



محكمة قطر الدولية
ومركز تسوية المنازعات
QATAR INTERNATIONAL COURT
AND DISPUTE RESOLUTION CENTRE

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

Neutral Citation: [2024] QIC (A) 10

IN THE QATAR FINANCIAL CENTRE
CIVIL AND COMMERCIAL COURT
APPELLATE DIVISION

[On appeal from [2023] QIC (RT) 3]

Date: 4 September 2024

CASE NO: RTFIC0002/2023

RUDOLFS VEISS

Appellant

V

QATAR FINANCIAL CENTRE REGULATORY AUTHORITY

Respondent

JUDGMENT

Before:

Lord Thomas of Cwmgiedd, President

Justice Her Honour Frances Kirkham CBE

Justice Laurence Li SC

Order

1. Permission to appeal is granted.
2. Appeal against the decision on the contraventions by the Appellant as found by the Regulatory Tribunal is dismissed.
3. Appeal on the penalty allowed only to the extent that the financial penalty may be satisfied and paid by instalments of \$25,000 beginning on 30 September 2024, and thereafter 4 further payments of \$25,000 on 30 September of each succeeding year; if the Appellant fails to pay any instalment when due, the whole of the outstanding amount of the financial penalty of \$240,000 becomes immediately due and payable.
4. Appeal on the scope and period of suspension is dismissed.
5. The Appellant is to pay 75% of the Respondent's costs of or in this appeal.
6. If either party contends for a different order in (5), above, they shall file and serve written submissions limited to 2 pages of A4 (Times New Roman, font size 12) within 7 days of the date of this order. Absent such submissions, the order will become final upon the expiry of the 7-day period.

Judgment

Introduction

1. The Appellant ('**Mr Veiss**') by an application dated 11 December 2023 sought leave to appeal against the decision of the Regulatory Tribunal (Sir William Blair, Chairman, and Justices Edwin Glasgow CBE KC and Justice Dr Muna Al-Marzouqi; [2023] QIC (RT) 3) given on 12 October 2023. By that decision, the Regulatory Tribunal upheld in part the decision of the Qatar Financial Centre Regulatory Authority ('**QFCRA**') dated 22 September 2022 finding that Mr Veiss had contravened QFC regulations. It reduced the penalty from QAR 1,820,500 (approximately \$500,000) to \$240,000 (QAR

876,000) but upheld a prohibition of Mr Veiss from carrying out any function at the Qatar Financial Centre ('QFC') for a period of 5 years.

2. Mr Veiss appealed against the decision that he had been in contravention of the regulations on the basis that the Regulatory Tribunal had erred on two points law on its interpretation of the material regulations. He also appealed against the financial penalty, the time given to pay and the suspension.
3. After consideration of the application and the response of the QFCRA, we decided on 20 March 2024 that the application should be determined at a rolled up oral hearing with the appeal to be heard at the same time if permission was granted. The oral hearing took place remotely on 15 May 2024 when both parties were represented by English leading counsel. The parties then requested time to see if they could reach agreement on the time that should be given to pay the financial penalty and the length and scope of the suspension and, if not, make further submissions in relation to the penalty, time to pay and period of suspension.

The factual background

4. The factual background is set out in full with great clarity in the decision of the Regulatory Tribunal. It is only necessary for us, given the scope of the appeal, to summarise it in brief:
 - i. Mr Veiss, who had some prior experience in the financial advisory and wealth management service industry, began working in Qatar in 2013. He was first employed by Nexus Financial Services WLL, a firm authorised to carry on insurance mediation business in the QFC, as many expatriates in Qatar make investments, often in significant amounts, through life insurance policies.
 - ii. He subsequently joined International Financial Services (Qatar) LLC ('IFSQ'), a company also authorised to carry out insurance mediation business at the QFC. It mainly provides advice to expatriates in Qatar and brokered life insurance policies for the purposes of making investments.

The principal source of remuneration received by IFSQ was commission on such policies.

- iii. In late 2019, Mr Veiss acquired the ownership of IFSQ through Amberberg Ltd, a company beneficially owned by him. By that time IFSQ had been the subject of regulatory action by the QFCRA and was, the Regulatory Tribunal found, “*an extremely troubled firm in a parlous state*”. Although there were others who were directors, the Regulatory Tribunal concluded that Mr Veiss was the driving force of IFSQ from the time he acquired the company. Between April and December 2020, the period in which the material events took place, Mr Veiss held the Executive Governance Function of IFSQ. It was accepted that Mr Veiss took steps to try and rectify the inadequacy in the compliance staff, but it was found that these steps were insufficient.
- iv. On 9 April 2020, the QFCRA issued a Supervisory Notice (the ‘**April Supervisory Notice**’) to IFSQ restricting it from carrying on any regulated activities in or from the QFC, except for continuing to engage in regulated activities for existing customers. The prohibition lasted until 24 June 2020.
- v. During the period of restriction under the April Supervisory Notice, IFSQ obtained letters of authority (‘**LoA**’) or transfers of authority forms (‘**ToA**’) from a number of persons who held policies of insurance with insurers under which investments were made, but who were not existing customers. As the Regulatory Tribunal noted at paragraph 103 (vii), the terms “LoA” and “ToA” were used interchangeably and there was no material difference between them. We shall only use the term “LoA”, but encompass within it “ToAs”.
- vi. Under an LoA, a person who had an existing policy of insurance appointed IFSQ to act as the servicing agent of the policy and granted IFSQ full authority to discuss the policy with the insurer.

- vii. The conduct of IFSQ in obtaining LoAs and the effect of the LoAs was the central issue in the hearing before the Regulatory Tribunal; the effect of the LoAs was also the central issue before us. In relation to the April Supervisory Notice, the QFCRA contended that the actions of IFSQ in relation to the LoAs was in contravention of the restriction imposed, as obtaining the LoAs amounted to carrying on or undertaking insurance mediation business in contravention of the restriction in the Supervisory Notice. The Regulatory Tribunal upheld the contention of the QFCRA.

- viii. Although matters at IFSQ improved in June 2020 leading to the lifting of the restriction imposed under the April Supervisory Notice, the QFCRA issued IFSQ on 19 July 2020 with a Notice to Produce a “*complete client list*” and the date of each due diligence check; it had previously issued in April 2020 a Notice to Produce. Neither of these Notices was the subject of the proceedings before us, but the issues on such Notices were raised on subsequent Notices in the same terms as we set out below.

