

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

**IN THE CIVIL AND COMMERCIAL COURT**

**OF THE QATAR FINANCIAL CENTRE**

**1 December 2010**

**CASE NO: 02/2010**

**IN THE MATTER OF THE WINDING UP OF  
AL MAL BANK LLC**

**WILLI DIENER**

**v**

**AL MAL BANK LLC**

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**JUDGMENT ON COSTS**

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**Members of the Court:**

**Justice Dohmann**

**Justice Lord Cullen**

**Justice Sackville**

## ORDERS

1. Pursuant to Article 95(1) of the *QFC Insolvency Regulations*, the Court **DETERMINES** that the Applicant is entitled to receive, pursuant to the costs order made on 6 June 2010:
  - (i) the costs of advertising the winding up petition;
  - (ii) expenses reasonably incurred by the Applicant himself in travelling to and remaining in Qatar for the purposes of presenting the winding up application; and
  - (iii) outgoings, such as photocopying or printing expenses, reasonably incurred in preparing materials in support of the winding up application.
2. The Court directs that any disputes as to quantification will be determined by the Registrar of the Court.
3. The Court makes no order as to the costs of the application dealt with in this judgment.

## JUDGMENT

### THE COURT:

#### THE APPLICATION

1. On 6 June 2010, the Court made an order for the compulsory winding up of Al Mal Bank LLC (*“the Bank”*) on the petition of the Applicant, and ordered that the Applicant’s costs of the winding up application, including legal expenses and the costs of his appearance before the Court on 6 June 2010, be costs in the liquidation.
2. On 20 June 2010, the Applicant submitted to the Liquidators a schedule setting out amounts claimed by him. The total claimed was AED 5,817,394, including the principal sum of AED 3,000,000 invested by the Applicant with the Bank under a Wakala Investment Agreement.
3. On 25 August 2010, the Liquidators advised the Applicant that they were prepared to pay the sum of AED 3,000,000 in *“full and final settlement of your initial investment”*. The Liquidators also advised that they were prepared to allow a total of QR 75,000 for legal and associated costs, together with QR 3,500 in respect of advertising expenses. The Liquidators further informed the Applicant that, insofar as he sought the profit element due under his Wakala Investment Agreement with the Bank, he would need to lodge a proof of debt as an unsecured creditor. The Liquidators rejected all other claims.

4. On 3 September 2010, the Liquidators paid the Applicant AED 3,000,000.
  
5. On 6 October 2010, the Applicant requested the Court to direct, pursuant to art 95(1) of the *QFC Insolvency Regulations* (Regulation No 5 of 2005) ("*Insolvency Regulations*"), that the Liquidators reimburse him for the costs and expenses itemised in his claim to the Liquidators made on 20 June 2010. The amounts claimed by the Applicant, in summary, are the following:
  - (a) accrued interest and default interest of AED 662,400;
  
  - (b) QR 111,520 as compensation for the Applicant's time spent in dealing with the winding up application;
  
  - (c) various expenses incurred in relation to the winding up, including advertising costs (QR 3,500) and out of pocket expenses for items such as air fares, visa charges and other travel costs incurred in attending the hearing of 6 June 2010;
  
  - (d) QR 17,924.50 in medical costs allegedly incurred by the Applicant due to "*stress caused by the non payment of [the deposit]*";
  
  - (e) QR 378,547.50 as costs charged by and due to Mr Jeffrey Wofford for legal work carried out by him in connection with the winding up application and for legal work related to the "*client money issue*";

- (f) QR 5,500, being an allowance for the time spent by Mr Altaf Sheikh, the Applicant's Money Manager, in connection with the winding up application;
- (g) an allowance for ancillary costs incurred by Messrs Wofford and Sheikh, such as air fares; and
- (h) QR 1,500,000 in what are said to be "*punitive damages for the agony caused to [the applicant]*".

6. In addition, the Applicant asked the Court to direct the Liquidators:

"to provide the Applicant with a complete schedule of expenses incurred by the Liquidators to date within 7 days of the ruling of the Court and to direct the Liquidators to provide regular (monthly or every two months) financial information to creditors that includes the amount of payments made to date, the specifics of any payments made during the reporting period and a running list of all expenses incurred to date".

7. By further submissions dated 20 November 2010, the Applicant:

- (a) replied to the Liquidators' objections as to recoverable costs;
- (b) reiterated his demand for information and transparency relating to the Liquidators' expenses;
- (c) sought the full amount of the profit claimed under his Wakala Agreement "*on the priority basis that client money provides*"; and

- (d) raised what appears to be a complaint about alleged regulatory failures by the Qatar Financial Centre Regulatory Authority (QFCRA”).

## **THE APPLICANT’S MISCONCEPTIONS**

8. Much of what has been put forward by or on behalf of the Applicant reflects misunderstandings as to the procedures to be followed in a liquidation under the *Insolvency Regulations*. Accordingly, some of his claims are misconceived.

### **The Regulatory Complaint**

9. The QFCRA investigated the Bank as of November 2009, and on 3 March 2010 withdrew its banking licence and imposed a substantial fine on the Bank. Insofar as the Applicant has a complaint against the Regulator, he needs to raise this with the QFCRA. No action against the Regulator is before the Court.

