AI Principle 5 requires:

> "An Approved Individual who is a Senior Manager must give appropriate priority to his management responsibilities and ensure that the business of the Authorised Firm for which

he is responsible is effectively supervised and controlled and complies with the relevant requirements of the Regulatory System."

125. The regulations elsewhere define a "Senior Manager" as "an individual employed by the Authorised Firm … who has responsibility either alone or with others for the management and supervision of one or more elements of a firm's business relating to Regulated Activities".

126. Article 84(2) of the FSR states:

> "Without prejudice to the generality of Article 84(1), for the purposes of these Regulations, a Person contravenes a Relevant Requirement if he:
>
> (A) knowingly or recklessly provides to the Regulatory Authority any information which is false, misleading or deceptive, or conceals information where the concealment of such information is likely to mislead or deceive the Regulatory Authority;"

127. Principle 13 in PRIN mirrors AI Principle 4 and requires:

> "An Authorised Firm must deal with all relevant regulators in an open and cooperative manner and keep the Regulatory Authority promptly informed of anything relating to the Authorised Firm, of which the Regulatory Authority would reasonably expect notice."

128. Article 85(2) of the FSR states:

> "If an officer of a body corporate is knowingly concerned in the contravention of a Relevant Requirement committed by a body corporate, the officer also commits a contravention of a Relevant Requirement."

129. Counsel for the Authority referred us to some authorities interpreting the UK regulations. The propositions they stand for are not controversial. Nonetheless, we have found them helpful and, for ease of reference, set them out below.

On Integrity

130. The UK Financial Services Authority ("FSA") has published a set of Statements of Principle and Code of Practice for Approved Persons ("APER"). Principles 1 and 4 are in essentially the same terms as the Authority's AI Principles 1 and 4.

131. APER 4.1 lists a number of examples of conduct which, in the FSA's view, does not comply with Principle 1, i.e., the requirement of integrity. These include:

(1) "Deliberately misleading (or attempting to mislead) by act or omission a client, his firm ... or the FSA" (4.1.3). This "includes, but is not limited to, deliberately ... providing false or inaccurate information to the firm ... [or] the FSA" (4.1.4(10) and (11));

(2) "Deliberately failing to inform, without reasonable excuse, a customer, his firm ... or the FSA, of the fact that their understanding of a material issue is incorrect, despite being aware of their misunderstanding" (4.1.6);

(3) "Deliberately preparing inaccurate or inappropriate records or returns in connection with a controlled function" (4.1.8).

132. The Financial Services and Markets Tribunal (the "FSMT"), the UK equivalent to this Tribunal, has had occasion to consider the UK Principle 1 and the meaning of the requirement of integrity. In Hoodless and Blackwell v. FSA (3 October 2003), the FSMT remarked at paragraph 9 that:

> "... 'integrity' connotes moral soundness, rectitude and steady adherence to an ethical code. A person lacks integrity if unable to appreciate the distinction between what is honest and dishonest by ordinary standards."

133. In Vukelic v. FSA (13 March 2009), the FSMT commented at paragraph 23 that:

> "In an area of life giving rise to circumstances of great variety and complexity there may well be many other circumstances in which the FSA could fairly conclude that an applicant lacked integrity, a concept elusive to define in vacuum but still readily recognizable by those with specialist knowledge and/or experience in a particular marketplace."

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 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.

On Open and Cooperative Manner

137. This duty is reinforced by AI Principle 4, requiring a regulated person to deal with the regulator in an open and cooperative manner and to disclose information that one can expect to be of significance.

138. APER 4.4 provides some examples of behaviour which, in the FSA's view, does not comply with the UK equivalent of this principle. They include:

(1) "Failing to report promptly in accordance with his firm's internal procedures (or if none exist direct to the FSA), information which it would be reasonable to assume would be of material significance to the FSA, whether in response to questions or otherwise" (4.4.4);

(2) "Where the approved person is, or is one of the approved persons who is, responsible with the firm for reporting matters to the FSA, failing promptly to inform the FSA of information of which he is aware and which it would be reasonable to assume would be of material significance to the FSA, whether in response to questions or otherwise" (4.4.7). In this connection, it is relevant to take into account "the likely significance of the information to the FSA which it was reasonable for the approved person to assume" and "whether any decision not to inform the FSA was taken after reasonable enquiry and analysis of the situation" (4.4.8).

(3) "Failing without good reason to inform a regulator of information of which the approved person was aware in response to questions from that regulator" (4.4.9(1)).