- ix. There were various further disputes within IFSQ, and the further involvement of the QFCRA during the summer of 2020. Mr Veiss became the sole director of IFSQ on 14 September 2020.

- x. In September 2020, the QFCRA began an investigation of Mr Veiss. In the course of that investigation, he was subject to a travel ban.

- xi. Further requests were made to produce documents under the provisions of articles 31(2) and 55 of the QFC Financial Services Regulations 2010 (**‘FSR’**):
 - a. On 7 September 2020, the QFCRA issued a Notice to Produce which included the requirement to produce “*a complete client list*”.

 - b. A further Supervisory Notice was issued by the QFCRA on 17 September 2020 in similar terms to the April Supervisory Notice; it

also required the production of a “*full, complete and current customer list*”.

- c. A further Supervisory Notice was issued on 6 October 2020; it required a “*customer list which has been verified as true and correct*”.

- xii. The QFCRA’s contention was that in respect of requests to produce a “*client list*” and a “*customer list*” on 7 September, 17 September and 6 October 2020, no list was complete, as none included those persons who had provided LoAs to IFSQ. The Regulatory Tribunal upheld this contention.

- xiii. In December 2020, Mr Veiss was suspended from his Executive Governance Function and resigned as a director of IFSQ; thereafter, he worked for IFSQ until August 2022.

- xiv. In August 2021 Mr Veiss sold IFSQ; he lost the entire investment he had made in the firm.

- xv. On 19 September 2022, the QFCRA issued a Decision Notice imposing the penalty of QAR 1,820,000 and the 5-year suspension period.

- xvi. Mr Veiss appealed to the Regulatory Tribunal. In the course of that appeal the case made against him was considerably less than the case found to be established in the Decision Notice. The Regulatory Tribunal found that the allegations proved against him were “*substantially less than what was alleged in the Decision Notice*”.

- xvii. In its decision, the Regulatory Tribunal found four contraventions:
 - a. IFSQ had contravened the restriction on carrying on insurance mediation imposed under the April Supervisory Notice by obtaining LoAs; Mr Veiss was knowingly concerned in the contraventions.

- b. Mr Veiss had redated at least 15 LoAs using correcting fluid to make it appear that the persons who had provided them had signed them when the period of suspension was not in place and were not clients or customers when lists were sought. In doing so, he had acted with a lack of integrity; the Regulatory Tribunal found it was not proved that Mr Veiss acted dishonestly.
- c. IFSQ failed to provide complete and proper customer and client lists as they did not include the persons who had provided LoAs to IFSQ. It held that Mr Veiss was knowingly concerned or negligent in relation to the failures.
- d. IFSQ was in breach of the regulatory requirement to conduct due diligence for a customer “*when it establishes a business relationship*”. That business relationship was established when an LoA was signed. IFSQ had failed to conduct due diligence at that stage.

xviii. The Regulatory Tribunal found that other matters alleged against Mr Veiss had not been proved.

The appeal on the issues of contravention

- 5. The two points of law raised on behalf of Mr Veiss on his appeal against the decision that he had contravened the regulations related to the same basic question as to whether the obtaining of LoAs by IFSQ from persons who were not existing “*customers*” or “*clients*” (within the meaning of the terms used in the Notices) had the effect of making these persons “*customers*” or “*clients*” of IFSQ. If it had that effect, then:
 - i. There was a contravention of the restriction in the April Supervisory Notice as IFSQ would have been carrying on the regulated activity of insurance mediation.
 - ii. As the persons who had signed the LoAs were not listed on the client or customer lists, then there was a contravention of the Notices to Produce.

- iii. As no due diligence had been conducted when LoAs were provided, there had been a failure to conduct due diligence.
- iv. However, although the common factor on both points of law was the effect of the LoA, the contraventions turned on the interpretation of different regulatory provisions which we consider in turn.

The restriction under the April Supervisory Notice: was IFSQ carrying on the business of Insurance Mediation when it obtained LoAs and sent them to the insurers?

The terms of the restriction under the April Supervisory Notice

6. The restriction imposed by the April Supervisory Notice was in the following terms:

1.1 For the reasons set out below and pursuant to Article 31 of the Financial Services Regulations (“FSR”), the [QFCRA] imposes the following restrictions and requirements on IFSQ to protect [QFC] financial system and the interests of customers:

(a) Subject to Clause 1.2 of this Notice, IFSQ must not carry on any of the regulated activities of Insurance Mediation in, or from the QFC...

(b) ...

1.2 Nothing in this Notice prevents IFSQ from continuing to engage in regulated activities under its Scope of Authorisation dated 28 July 2009 for its existing customers, however, IFSQ shall not undertake any new business for existing customers as outlined in paragraph 1.1. of this Notice.

1.1 “New Business” means providing additional services within the scope of IFSQ’s authorised regulated activities to its existing customers not related to the products and activities currently being provided to the customer.

The findings of fact made by the Regulatory Tribunal

7. The Regulatory Tribunal’s findings of fact as to what IFSQ and Mr Veiss had done can be summarised:

- i. LoAs in common form were obtained by IFSQ from persons who had policies of insurance, but who not been existing customers or clients of IFSQ. Each LoA was signed by the person and by IFSQ, addressed to the insurer and sent to the insurer. Each identified the name of the person giving the authority and the policy number and then stated:

I/We wish to confirm that I/We have instructed the following company [IFSQ] to act as our servicing agent with immediate effect; they have our full authority to discuss any policies that we hold with your company [the insurer or fund etc].

It then was signed by the individual who signed above the word “client”.

- ii. IFSQ sent LoAs in these terms to insurers during the period of restriction in respect of about 40 persons. One of the emails to insurers sending the LoA stated “Please process the attached transfer of agency for the client above”.
- iii. The practical reality of what was being done by IFSQ was that IFSQ was continuing to speak to potential new customers and targeting clients of Mr Veiss’ former firm in the hope that they would transfer the policies to it and make new investments. At paragraph 107, the Regulatory Tribunal found in respect of Mr Veiss:

As he accepted in his oral evidence, he was targeting his “top 20” customers from his previous firm and encouraging them to transfer over to IFSQ. His “top 20” were selected on the basis of their likely ability and willingness to make new investments.

