Neutral Citation Number: [2019] EWHC 860 (Comm)

Case No: CL-2018-00047

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: Thursday, 14th March 2019

Before:
MR. JUSTICE WAKSMAN

- -

Between:

(1) ARAB JORDAN INVESTMENT BANK PLC	**Claimants**
(2) HSBC BANK MIDDLE EAST LIMITED	
- and -	
JABRA JERIES IBRAHIM SHARBAIN	**Defendant**

- -

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MR. FRANCIS TREGEAR QC and MR. ALEXANDER PELLING (instructed by **Taylor Wessing LLP**) for the **Claimants**
MR. JOHN JARVIS QC and MR. GEORGE McPHERSON (instructed by **Bishop & Sewell LLP**) for the **Defendant**

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JUDGMENT APPROVED

MR. JUSTICE WAKSMAN:

Introduction

1. This is an application by the second claimant bank, HSBC Bank Middle East Limited (to which I will refer hereafter as "HSBC") for summary judgment against the single defendant, Mr. Jabra Sharbain ("Mr. Sharbain") so as to enforce against him two judgments which HSBC says it has obtained in the courts of Jordan. By those judgments Mr. Sharbain was found to be liable as guarantor of the liabilities to HSBC of two Jordanian companies in which he is interested, namely, Jordan Book Center Limited and Trans Middle East International Distribution Company Limited.

2. I will give a brief procedural chronology taken initially from the claimant's skeleton argument as a matter of convenience and in respect of matters which are not in dispute. First though, the relevant loan facility said to be between HSBC and the two companies

were dated 19th April 2011 as far as the Jordan Book Center was concerned and as far as TransMED is concerned, dated 5th March 2006 and 27th July 2008. On 5th August 2012 HSBC issued proceedings in two separate actions in the first Instance Court in Amman in Jordan. The first was where the defendants were the Jordan Book Center Company and Mr. Sharbain and the second was where the defendants were TransMED and again Mr. Sharbain. On 20th May 2013 judgment was given against both defendants in the first action in the sum of US$4.3 million. None of that money has been paid by Mr. Sharbain or indeed the company. On 3rd June 2013 judgment was given against the defendants in the second action in the sum of just over US$5 million inclusive of interest as was the first judgment. None of that money has been paid either. So on the face of it, according to HSBC, Mr. Sharbain's liability to it as guarantor of the companies' liabilities is something over US$10 million plus interest and costs.

3. On 20th January 2014 HSBC entered into Sale and Purchase Agreement with the first claimant in this action which is the Arab Jordan Investment Bank PLC ("AJIB") for the sale of HSBC's banking business in Jordan. That included, on AJIB's case, the judgment debts owed by Mr. Sharbain which are the subject of the Jordanian actions. On 19th October 2014 Mr. Sharbain's appeal against the TransMED judgment was dismissed by the Jordanian Appeal Court. On 3rd March 2015 his further appeal against the TransMED judgment was dismissed by the Jordan Court de Cassation. Two similar appeals relating to both of those levels of Court of Appeal were dismissed as far as the Jordan Books judgment was concerned on 8th November 2015 and then on 12th May 2016.

4. On 18th January 2018 these proceedings were issued in this court against Mr. Sharbain, initially by AJIB only, in respect of the TransMED judgment. On 16th March 2018 the particulars of claim were amended to bring in the Jordan Books judgment. On 8th May 2018 the original defence of Mr. Sharbain was served. As will be shown, he admitted that HSBC had obtained the judgments in Jordan and was the person entitled to enforce them, but contested the validity of the assignment of the judgment debt to the then sole claimant, AJIB. Other points about the enforceability of the judgments in this jurisdiction were also taken. On 14th September re-amended particulars of claim were served by which HSBC was added as a second claimant. So, to the extent that there was anything defective in the assignment to AJIB, the joinder by consent of HSBC disposed of that point, at least for present purposes.

5. On 10th October 2018 Mr. Sharbain served an amended defence and now he said that the Jordanian judgments were not obtained by HSBC at all, but by a wholly separate new "Limited Liability Company" which, according to the pleading, was to be described as "HSBC Middle East Limited (Jordan)" abbreviated to "HSBC ME Jordan". It was a separate company to HSBC: see paragraph 3B of the amended defence. On 4th December 2018 HSBC applied for summary judgment on the whole of the claim i.e. so as to obtain an order summarily that the two Jordanian judgments could be enforced as if English judgments against Mr. Sharbain here.