139. It is not enough for an approved person to sit like the proverbial wise monkeys: "see no evil; hear no evil; speak no evil". As someone trusted with responsibility, if he sees or hears evil, he must speak out.

On Provision of Information

140. In his closing submission, Mr. Abdelkareem raised an argument that Article 84(2) should be read to cover only provision of information in writing.

141. We do not agree. Article 84(2) speaks of "provides ... any information" in general. There is no indication that it is meant to be limited to matters which are in writing. On the contrary, the article goes on to cover concealment of information, which by definition cannot be in writing.

On Knowing Concern

142. As we have quoted earlier, Article 85(2) of the FSR makes an officer of a body corporate who is "knowingly concerned in" the body corporate's contravention of a requirement also himself liable as contravening a requirement.

143. Article 85(7) further states:

> "For the purposes of Article 85, a Person is knowingly concerned in a contravention of a Relevant Requirement if, and only if, that Person:
>
> (A) has aided, abetted, counselled, or procured the contravention;
>
> (B) has induced, whether by threats or promises or otherwise, the contravention;
>
> (C) has <u>in any way, by act or omission, directly or indirectly, been knowingly involved in</u> or been party to, the contravention; or
>
> (D) has conspired with another or others to commit the contravention." (underlining added)

144. Steyn LJ (as he then was) explained in <u>SIB v. Pantell SA (No. 2)</u> [1993] Ch 256 that "knowingly concerned" involves 2 parts: knowledge and active involvement. That case concerned the meaning of the phrase in certain provisions of the UK Financial Services Act 1986. As his Lordship said at 283:

> "'Knowingly concerned' is not defined. In my judgment it is clear that proof of actual knowledge is essential but not enough. Mere passive knowledge will not be sufficient: actual involvement in the contravention must be established."

145. In FSA v. Fradley [2004] All ER (D) 297 (Oct), the English High Court clarified, at paragraph 39, that knowledge does not mean dishonesty or unconscionability.

146. In FSA v. Martin [2005] 1 BCLC 95, the FSMT discussed at 503b-c, the person's active involvement as "in ways which were not peripheral but key elements". This must be right. It cannot be, for example, that a secretary who types up documents or makes arrangements for meetings, in the usual course of his job and following instructions, is then actively involved in his principal's wrongful conduct.

147. We respectfully agree with the observations of the English Court in Pantell and Fradley as well as the UK FSMT in Martin, and will adopt the same approach in applying the AI Principles and the Articles of the FSR.

The Alleged Contraventions

148. In our view, Mr. Abdelkareem did contravene the abovementioned AI Principles and Articles of the FSR.

149. As Mr. Abdelkareem was aware, Al Mal initially stated to the QFC authorities that its share capital was US$15 million. In July 2009, he became aware that Al Mal had told the CRO in June that it had increased its share capital to US$35 million. By September, he was aware that Al Mal had told the Authority it had increased its share capital to US$60 million.

150. Mr. Abdelkareem also knew that the 2 later figures were problematic. As CFO, he himself refused to include the relevant additional funds, purportedly in an account with DIB, in Al Mal's financial records.

151. What did Mr. Abdelkareem do? To his credit, he repeatedly asked to see and have access to the account statements.

152. When his requests repeatedly failed to lead to a proper proof of the accounts and the funds held in them, he must have become increasingly suspicious. But he then did nothing further. He did not warn his fellow senior managers; he did not seek to escalate the issue up to the board; he did not discuss his suspicions with the Authority.

153. Ms. Hussain asked Mr. Abdelkareem in her email of 12 November 2009 whether she should have the external auditors look into the matter in the upcoming audit. We saw no response.

154. What Mr. Abdelkareem did was to look for another job. He found one and was ready to leave. As he later told the Authority's investigator in an interview:

> *"What I have decided was just to move on. On 20th September I made my first interview. 20 September I made my first interview with the current bank I am working for now. So I have just decided to move on. I said this is just ... something is going to hit the wall. It was very clear."*

155. Worse, as events unfold, Mr. Abdelkareem became complicit in perpetuating the myth that Al Mal had substantial funds at DIB and had a share capital of US$60 million. His part is recorded in the 1st ALCO Minutes, the MCC Minutes, the October Minutes, the 13 October Emails, and the 2nd ALCO Minutes. It culminated later in an active involvement (as we will discuss below) in the preparation of the September Return and eventually in his direct provision of false information to the Authority during the November Conversation.

156. A bank's true capital position is obviously a matter of the utmost importance, and any misinformation about it a matter of grave concern. Mr. Abdelkareem's failure to speak out is inexcusable and demonstrates a serious lack of integrity. His part in the later events is even worse and is outright condemnable.