- iv. The effect of the LoA was to:
 - a. Effect the registration of IFSQ with the insurer as the client’s broker.
 - b. Grant IFSQ access to the information on the insurer’s portal and deny access to the previous broker.
 - c. Grant IFSQ authority to discuss the terms of the policy with the insurer.
 - d. Transfer payment of on-going “trail commissions” to IFSQ, placing IFSQ under an obligation to provide an ongoing service to the client by giving advice and keeping the policy under review. At paragraph 110, the Regulatory Tribunal found:

In any case, it is an obvious point, and the Appellant accepted in cross-examination that he was aware that trail commissions

would (where applicable) be paid once a form was signed, and that imposed a regulatory obligation to give advice and keep the policy under review.

- e. IFSQ was not, as Mr Veiss had submitted, simply acting as a post box.

 - v. Mr Veiss (who had accepted that he was involved in these transactions) was fully aware of the scope of the prohibition. He had chosen to ignore it, hoping there would be no come back. He did not ask the regulators whether his actions in relation to LoAs were permissible under the terms of the April Supervisory Notice, as he knew what answer he would get.
8. These findings were not challenged on the appeal, but it was emphasised that the Regulatory Tribunal had made no finding that IFSQ had carried out any servicing of the existing policies during the restriction period; for example, it had not been alleged that IFSQ had conducted a review or done anything else in relation to the investments made under the policies.

The Insurance Mediation Business Rules 2011

9. Insurance Mediation business is defined in rule 1.2.2 of the Insurance Mediation Business Rules 2011 (**‘IMEB’**):
- (1) *Insurance mediation is any of the following activities:*
 - (a)...
 - (b)...
 - (c) *making arrangements with a view to other persons buying contracts of insurance, whether as principal or agent;*
 - (d) *assisting in the administration or performance of contracts of insurance for or on behalf of policyholders.*
 - (2) ...
 - (3) *Subrule (1)(c) includes arrangements mentioned in the provision that do not result in another person buying a contract of insurance.*
 - (4) *Subrule (1) (d) includes—*
 - (a) *assisting policyholders to make claims under contracts of insurance; and*
 - (b) *managing claims made by policyholders under contracts of insurance.*

(5) *However, insurance mediation does not include any of the following activities:*

...

(e) *the activity involves merely providing the means by which a party to a transaction can communicate to the other parties to*

The contention of Mr Veiss

10. On the appeal there was an overall challenge to the conclusion reached by the Regulatory Tribunal that the whole purpose of the LoAs was to create an agency agreement and to put in place a means of IFSQ being paid commission. The actions of IFSQ had not amounted to conduct within rule 1.2.2 (1) (c) and (d) of IMEB.

11. The essence of the submission made by Ms Amy Rogers KC was that the signing of an LoA by a person, IFSQ countersigning it and forwarding it to the insurer without more and without the doing of anything else, was not carrying on the business of Insurance Mediation. As it was not alleged that IFSQ had done anything more or provided any services to any of those who had provided LoAs, procuring, countersigning and forwarding LoAs to the insurer was insufficient. What had been done by IFSQ was not within rule 1.2.2(1) (c) or (d) of IMEB:

- i. It was not within (c) as it did not entail the making of arrangements with a view to any of the persons buying contracts of insurance; it did not necessarily follow that any of the persons for whom IFSQ was administering the policies would buy any further policies. All the LoAs did was to allow access to information about existing policies so it could act as servicing agent, but it had not so acted.
- ii. It was not within (d) as the actions in signing the LoAs and sending them to insurers was not assisting in the administration or performance of the policies on behalf of the policyholder. No services were provided. In particular, IFSQ had not reviewed or advised on the investments made under the policies.
- iii. The receipt of trail commissions by IFSQ was not relevant as this did not amount to an activity within (c) or (d)

12. It was important that the boundaries of regulated activities were defined with precision.

Our conclusion

13. It is clear, as Ms Rogers KC submitted, that the boundaries of regulated activities must be clearly defined. We also agree with the approach suggested in the judgment of Popplewell LJ in the Court of Appeal of England and Wales in *Financial Conduct Authority v Avacade* [2021] EWCA Civ 1206, [2021] Bus LR 1810 at paragraph 46 that a court should, when considering financial services regulations, give a fair reading to the ordinary meaning of the words used in the light of the overall purpose of the provision in its legislative context. The terms of the sub-rule (c) and (d) are in our view clear and have a clear purpose. The short question is whether what was done by IFSQ was within the sub-rules.

14. It was, in our view, plainly contemplated that the LoA would be sent to the insurer (as it in fact was). The signing of the LoAs by a person who had existing policies and its countersigning by IFSQ also gave rise to an agreement between IFSQ and the person. It is difficult to see what purpose IFSQ had in acting in this way other than with a view to the persons who had provided the LoAs buying new policies; or using IFSQ on further renewals or increases under existing policies. The sub-rule does not require the actual purchase of a policy or renewal or increase; it is sufficient if there is activity with a view to a person buying a policy or renewing it or increasing it. That was plainly the purpose of the LoAs, and the sending of the LoAs by IFSQ to the insurers was the making of arrangements with a view to those persons buying contracts of insurance and therefore within (c).

15. We have had regard to article 25 of the UK's Financial Services and Markets Act 2000 (Regulated Activities) Order 2001/54 (the '**UK Regulated Activities Order**') which brings within the scope of UK regulation, "*making arrangements with a view to*" transactions in investments as a regulated activity. The UK Financial Conduct Authority's ('**FCA**') Perimeter Guidance Manual (the '**UK Perimeter Guidance Manual**') sets out at paragraphs 5.6.4-5.7.3 the FCA's guidance that the passive display of literature would not amount to an activity whereas helping someone fill in or check an application form would be. We see the force of the distinction made in the example, but the activity of IFSQ was not a passive activity.