6. On 8th February 2019, and somewhat late, Mr. Sharbain served evidence in response. This included an expert report from a Jordanian lawyer called Ms. Nasser. It also contained a witness statement from a Mr. Hazboun, a Management Consultant practising in Jordan, and the brother-in-law of Mr. Sharbain. On 20th February 2019 Mr. Sharbain submitted a proposed draft re-amended defence which made a number of changes but they included the taking of a new point; this was to the effect that the Jordanian lawyer who had issued the Jordanian proceedings, purportedly on behalf of HSBC, had done so without a valid power of attorney. It is pleaded in this proposed pleading that this was a fraud as a result of which

those foreign judgments are likely to be impeached thereby posing an obstacle to their enforcement in this jurisdiction. On 1st March HSBC produced evidence in reply. This included a witness statement from the relevant attorney, Mr. Al-Khalil, whose power of attorney was impeached.

7. Since 1st March there has been a late flurry of yet further evidence including, for Mr. Sharbain, a second report of Ms. Nasser dated 5th March, a first witness statement of Ms. Hazboun who is a practising lawyer in Jordan and the sister-in-law of Mr. Sharbain, dated 8th March; and then a second witness statement from her dated 10th March, the hearing of this application commencing on the following day, Monday, 11th March.

8. Mr. Tregear QC for HSBC took a pragmatic approach to this late evidence. He did not object to its admission but stood firm instead on his submission that such evidence did not take the case any further from Mr. Sharbain's point of view. Accordingly, I decided this application on the basis of all the materials put before me. I should add that two days after the conclusion of the hearing on 11th March, that is to say, yesterday, on 13th March in the afternoon, I received what is described as a "Further Supplemental Note" from Mr. Sharbain's counsel and, later the same day, an emailed response from HSBC's counsel. I will refer to those documents below.

9. While there is not yet permission for the defendant to serve its proposed re-amended defence, HSBC is again content to deal with the arguments and the evidence adduced in support of the new points in it. If summary judgment is not given, then permission to amend can be addressed then. If summary judgment is given, it becomes irrelevant.

Principles relating to Summary Judgment

10. So far as the principles relating to summary judgment are concerned, they are well known. Part 24 provides that in order to obtain summary judgment the claimant must show that there is no real prospect of successful defence and no other compelling reason for a trial. Such an approach must not involve the holding of a "mini-trial" where the court seeks inappropriately to resolve all sorts of factual and other issues as if it is the trial. On the other hand, if a factual allegation advanced by a defendant is clearly hopeless on the material before the court, the court can say so and disregard it, even at this summary stage.

11. Mr. Jarvis QC for Mr. Sharbain said that at the summary judgment stage in particular, it was effectively not open to the court to reject the evidence of an expert on foreign law adduced on behalf of a defendant, however much the court disagreed with it, especially if the claimant had not adduced any independent expert evidence of its own in response; or, at the very least, it would be highly exceptional for the court to do that. I do not consider that the position is as prescriptive as that. There may be cases – and the claimant says that this is one such case – where on any reasonable view the defendant's expert evidence is so poor and is so lacking in any real foundation for the propositions advanced, that it can be safely disregarded, just as with any other evidence; though, of course, the court will give due regard to the independent nature of any expert evidence which is served. As a matter of principle, I agree with that latter approach. Whether this is such a case I will examine below.

12. Otherwise, I make a brief reference to the well-known decision of Simon J (as he then was) in the case of *JSC VTB Bank v. Skurikhin* [2014] EWHC 271 (Comm) at paragraph 15 where he sums up the relevant principles. The first five I have already summarised. At (6) he says that court should take into account "not only the evidence actually placed before it … but the evidence that can reasonably be expected to be available at trial". There was no submission based on that point made before me. At (7) he says:

> "Allegations of fraud may pose particular problems in summary disposal, since they often depend, not simply on facts, but inferences which can properly be drawn from the relevant facts, the surrounding circumstances and a view of the state of mind of the participants …
>
> (8) Some disputes on the law or the construction of a document are suitable for summary determination … On the other hand the Court should heed the warning … that it may not be appropriate to decide difficult questions of law on an interlocutory application where the facts may determine how those legal issues will present themselves for determination and/or the legal issues are in an area that requires detailed argument and mature consideration …
>
> (9) The overall burden of proof remains on the claimant ... to establish, if it can, the negative proposition that the defendant has no real prospect of success … and that there is no other reason for a trial …
>
> (10) … there will be a compelling reason for trial where 'there are circumstances that ought to be investigated', see *Miles v Bull* [1969] 1 QB 258 at 266A. In that case Megarry J was satisfied that there were reasons for scrutinising what appeared on its face to be a legitimate transaction …"

13. In this case while occasionally, Mr. Jarvis QC referred to matters that should be investigated at trial, his principal focus was not on establishing compelling reasons for a trial even where there was no real prospect of success, but rather that there were obvious real prospects of success for the two separate defences which are now being advanced.