157. His behaviour in relation to the Undisclosed Account shows the same attitude.

158. We conclude that Mr. Abdelkareem had contravened AI Principle 1. For the same reasons, he had also contravened AI Principle 4.

159. His failure to act upon his knowledge of the many problems in Al Mal's financial disclosure to the authorities as well as with its own financial records was a failure to exercise due skill, care, and diligence. He had contravened AI Principle 2. For the same reasons, as a Senior Manager, he had also contravened AI Principle 5.

160. Focusing on the September Return, as we have found earlier, Mr. Abdelkareem was aware that it contained false and misleading information.

161. He also had an active involvement in its preparation. He instructed and supervised Ms. Hussain in the actual collation of figures. He decided that it was appropriate to include the US$6,213,238 in Al Mal's ordinary share capital, and advised Mr. Omara that it may be possible to treat the US$5,786,762 as Tier 2 capital.

162. Mr. Omara insisted on including the US$5,786,762 as share capital and proceeded to submit a version of the return stating so. Mr. Abdelkareem was fully aware of this and knew how the return was false and misleading. But his attitude was that so long as his signature did not appear on the document, he was content for it to be submitted – and for those reading it to be misled.

163. By this point in time, however, he had already had an active involvement.

164. We conclude that Mr. Abdelkareem was knowingly concerned in the submission of the September Return. Al Mal's submission was a contravention under Article 84(2)(A) of the FSR. Therefore Mr. Abdelkareem had committed a contravention under Article 85(2) of the FSR.

165. As we mentioned earlier, there is an issue of whether the Authority was too late in referring to Article 85(2). In its Decision it did not cite the article by number. But it did make all the factual allegations constituting the "charge" (we use the term loosely) under Article 85(2). Also, at the outset of its Decision, the Authority stated the 3 contraventions (defined therein as "the Contraventions") which it was alleging Mr. Abdelkareem to have committed. In the third of these, the Authority alleged that he had been "knowingly concerned in the contravention of Al Mal of Article 84(2)(A) of the FSR ... and Principle 13 of the PRIN." (See paragraph 2.1(iii) of the Decision.) Although this did not expressly cite Article 85(2), it was clearly a reference to that article, which provides the basis for holding an officer liable for a body corporate's contraventions. Moreover, the Authority's allegation did expressly state the essential and the substantive point, i.e., Mr. Abdelkareem was being liable for the contraventions of Al Mal for the reason that he had been "knowingly concerned" in them.

166. The Authority repeated the same in the concluding paragraph of its findings. (See paragraph 6.20 of the Decision.)

167. The Authority also expressly cited Article 85(2) in its opening submissions, which was filed with the Tribunal and served on Mr. Abdelkareem before the substantive hearing of this appeal began.

168. Thus the Authority has all along sufficiently made clear its "charge" against Mr. Abdelkareem. Indeed, Mr. Abdelkareem evidently had not had, nor did he argue to have had, difficulty in understanding the allegation and defending against it. Considering this and the above, it is not unfair for us to now expressly conclude that he had contravened Article 85(2) of the FSR.

169. Turning to the November Conversation, when Mr. Abdelkareem told Mr. Busari that Al Mal's paid up capital was US$27 million, he knew this was not true, else he would have signed the September Return, and else he would have known as Al Mal's company secretary about a proper capital contribution recorded in the share register with the issuance of share certificates. And when he said that there was another US$33 million on fixed deposit with DIB in the name of Al Sadd, he had no good reason to think it was true. As CFO, he had himself refused to include funds purportedly at DIB in Al Mal's financial records.

170. We conclude that Mr. Abdelkareem knowingly provided false information to the Authority in contravention of Article 84(2)(A) of the FSR.

Penalty

171. From what we have already stated, it should be clear that we take a dim view of Mr. Abdelkareem's conduct.

172. The CFO of a bank occupies a key position of serious responsibility. He is the top finance person in a financial institution and is entrusted with the role of watching over its finances and financial health. His fellow senior managers as well as the regulator rely on him to fulfil that role.

173. Mr. Abdelkareem fundamentally failed to fulfil that role. He did not watch over Al Mal's finances and financial health. Rather, he saw his job as just looking after the books. He was content as long as "his" accounts were accurate; what else was happening was not his concern.

174. He maintained this attitude even before the Tribunal. For example, in relation to the April Certificate and the purported US$60 million, he said, "*... if it was not in my records, I don't bother about it ... If everything is not confirmed by me, it wouldn't get into my account ... I'm the financial controller. I control things.*"

175. It is startling that the CFO of a bank (indeed, of any company) would see his role as merely controlling the financial records rather than the actual finances.