16. We also consider that what IFSQ did was also within sub-rule (d). It is clear that there was no evidence that IFSQ did anything other than send the LoAs; no evidence was adduced, for example, to show that IFSQ sought information, let alone advised, on the investments held under the policy. We have had regard to article 39A of the UK Regulated Activities Order which provides that “*assisting in the administration and performance of a contract of insurance*” is a regulated activity. The UK Perimeter Guidance Manual sets out at paragraph 5.7.1- 5.7.3 the FCA’s guidance that the regulated activity of assisting in the administration and performance of a contract of insurance relates in broad terms to activities after the conclusion of the contract of insurance. It sets out in more detail its views as to what activity in assisting with a claim will amount to the regulated activity. Although we have paid close attention to the views of the UK regulators, our task is to apply the wording of our regulations to the facts as found and the agreement into which IFSQ had entered under the LoA.

17. In our view the material finding of fact was the receipt of the trail commissions in consequence of the agreement made under the LoA. Under the terms of the LoA, IFSQ became the “*servicing agent*” of the policy; that had the result that IFSQ became entitled to commission. The receipt of trail commissions, in our view, placed IFSQ under an obligation to provide such advice as the policies in question necessitated. Indeed rule 3.5.12 of the Customer and Investor Protection Rules 2019 (‘**CIPR**’) made it clear that the receipt of a trail commission by an authorised firm obliged the firm to provide an ongoing service to the customer. The purpose of the policies was to provide a facility under which investments were held; under such a policy monitoring of the investments and advice is required. Even though there was no evidence that IFSQ had actually monitored the investments or advised on them or otherwise actually provided a service, IFSQ had become under an obligation to provide such services. It was therefore assisting in the administration and performance of the policies by undertaking that obligation towards the policyholder.

The Notices to Produce: were the persons who provided LoAs “*clients*” or “*customers*”?

18. The second issue of law raised on the appeal was whether the persons who had provided LoAs were customers or clients of IFSQ for the purposes of Notices given by the QFCRA on 7 and 17 September, and 6 October 2020.

The terms of the Notices to provide customer and client lists

19. IFSQ was required to provide a “*client list*” and a “*customer list*” on 3 occasions in September and October 2020:

- i. A Notice to Produce dated 7 September 2020 required IFSQ to produce a “*client lists*” in the following terms:

1. Please provide a complete client list, including name, date of birth, policy number, provider, on boarding/transfer date, type of policy, risk rating and jurisdiction of the client (both residency and citizenship), and date of AML/CFT due diligence checks (the “IFSQ client list”). The IFSQ client list must be verified by the Senior Executive Function, MLRO and Compliance Oversight Function that it matches and is aligned with IFSQ’s provider/s client list, and that it is true and correct on the production date of this Notice; and

2. Identify which clients in the IFSQ client list were not known or otherwise recorded as clients of IFSQ, including:

- (a) when IFSQ became aware;*
- (b) when the client was onboarded;*
- (c) how IFSQ became aware;*
- (d) whether required AML/CFT due diligence has been undertaken for the client, including details of when, and whether the client passed such checks, and if not, why not;*

- ii. By a Supervisory Notice of 17 September 2020, IFSQ was asked to produce “*a full and complete current customer*” list certified as true and correct.
- iii. By a Supervisory Notice of 6 October 2020 to provide a “*customer list*” verified as true and correct.

20. No definition was given of the term “*client*” or “*customer*” in the Notices.

The findings and decision of the Regulatory Tribunal

21. The Regulatory Tribunal held that the applicable definition of the terms “*client*” and “*customer*” was the definition set out in rule 1.2.1(1) of the CIPR:

A customer of an authorised firm is a person to whom the firm provides, has provided, or offers to provide, a service that is a regulated activity, or a person who asks the firm to provide such a service;

22. Applying that definition, it held that a person who had signed an LoA was a client or customer. As at least some of those who had signed an LoA had not been included in the lists, or documents had not been produced in respect of them, there had been a contravention of the Notices.

The contention of Mr Veiss

23. It was contended on behalf of Mr Veiss by Ms Rogers KC that none of the Notices had referred to the definition in the CIPR; the Notice of 7 September 2020 used the term “*client*”, not “*customer*”. The use of the definition in the CIPR had been put forward by the QFCRA who had also pointed to the definition of “*customer*” in rule 1.3.4(1) of the Anti-Money Laundering and Combatting Terrorism Financing Rules 2019 (the ‘**AML Rules**’):

- (1) *A customer, in relation to a firm, includes any person who engages in, or who has contact with the firm with a view to engaging in, any transaction with the firm or a member of the firm’s group—*
- (a) on the person’s own behalf; or*
b) as agent for or on behalf of another person;
- (2) *To remove any doubt, customer also includes:*
- (a) any person receiving a service offered by the firm (or by a member of the firm’s group) in the normal course of its business and*
(b) a client or investor or prospective client or investor, of the firm or a member of the firm’s group.

24. If a definition in the CIPR or the AML Rules was to be relied on, it should have been specified in the Notices. There was no reason for IFSQ to have known that these were the definitions relied on, particularly as the definition in the CIPR extended to persons who had made enquires of IFSQ, but not followed them up or persons who had been former customers of the firm. The clients or customers of IFSQ were those who had received services from IFSQ, both as a matter of the ordinary use of language and in the scope of the definition in the CIPR. It was only when a person was “*on-boarded*” and had signed IFSQ’s terms of business that a person became a client or customer. Those terms of business specified IFSQ’s services:

Our Services include advising you on your insurance needs, arranging your life insurance policy with the above companies to meet your requirements, and helping you with any ongoing changes you may require. We will assess your needs periodically and advise you in writing of our recommendations based on your needs, the information you have provided, your attitude towards risk and then make arrangements for the appropriate form of insurance.