### **Interest**

10. The Liquidators have accepted that the Applicant was entitled to be repaid his initial investment of AED 3,000,000 in full as “*client money*” and they have in fact repaid that amount. The Liquidators have not accepted that the Applicant is entitled to be repaid any portion of the “*interest*” claimed by him, much less that he is entitled to any priority over other creditors in respect of that claim since it is not in the nature of client money. If the Applicant wishes to claim interest or “*Muwakkil profit*” (as it is described in the Wakala Agreement), he will need to submit a proof of debt for adjudication by the Liquidators. If his claim is rejected, he may challenge the rejection by way of an application to the Court under art 95 of the *Insolvency Regulations*.

### **Punitive Damages and Medical Costs**

11. Similarly, if the Applicant wishes to pursue claims for “*punitive damages*” or medical costs associated with psychological harm, he will need to submit the claims to the Liquidators with such supporting evidence as may be appropriate. It should not be assumed, however, that there is a sound basis for any such claims. In particular, punitive damages are not a remedy granted in this jurisdiction, nor would this Court normally deal with personal injury claims.

### **Information as to Liquidators’ Expenses**

11. Individual creditors, of whom the Applicant is one, are not entitled to a running audit or account of the liquidation. The *Insolvency Regulations* provide mechanisms for ensuring that the Liquidators perform their duties according to law. These include provision for the appointment of a Creditors Committee (art 85), which is responsible for assisting the Liquidators in the discharge of their functions (art 123(1)). A Creditors Committee has been duly appointed in the present case.

### **COSTS OF THE WINDING UP APPLICATION**

12. The Applicant, as the successful petitioner in the application to wind up the Bank, is entitled under the orders made on 6 June 2010 to the reasonable legal and administrative costs incurred by him in connection with the application. If the Applicant had been represented by a legal practitioner with rights of audience before this Court, the recoverable costs would ordinarily include the reasonable fees and outgoings charged by the legal practitioner acting on his behalf. In the present case, however, no legal practitioner appeared on the record as representing the Applicant. The documents filed on behalf of the Applicant gave no indication on their face that they had been prepared by a legal practitioner representing the Applicant in a professional capacity.

13. Where an applicant chooses to appear in this Court without legal representation (as he or she is entitled to do), the recoverable costs will ordinarily include reasonable travel and subsistence costs and necessary expenses, such as the costs of advertising the petition and of copying materials for the assistance of the Court. However, if an applicant elects to represent himself or herself, the general principle is that a costs order will not cover lost earnings or other opportunities foregone as a consequence of preparing and presenting the claim.
14. Despite no legal practitioner appearing on the record as the Applicant's representative in the proceedings, the Applicant claims a very substantial sum as legal fees charged to him by Mr J Wofford. The claim of QR 378,547.50 is based on a total of 148.45 hours work said to have been performed by Mr Wofford, calculated at a rate of QR 2,550 per hour. Curiously enough, the Applicant's schedule of costs also states that he is obliged to pay Mr Wofford "*legal fees in the amount equal to the greater of USD100,000 and 10% of my ultimate recovery of principal and interest from the [Bank]*".
15. Even if Mr Wofford had been a legal practitioner authorised to practice in Qatar and with a right to audience before the Court, the fees claimed are grossly excessive. The winding up application was a straightforward matter that occupied less than one half day of the Court's time. Documentary evidence established the Applicant's status as a creditor of the Bank and the *Insolvency Regulations* provided a clear statutory framework for the application. In our view, a competent legal practitioner would require only a fraction of the hours billed by Mr Wofford to conduct the winding up proceedings on behalf of the Applicant.
16. There are, however, more fundamental objections to allowing any of the legal fees claimed by the Applicant. Mr Wofford is not authorised to practise law in Qatar and never sought to appear on the record as the Applicant's legal representation. On the contrary, in response to a specific inquiry from the Registrar of the Court, Mr Wofford advised on 4 April 2010 that he was not acting as the applicant's legal representative in the

winding up proceedings. That unequivocal representation was never corrected.

17. Moreover, Mr Wofford has played a variety of roles in relation to the affairs of the Bank that make it entirely inappropriate for him to have acted as the Applicant's legal representative. Mr Wofford was the head of the Bank's Legal Department. He has lodged a proof of debt as a creditor of the Bank. He was given leave by the Court to assist Mr Babiker in the latter's wrongful dismissal claims against the Bank at a time when the Court was unaware that Mr Wofford intended to charge the Applicant for legal services.
18. For these reasons we are not prepared to award the Applicant any fees, costs or expenses charged by Mr Wofford.
19. The costs order in favour of the Applicant does not justify a claim for the time spent by Mr Sheikh, an employee or agent of the Applicant, in assisting in the preparation of the petition.

## **CONCLUSION**

20. It follows from what we have said that the Applicant is entitled to recover:
  - (a) the costs of advertising the petition (a claim accepted by the Liquidators);
  - (b) expenses reasonably incurred by the Applicant himself in travelling to and remaining in Qatar for the purposes of presenting the winding up application; and
  - (c) outgoings, such as photocopying or printing expenses, reasonably incurred in preparing materials in support of the winding up application.
21. We have dealt in principle with the Applicant's claims. Any disputes as to quantification will be determined by the Registrar of the Court.

22. The Court makes no order as to the costs of the application dealt with in this judgment.

Representation:

The Court dealt with the Application on the papers.

For the Applicant: Mr. Willi Diener (in person)

For the Liquidators: Ms Joanna Rolls and Ms Jacqui de Bidaph