176. We are mindful that Al Mal was a start-up company and, as the evidence indicates, its founder CEO Mr. Omara was a domineering character who hoarded information and restricted the other senior officers' roles. But Mr. Abdelkareem himself was an experienced professional in the financial services industry. He was not a novice who had been dazzled or pressured into trusting his seniors.

177. Moreover, as CFO, Mr. Abdelkareem was one of the top 3 business executives of Al Mal (together with the CEO and COO). It simply would not have been open to him to plead in mitigation that the CEO had towered over the staff team. His job required him to assert himself when it came to financial matters.

178. In any event, the evidence shows that he well knew there were improprieties. In his own words, he saw that "*something was going to hit the wall*". But instead of calling halt, Mr. Abdelkareem's attitude was to avoid stirring up trouble while he looked for a way to jump ship.

179. In the process, not only did Mr. Abdelkareem not speak out, he allowed himself to become complicit, later to be knowingly concerned, and ultimately to participate in the improprieties.

180. This occurred over a period of 5 months from July to November 2009. It cannot be said to be a matter of oversight or even neglect. Mr. Abdelkareem was acting out of deliberate choice.

181. One potential mitigating factor was that Mr. Abdelkareem all along reported what he regarded to be accurate figures in the WLRs and in an earlier prudential return. These figures were obviously different from the US$60 million share capital figure told to the Authority. He argued before us that this showed he could not have the intention to mislead the Authority and further that, had the Authority checked the returns it received more carefully, it would have discovered the problem for itself.

182. We do not accept the first part of Mr. Abdelkareem's argument. The fact that a person only signs what he thinks is unimpeachable does not mean he would not be involved in something else which he knows to be false. It shows cautiousness, not innocence. As we have noted above, Mr.

Abdelkareem's attitude was (as much as possible) to avoid being implicated. But he was also keen not to stir up suspicion.

183. It was therefore fortunate for Mr. Abdelkareem that the Authority did not read all the returns more closely and did not always cross-check the figures. This was in part because the WLRs were intended specifically for monitoring financial firms' liquidity situations rather than generally for reporting capital positions. But whatever the reason, and regardless that the Authority might have discovered the problem earlier, it would not absolve Mr. Abdelkareem of his responsibility.

184. To do so in any way or in any degree would be to view the regulator as somehow sharing a regulated person's responsibility. This must be wrong in principle.

185. We note that Mr. Abdelkareem was not the original instigator behind the overall mischief concerning Al Mal's share capital position. Neither was he the primary proponent. But he did have knowledge of it and participated in it.

186. We note also that Mr. Abdelkareem derived no financial benefit from the mischief. This mitigating factor, however, is to a large extent vitiated by the fact that he was trying to save his own skin and (in his own words) to "*move on*" before it all "*hit the wall*". There was little regard for the interests of shareholders, depositors, and the financial system of which the bank was a part.

187. As CFO, Mr. Abdelkareem's conduct, in respect of both his failure to act and his positive acts, is inexcusable. Taking into account all the circumstances, we have no doubt that it should be met with heavy sanctions which reflect the gravity of the matter and our stern disapproval.

188. The Financial Penalty of US$100,000 appears to us to fall within an appropriate range. It might have been on the high side of the range. Had Mr. Abdelkareem supplied us with concrete information about his personal finances, we might have entertained his argument for reducing the figure. But he did not do so, despite the Authority having referred to the absence of such information in its Decision and again in its Counsel's opening submissions.

189. We also feel strongly that a prohibition is necessary. Our primary rationale is not punishment or deterrence. Rather, a prohibition is necessary to protect the system, the market, and the public from an irresponsible person.

190. Article 62 of the FSR, which governs prohibitions, does not appear to contemplate that prohibitions would have time periods. This raises an issue about whether it is right to pre-judge a person's ability to reform and to exile him indefinitely.

191. The Tribunal put this issue to the Authority during its closing submissions. The Authority explained that a person subject to a prohibition order could apply at any time to lift it by applying for approval. The Authority's grant or denial of the approval would necessarily include a revocation or refusal of revocation of the prohibition order. Furthermore, the Authority's decision, if adverse, would be subject to appeal.

192. On this basis, we are satisfied that the Prohibition Order against Mr. Abdelkareem, even without a specified time period, is appropriate.