Our conclusion

25. It is unfortunate that the QFCRA did not include a definition of “customer” or “client”, particularly by reference to the CIPR. It is also unfortunate that it did not refer to the definition in the CIPR. However, we have little doubt that the persons who signed LoAs were “customers” or “clients” of IFSQ. In addition to the fact that the LoA set out under the signature of the person the words “client signature” and at least one of the emails sent by IFSQ to insurers referred to the LoA as “the transfer of agency for the client”, the LoA expressly appointed IFSQ as the servicing agent under the policies. As a matter of ordinary language, the person became the client or customer of IFSQ in this respect.
26. Moreover, quite apart from giving the terms their ordinary meaning, it would be right to have regard to the terms in which “customer” was defined in the regulatory regime. Thus, the Regulatory Tribunal was correct in its approach in adopting the definition in the CIPR as applicable to the relationship to IFSQ of the persons who provided the LoAs. Having regard to the terms of the Notices, the application of that part of the definition of “customer”, which included those to whom services had been offered might not have been applicable, but given the relationship established under the LoAs for the reasons we have set out on the first issue, the person who signed LoAs was a person to whom IFSQ was obliged to provide services which were within the regulated activity of Insurance Mediation. The fact that rule 4.4.1 of the CIPR provides for the giving of an initial disclosure document before a service is provided to a customer cannot in our view matter in this context, as the relationship to the person who provided an LoA of “customer” or “client” of IFSQ arose from the obligation to provide a service; it did not depend on the actual provision of a service. Nor is it material that when the AML Rules provide (at article 4.3.1) for obligations under the Rules to arise when a business relationship is established; business relationship means by article 4.2.4 a regular and not a transitory relationship. This appeal is concerned with the obligations that arise in respect of services.

Conclusion on Contraventions

27. Although we consider that we should grant permission in the light of the arguments advanced, we dismiss the appeal for the reasons we have set out.

Appeal on financial penalty and suspension

28. The Regulatory Tribunal reduced by a very substantial amount the financial penalty imposed on Mr Veiss. It did so because what was proved before it was substantially less than what was alleged in the QFCRA Decision Notice, and because it was ultimately for the Regulatory Tribunal to determine the appropriate penalty in all the circumstances.

29. The Regulatory Tribunal also had before it witnesses statements from Mr Veiss about his financial position and documentation which was put forward as financial disclosure in respect of his financial position. Mr Veiss took the position that on that evidence the payment of any significant penalty in one instalment would bankrupt him. Mr Veiss was not cross-examined on the statements.

The approach of this Court

30. In its decision, the Regulatory Tribunal set out the reasons not only for reducing the penalty but also why it regarded the contraventions as so serious that a penalty of \$240,000 was appropriate. Although there was no finding of dishonesty, Mr Veiss's conduct had demonstrated a lack of integrity. The Regulatory Tribunal also concluded that this was not a case where the penalty should be commuted on the basis of financial hardship applying the principles set out by it in *Russell v QFCRA* [2020] QIC (RT) 2 and *Perera v QFCRA* [2021] QIC (RT) 6 at paragraphs 71-73.

31. As this Court made clear in *Perera v QFCRA* [2022] QIC (A) 6 at paragraph 31, we take the view that consideration of any application for permission to appeal on penalty or period of suspension must take into account the fact that the appeal to this Court is a second appeal.

32. Although it was contended that the amount of the financial penalty was too great and the period of suspension excessive, in our judgement there is no basis for contending that this Court should reconsider either the overall amount of the financial penalty or the length of the period of suspension.

Two specific issues

33. However, two specific issues were raised on the application in respect of the penalties imposed:

- i. Mr Veiss did not have the assets or income to pay the financial penalty immediately. He needed time to pay. The amount he should be ordered to pay on a periodic basis should take into account his ability to pay on each occasion during that period and the period should be one that was not oppressive or an undue burden and which enabled the offender to resume his life.
- ii. The scope of the prohibition was in excess of what was permissible as it extended beyond a prohibition in relation to regulated activities to any employment in the QFC.

Financial Hardship – the time to pay

The issues before us

34. Although the Regulatory Tribunal rejected the application for the penalty to be commuted in whole on the basis of financial hardship, it stated that, if Mr Veiss could not pay immediately, he should update his financial disclosure and provide it to the QFCRA. The parties should then seek to agree a payment schedule between them and if they could not agree, the matter could be referred back to the Regulatory Tribunal.

35. It was contended on the application for permission to appeal that the Regulatory Tribunal had not considered whether the financial penalty should be commuted in part. Furthermore, it was clear that Mr Veiss needed time to pay; therefore, when determining the amount of the periodic payments which Mr Veiss should be required to make, the length of time over which these were to be paid should not be unduly burdensome and allow Mr Veiss to put the issues behind him.

The approach to financial penalties

36. The Regulatory Tribunal has taken the view as summarised by it at paragraph 167 of the decision that in its approach to penalties it should have regard to the QFCRA's Enforcement Policy Statement ('EPS'):

... The EPS sets out matters relevant to sanction. This is a policy statement of the regulator, not a Rule, and so not binding on the Regulatory Tribunal, and it is not exhaustive. Nevertheless, just as regulated persons are entitled to expect regard to the EPS by the regulator, so they are entitled to expect regard by the Regulatory Tribunal on appeal, given that the fundamental purpose of the EPS is to impose penalties which are consistent, appropriate and fair.

37. The EPS sets out at paragraphs 6.48 to 6.56 matters relevant to the determination of financial hardship; it makes clear that there must be full disclosure and in cases where the misconduct is serious, it may not be appropriate to reduce the penalty. Paragraph 6.55 states:

Where there is serious misconduct it would diminish significantly the deterrent effect of a financial penalty if the Regulatory Authority were to reduce it on the grounds that an individual would suffer serious financial hardship. This, in turn, would be detrimental to the Regulatory Authority's objectives, particularly the objective to prevent, detect and restrain conduct which causes or may cause damage to the reputation of the QFC.

38. In our view the considerations set out in the EPS are proper considerations. Although, as the EPS makes clear at paragraph 6.48 that “*the purpose of a financial penalty is not to render a person insolvent or to threaten their solvency*”, it is plain from paragraph 6.55 that there are overall policy considerations in providing that no reduction should be made even if financial hardship resulted if the conduct was of sufficient seriousness and it was otherwise in the public interest in deterring misconduct in the financial markets.

39. The Regulatory Tribunal, in our judgement, had such regard as it considered proper to the EPS in determining that this was not a case where the amount of the penalty should be reduced on account of financial hardship, given the seriousness of the contraventions, its conclusion on lack of integrity, and the significant public interest in deterring misconduct in the financial markets. It did, however, contemplate that payments by instalments were a course open to it.

40. The EPS does not deal in any detail with payment by instalments. Paragraph 6.52 simply states in one sentence:

The Regulatory Authority may agree to payment of the penalty by instalments where the person must wait for a salary payment or needs time to realise assets.

41. However, in *Russell v QFCRA* the Regulatory Tribunal made clear the applicable principles at paragraph 75. In the appropriate case, although not reducing the penalty, it can allow time to pay:

Any period fixed by the Tribunal for time to pay would leave this penalty hanging over the appellant and his family for an unreasonably lengthy time. They should have the opportunity now to put this matter behind them, and make a fresh start.

42. Again, in our view, this embodies the correct principle on which both the QFCRA and the Regulatory Tribunal should proceed. The instalments fixed must be within the ability of the offending party to pay and the period over which the instalments are paid should not leave the penalty hanging over the offending party and his or her family for an unreasonably lengthy period of time. This may have, as was the position in *Russell v QFCRA*, an effect on the overall amount that will in the result be paid. Although the amount of the financial penalty assessed will remain as a mark of the gravity of the misconduct, consideration of the amounts that should be paid by instalments and the length of the period may have the effect of reducing the amount that in fact is required to be paid if the instalments are duly paid.
43. Where an appeal is made to the Regulatory Tribunal, it is for the Regulatory Tribunal to set the amount of the instalments and the time. That is a decision solely within the Regulatory Tribunal's jurisdiction. It is no longer a matter for the QFCRA to determine, though it is always helpful if agreement can be reached between the QFCRA and the party within a few days so that it can be embodied in the Order of the Regulatory Tribunal or if there is no immediate agreement, then the Regulatory Tribunal can make its decision and embody it in the Order.
44. As the issue of time to pay was not determined by the Regulatory Tribunal and no agreement was reached between the parties, it is clear in our view that permission to appeal on this issue must be given as the issue is for judicial determination and not for the QFCRA. If time to pay is given, then the time and the amounts must be set out in the Order of the Regulatory Tribunal or this Court.

45. The QFCRA rejected Mr Veiss' offer to pay by instalments on the basis that he had not made full financial disclosure. On the appeal it firmly maintained that position.
46. We determined that the interests of justice would be best furthered by giving the parties time to see if they could reach agreement after further disclosure so that an appropriate Order could be made by this Court. As the determination of the question as to the time to pay and the amounts payable was a matter for judicial determination in the event that there was no agreement between the parties, we determined that it would be in the interests of all that the question should be decided by us rather than referring it back to the Regulatory Tribunal. We made directions accordingly.
47. On 24 May 2024, some 10 days after the hearing, Mr Veiss set out his position that he should pay \$10,000 per year for 5 years, but that the remaining penalty should be commuted so that he and his family "*could move on with their lives and put this matter behind them*". He served a fourth witness statement dated 23 May 2024 explaining his proposal and setting out his financial position. In summary, he said he had no assets of any material value and had very significant debts, particularly a debt of \$250,000 to Cano Ltd ('Cano'), a Gibraltar company, and of \$385,000 to Eversheds Sutherland (International) LLP.
48. The QFCRA raised questions on the fourth witness statement, particularly in relation to the loan from Cano, and payments made by Cano recorded in the documents supplied by Mr Veiss as commissions. Mr Veiss in response provided further information in his fifth witness statement dated 5 June 2024 and in a witness statement made by the beneficial owner of Cano. In essence, Mr Veiss' case was that the monies paid by Cano to him were interest free loans.
49. In its submission of 12 June 2024 in response to the witness statements served by Mr Veiss, the QFCRA contended that Mr Veiss had not been forthcoming, transparent or candid in respect of his financial position. The evidence tended to suggest that Mr Veiss was earning more than he was prepared to acknowledge; it suggested that the monies paid by Cano to Mr Veiss were not loans, but payments of commission or advances on commission for work done by Mr Veiss for Cano. The QFCRA relied in particular on the description of some of the payments in the documentation disclosed by Mr Veiss as

“commission”, the absence of any written loan agreement, and the high likelihood that sums of the magnitude paid under a loan would not be provided without any security. It also contended that Mr Veiss’ expenditure was not consistent with his assertion of a difficult financial position.

50. In response Mr Veiss served a sixth witness statement on 19 June 2024 in which he accepted that he had been paid some sums by way of commission by Cano prior to the loan of \$250,000 being made. However, he stated that since the publication of the decision of the Regulatory Tribunal, he found it very difficult to make referrals of clients to brokers, who were not prepared to accept the reputational risk of dealing with him. His counsel also served a submission in response to the submission made by the QFCRA on 12 June 2024 summarising the evidence adduced by Mr Veiss as to financial hardship and criticising the approach of the QFCRA in attacking his credibility in relation to his assets, income and disclosure when the QFCRA had not cross-examined him in relation to his financial position at the hearing.

51. There was a further submission by the QFCRA on 24 June 2024 arguing that Mr Veiss’ admission that he had received commission payments from Cano showed that his earlier statement had been materially misleading:

This significant admission confirms the Tribunal’s approach that the penalty should not be reduced or commuted on the basis of ability to pay and that any request for time to pay should be referred to the Regulatory Authority for determination. It also confirms the Regulatory Authority’s view that Mr Veiss has not been forthcoming, transparent or candid about his financial position.

52. We permitted Mr Veiss to respond to this submission. He did so on 4 July 2024, reiterating what he had done by way of disclosure and explaining what he said was an error he had made in relation to Cano.

Our conclusion

53. We were unimpressed by the way in which Mr Veiss had approached the issue of disclosure. As has been made clear by the judgment of the Regulatory Tribunal in *Russell v QFCRA* at paragraph 71, full and frank disclosure is required before the Regulatory Tribunal and this Court. We accept the submission of the QFCRA that such disclosure was not provided, particularly in respect of Cano.