193. In his closing submissions, Mr. Abdelkareem argued that the same set of wrongs, even if constituting contraventions of different regulatory rules, should not attract duplicated or cumulative punishment. This must be correct. For the avoidance of doubt, we make clear here that we have taken a global approach in considering penalties, viewing his conduct overall rather than counting each contravention as attracting a set of penalties separately.

Conclusion

194. In conclusion, we uphold the Authority's Decision that Mr. Abdelkareem had:

(1) contravened Principles 1, 2, 4, and 5 of the AI Principles;

(2) contravened Article 84(2)(A) of the FSR; and

(3) contravened Article 85(2) of the FSR in being knowingly concerned in the contravention by Al Mal of Article 84(2)(A) of the FSR and Principle 13 of the PRIN.

195. We also uphold the Authority's Financial Penalty and Prohibition Order (subject as follows). The Financial Penalty shall be paid to the Authority within 3 months of the date of publication of this Decision. The Prohibition Order shall take immediate effect.

Some Additional Thoughts

196. It has not been part of this Tribunal's function to look critically at the conduct of the Authority. We stress this because part of Mr. Abdelkareem's defence consisted of attributing culpable responsibility for the collapse of Al Mal to the Authority and its staff. We pointed out to him early on, and again we now record our view, that even if the Authority were to be blamed for any shortcomings, this could not justify or affect proven problems in his own performance of duties he himself had undertaken.

197. That said, commercial crime and financial misconduct are by nature difficult to detect. With hindsight, there may be a natural tendency to step up regulation. This could provide impetus for good improvement. But if pursued without thought, it could also lead to a meaningless increase of paperwork and administrative burden.

198. We hope that the Authority would examine the details of the Al Mal incident from before its authorisation to after its demise, including matters in this appeal and that of Mr. Chaudhry in QFCRT No. 1 of 2011. We have offered some thoughts in our decision in Mr. Chaudhry's appeal and will repeat them below.

199. This case may have demonstrated the perennial truth that a "light touch" approach to regulation can bring disadvantages, particularly when start-up financial firms are involved. We were also struck by the contrast between the detailed inquiries and consideration that the Authority had given to the approval of Mr. Chaudhry and Mr. Abdelkareem to undertake their functions, and the much less rigorous testing of what Al Mal had reported at different times about its capital and shareholding. Too much may have been assumed about the adequacy of Al Mal's understanding of basic legal and accounting principles. Though confusion between the capital and assets of the holding company (Al Sadd) and of its wholly owned subsidiary (Al Mal) was evident and detectable, there was not sufficient attempt to correct this confusion or to make sure that it did not continue.

200. A few other matters may be worth the Authority's study. Firstly, as we have noted earlier, its practice of formal authorisation pending substantive assessment and "green light" seems odd. We do not know but fear that this might contribute to a sense of expectation.

201. Secondly, like other public agencies the world over, the QFC authorities required the submission of information in different ways for different purposes. Sometimes the information is repeated, maybe because the purposes are similar or related. Of course one cannot expect the Authority or the CRO to cross-check all figures. But it might be worthwhile for the regulator to reflect on what information is required for what purposes and therefore how such information should or should not be reviewed. After all, timely detection of problems is part of the regulatory craft.

202. Thirdly, returning to the subject of a "light touch" approach to regulation. Indeed, this seems to be the modern trend and has some obvious advantages. However, such an approach is usually coupled with the placement of much responsibility (and liability) on independent professionals, e.g., auditors. We have not observed this in the present case; the Authority may wish to consider.

203. We would end by expressing our gratitude to the Authority's Counsel as well as its legal and supporting staff for their efforts in preparing and presenting this case in a manner that enabled the hearing to be completed in 5 days, and for providing the Tribunal with transcripts of the proceedings. Much credit also belongs to those who compiled and maintained the voluminous documentation so well.

204. Through the care and efficiency of the Acting Registrar and his staff, telephone and video-links were procured to enable Mr. Abdelkareem to present his case and to give evidence, and were maintained throughout the hearing without significant interruption.

205. We also acknowledge the respectful and meticulously thorough manner in which Mr. Abdelkareem presented his case. It was gratifying to hear him acknowledge at the end of the 5 days that he had had a fair hearing.

Signed by: Michael Thomas CMG, QC

Chairman of the QFC Regulatory Tribunal on behalf of the Tribunal

Michael Thomas

Representation:

For the Appellant, Mr. Seifeldin Abdelkareem: Mr. Seifeldin Abdelkareem (Appellant in Person)

For the Respondent, QFC Regulatory Authority: Mr. Ben Jaffey (Counsel, Blackstone Chambers, UK) and Mr. Shane Sibbel (Counsel, Blackstone Chambers, UK)