54. We do not accept the case that he was being deliberately untruthful. If the QFCRA had wished to make that contention, it should have asked to cross-examine him. This is a matter of fundamental fairness for all legal systems that proceed by examination of witnesses. It was recently affirmed by the UK Supreme Court made in *TUI (UK) V Griffiths* [2023] UKSC 48 at paragraph 42. As the QFCRA did not seek to cross-examine Mr Veiss and as the Regulatory Tribunal did not find he was dishonest, it would not be fair to Mr Veiss to find that his serious failure to make full disclosure and to be candid was dishonest.
55. However, despite the failure to make full disclosure and to be candid about his financial position, given the debts Mr Veiss has incurred to his legal representatives and the effect of the scope of the period of suspension, it seems clear that, irrespective of the position on the payments by Cano, Mr Veiss cannot pay the sum in full in one instalment. He now needs time to pay. This was the view plainly reached by the Regulatory Tribunal. The question for us is the amount of the instalments and the period over which they must be paid given the effect of the period of suspension and the financial position of Mr Veiss.
56. In considering the amounts of the instalments, we also need to take into account the public interest that penalties impose and are seen to impose a sanction and must have a deterrent effect. There are plainly cases, particularly where dishonesty or other serious misconduct is found or where the offending party has obtained significant financial benefit (even if dissipated), that the public interest is served by imposing a financial penalty that inevitably results in the bankruptcy of the offending party. Furthermore, it is also highly material that the public interest is also served by the penalty not taking second place to other debts, including any owed to his legal representatives.
57. In the present case, although the debt owed to his legal representatives will have to be paid, we consider that there is a greater public interest in ensuring that this does not take priority over the penalty payable to the State of Qatar for a very serious regulatory breach where a lack of integrity has been found.

58. Nonetheless, we also have to take into account the length of time over which the instalments must be paid, as is the case even where a criminal court has convicted a party of dishonesty, that a financial penalty should not be left hanging over the offending party for an unreasonable length of time. Although the offending party must be punished, an opportunity for rehabilitation must be afforded.
59. In the result we consider that the gravity of the conduct of Mr Veiss and the necessity of punishing him and deterring others must be reflected both in the amount of the instalments that must be paid and the period of time over which these should be paid. We have reached the conclusion that a five-year period would be appropriate and the amount to be paid on 30 September each year should be \$25,000. That will result in the overall payment being \$125,000, if the payments are made. This reduction results from the principles we have set out and particularly in providing to him the opportunity for rehabilitation.
60. There is and will be no commutation of the penalty of \$240,000. If the amounts are not paid when due, the whole of the outstanding amount of the unpaid penalty of \$240,000 will become immediately due. Permitting an offending party to pay by instalments must, as is usual in other contexts, contain a sanction. As we are not in any way reducing the penalty adjudged appropriate by the Regulatory Tribunal, the sanction for non-payment must be the payment of the whole outstanding amount, even if this results in immediate bankruptcy. If Mr Veiss pays as ordered, the penalty he pays will be reduced to \$125,000.
61. Plainly, there is a risk that this might either result in Mr Veiss' bankruptcy or that he will not pay the instalments when they become due. However, if he fails to pay, we trust that QFCRA and, as importantly, regulators in other jurisdictions in which he might seek to work, would note this and take appropriate steps not only in relation to the reprehensible conduct which the Regulatory Tribunal found he had committed, but as importantly his failure to make amends and to demonstrate remorse and a reformed approach to his conduct.

The scope of the prohibition

62. The prohibition imposed on Mr Veiss extended not simply to any role he might carry out in regulated services or industries, but to any function in the QFC.

63. The power to impose the suspension is set out in article 62(3) of the FSR which provides:

The Regulatory Authority may by written notice:

.....

(3) prohibit a Person from performing a specified function, any function falling within a specified description or any function”

64. It is common ground that the practical effect of this prohibition would be to prevent Mr Veiss carrying out any function in the QFC, including his work for the Baltic Business Council, and he might lose his ability to reside in the State of Qatar.

65. Two issues arise:

- i. The power to issue a prohibition covering all activities in the QFC and not simply regulated activities.
- ii. Whether it was appropriate to impose the wide-ranging prohibition given the effect it would have on Mr Veiss’ ability to carry out any employment and to remain in Qatar.

66. We give permission to appeal on both issues.

Scope of power

67. Mr Veiss in his Notice of Appeal made an argument for the first time challenging the scope of the QFCRA’s power, and hence the Regulatory Tribunal’s power, to make a prohibition which covers activities beyond regulated activities. He acknowledged that the argument was not made before.

68. Since the argument goes to jurisdiction, we shall consider it.

69. The argument runs essentially as follows. Article 8 of the QFC Law, No. 7 of 2005 (the ‘**QFC Law**’), states:

[The QFCRA] is hereby established for the purposes of regulating, licensing and supervising banking, financial and insurance-related businesses carried on in or from the QFC and ... shall be the sole body with jurisdiction to regulate, license and supervise such activities.

70. A prohibition which covers activities outside of “*banking, financial and insurance-related businesses*” goes beyond QFCRA’s purposes and is ultra vires. Such a prohibition should be left to the QFC Authority, which has a wider jurisdiction pursuant to articles 2, 5, and 6 of the QFC Law and Part 5 of the QFC Authority Rules 2023.
71. The problem with this argument is that it reads the stated purposes for the creation of the QFCRA as necessarily limiting its powers. There is nothing in article 8 or elsewhere in the QFC Law which requires this.
72. Purposes and powers are related. An agency is deemed to have the powers necessary to carry out its purposes, even if such powers are not expressly provided for. The logic does not apply in reverse. Purposes does not limit what powers may be given to the agency.
73. Article 8 of the QFC Law itself states that the powers of the QFCRA are to be defined by further legal provisions. The second paragraph of article 8 states:

*Subject to the provisions of this Law, including the provisions set out in Schedule 4, **Regulations made with the consent of the Council of Ministers shall define the management, objectives, duties, functions, powers and constitution of the Regulatory Authority (including, without limitation, the exact activities which shall fall to be regulated, licensed and supervised by the Regulatory Authority)** and such Regulations may only be varied or revoked with the consent of the Council of Ministers.” (emphasis added)*

74. The regulations which define “*the management, objectives, duties, functions, powers and constitution of the [QFCRA]*” are the FSR. Mr Veiss does not challenge the validity of the FSR. A number of articles therein clearly provide that the QFCRA’s role is not limited to matters of banking, financial and insurance-related businesses.

75. Article 12(3) of the FSR states the wide objectives of the QFCRA, including:

(A) *the promotion of and maintenance of efficiency, transparency and the integrity of the QFC;*

(B) *the promotion and maintenance of confidence in the QFC of users and prospective users of the QFC ...*

(D) *the prevention, detection and restraint of conduct which causes or may cause damage to the reputation of the QFC, through appropriate means including the imposition of fines and other sanctions ...*

76. These objectives make clear that the QFCRA’s role extends beyond matters of finance and/or regulated activities, to matters of the whole QFC.

77. Exactly because article 12(3) gives QFCRA a wide role, article 12(4) then states that, “*the [QFCRA] shall be entitled to assume that it will fulfil its objectives relating to the QFC by fulfilling those objectives with respect to the Financial System operating within the QFC.*”

78. The overall regulatory design is understandable. The QFCRA is an agency in the QFC and has a role to promote and safeguard the QFC. Naturally, the QFCRA will and should focus on matters of finance as the area of its main responsibility. It may assume that, by doing so, it is already helping to achieve the larger objectives.

79. This does not mean that the QFCRA is restricted to its area of main responsibility. On the contrary, it means that the regulator may at times reach beyond its area of focus.

80. Article 62(3) of FSR provides that the QFCRA may, “*prohibit a Person from performing a specified function, any function falling within a specified description **or any function.***” (**emphasis added**)

81. The term “*any function*” refers to any function within the QFC. This is its plain meaning as well as the meaning which best achieves and furthers the regulatory design. See also: *Patrick Baeriswyl v QFCRA* [2023] QIC (RT) 2 at paragraph 17; and *Jean-Marc Mantegani v QFCRA* [2023] QIC (RT) at paragraph 16.

82. We conclude that the power of the QFCRA, and hence the Regulatory Tribunal, to make prohibition orders is not limited to regulated activities.

Appropriateness of this prohibition

83. Turning to the second issue raised about the prohibition order, Mr Veiss contends that a prohibition against him engaging in any business activity in the QFC is too wide.
84. On behalf of Mr Veiss, three arguments are made. First, such a prohibition does not serve any of the regulatory purposes stated in *Perera v QFCRA*. Second, the ambit of the prohibition is not logically related to the contraventions. Third, the QFCRA's submissions to the Regulatory Tribunal focused on the finance industry and protection of customers.
85. The third argument can be disposed of quickly. The Regulatory Tribunal is tasked to come to its own decision and is not bound by the QFCRA's submissions. Moreover, in this case the Regulatory Tribunal was reviewing a prohibition by the QFCRA which already covered any function in the QFC including activities beyond regulated activities. There could not be any doubt as to what was at issue.
86. As to the second argument, if what is meant is that the ambit of the prohibition extends beyond regulated activities and is in this way unrelated to the contraventions (which, by definition, must concern regulated activities), then it is really a legal argument and is the same argument challenging the power of the QFCRA. For the reasons we have discussed above, we find against the argument.
87. If what is meant by the second argument is that the nature of the contraventions are such that they cannot be related to unregulated activities, the argument is factually incorrect. As the Regulatory Tribunal found, Mr Veiss has demonstrated a lack of integrity. The very nature of this failure is that it can affect not only one's ability to discharge work functions in regulated activities, but also in all business activities.
88. For his first argument, Mr Veiss cites paragraph 20 of the Regulatory Tribunal's decision in *Perera v QFCRA*. There, the Regulatory Tribunal said the primary purpose of a prohibition order is to, "*protect the public (and the QFC and the financial system itself) where the regulated person's behaviour demonstrates a lack of fitness for a particular role or roles in a regulated firm*".

89. The emphasis sought to be made appears to be on the reference to “*lack of fitness for a particular role or roles*”, with the consequential point that the ambit of prohibition should be limited to such role or roles. Such a view of the purpose of a prohibition order is clearly wrong and could not be what the Regulatory Tribunal meant. A person’s failure or misconduct in one role is often – we dare say usually – not specific to that role. Lack of integrity is an obvious example.
90. The correct emphasis should be on the reference to “*protect the public (and the QFC and the financial system itself)*”. The question, therefore, is how to protect the public and the QFC from the person’s failure or misconduct. In this case, as we have noted earlier, the nature of Mr Veiss’s failure is that it can affect his ability to discharge work functions in business activities in general. It is appropriate to seek to protect the public and the QFC in respect of all such activities and not only in respect of regulated activities.
91. Lastly, we acknowledge Mr Veiss’s argument that a prohibition covering all functions in the QFC would mean he might lose his ability to reside in the State of Qatar. But, this is more a factor to be considered in mitigation. The Regulatory Tribunal has already taken note of it (see e.g., paragraph 169(iv)). As explained above and in cases below, this Court should be reluctant to re-decide, a third time, amount of fine or length of prohibition. For the same reasons, we would not re-weigh this factor of loss of residence.
92. Even if we were to do so, it would appear to us that, as long as the protection of the public justifies the scope of the prohibition, impact on the person’s employment potential and, further consequently, residency status, must be a secondary consideration.
93. In sum, we hold that Mr Veiss’s challenge against the prohibition order fails.

Costs

94. As for costs, Mr Veiss’s appeal has been substantially failed. He has succeeded only to the limited extent of obtaining an opportunity to pay his fine by instalment. For this, he filed new evidence.

95. We make a provisional order that Mr Veiss is to pay 75% of the QFCRA's costs of or in this appeal. For the avoidance of doubt, this will be payable forthwith and not by instalment. Costs is not a penalty; it is legitimate recovery by the successful party.

96. If either party contends for a different order, he or it shall file written submissions, limited to 2 pages, within 7 days hereof. Absent such submissions, the order will become final upon expiry of the 7-day period.

Overall conclusion on penalty

97. We allow the appeal only to the extent that Mr Veiss has time to pay the financial penalty on the terms set out above.

By the Court,



[signed]

Lord Thomas of Cwmgiedd, President

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

Representation

The Appellant was represented by Ms Amy Rogers KC, Mr Michael White and Mr Thomas Ogg of Counsel (11 King's Bench Walk, London, UK), instructed by Eversheds Sutherland (International) LLP (Doha, Qatar).

The Respondent was represented by Mr Ben Jaffey KC (Blackstone Chambers, London, UK) and Ms Natasha Barnes of Counsel (1 Crown Office Row, London, UK), instructed by the Respondent's in-house legal department.