Enforceability of foreign judgments: the law

14. Returning again to the *VTB* case the following passages in the judgment of Simon J which are relevant here and are not in dispute are as follows. At paragraph 18:

> "A foreign judgment for a definite sum, which is final and conclusive on the merits … and is unimpeachable … for error of law or fact …"
>
> Then at 20: "This general common law rule as to the conclusiveness of a foreign judgment is subject to four material exceptions [which include fraud (1) for fraud and natural justice] …"

15. So far as fraud is concerned, paragraph 21 sets out the rule in Dicey. It is impeachable for fraud which may be a

> "(1) fraud on the part of the party in whose favour the judgment is given; or
>
> (2) fraud on the part of the court pronouncing the judgment."

16. In paragraph 23 it is said that

> "… the fraud exception is part of the general policy of the common law that a person should not be entitled to take advantage of his own wrongdoing …"

17. At paragraph 25 fraud

> "… includes every kind of fraudulent conduct, *mala praxis* as well as *mala fides*. Thus a default judgment following threats of violence if a defendant were to attend court [for example] would give rise to a triable issue as to its enforceability …"
>
> At 26, "… a foreign judgment can be impeached for fraud irrespective of whether newly discovered evidence is produced and irrespective of whether

> the fraud was alleged in the foreign proceedings ... The party alleging the fraud can also rely on it even if it were known to him … [but] if the fraud is not newly discovered and could have been raised in the foreign proceedings, the court is likely to want to know the reason and why it was not."

18. Then in paragraph 27, drawing attention to the recent case, *Royal Bank of Scotland v. Highland Financial Partners LP and Others* [2013] EWCA Civ 328 for fraud it was said:

> "… there has to be a 'conscious and deliberate dishonesty' in relation to the relevant evidence given, or action taken, statement made or matter concealed, which is relevant to the judgment now sought to be impugned." – I emphasise that point. – "Secondly, the relevant evidence, action, statement or concealment (performed with conscious and deliberate dishonesty) must be 'material'." – I emphasise that also. – "'Material' means that the fresh evidence that is adduced after the first judgment has been given is such that it demonstrates that the previous relevant evidence, action, statement or concealment was an operative cause of the court's decision to give the judgment in the way it did."

19. At paragraph 33 dealing with the separate heading "Natural Justice",

> "A foreign judgment may be impeached if the … judgment was obtained [in circumstances which] were opposed to natural justice."

As to what that means, at paragraph 34,

> "… English courts never investigate the propriety of the proceedings in the foreign court, unless they offend against English views of substantial justice."

20. At paragraph 35:

> "The focus is likely to be on the regularity of the proceedings, since it is clear that a foreign judgment cannot be impeached on the basis of the English court's view of the overall merits of the claim …
>
> 36. The court's view of a natural and substantial justice will now take into account the right to a fair trial."

The Defences

21. To date Mr. Sharbain has advanced a total of seven different defences to the enforcement proceedings here. One of those original defences, not now pursued or at least not relevant for today's purposes, is the challenge to the validity of the assignment which has now been rendered otiose because of the joinder of HSBC as claimant. However, it is material to note that the original defence admitted that HSBC sued the relevant parties including Mr. Sharbain in Jordan and that the Jordanian court ordered the two companies and Mr. Sharbain to pay the sums claimed to HSBC and that this is what HSBC obtained in the Jordanian judgments: see paragraphs 6.1; 8; 10.1; 11.1; 14.1 and 14.2 of the defence. As we shall see, Mr. Sharbain has now effectively sought to reverse out of those admissions by the service of the amended defence which was served after HSBC was joined in September 2018.

22. I shall describe the two remaining defences as follows: (1) "the wrong entity point"; and (2) "the power of attorney point".

23. The wrong entity point first emerged in the amended defence and it argues as follows:

    (1) As a matter of Jordanian law once HSBC had registered its branch in Jordan in order to do business there, back in 1963, there arose a new and separate legal corporate entity.

Thereafter, in truth, it (that is to say that new entity) and not HSBC did the business in Jordan and in truth it was it and not HSBC, which sought and obtained against the relevant parties in Jordan the judgments. It was it and not HSBC which is the beneficiary of any such judgment.

(2) Accordingly, since the original claim here is by HSBC, it is the wrong claimant because HSBC was never the beneficiary of the Jordanian judgments. I shall refer simply for convenience, and as the amended defence had described it, to this new separate entity as "HSBC Jordan". This defence does not need to invoke fraud or the other exceptions against the enforcement of foreign judgments because it is simply a question of whether this claimant, HSBC, is in fact the beneficiary of the foreign judgment at all. This point was never taken originally, as I have recounted. It is said on behalf of Mr. Sharbain that it was never taken originally because it was only the assignee AJIB who sued and so there was no need to get into it. For what it is worth, I do not find that especially convincing. If Mr. Sharbain is right, it is a potentially knock-out blow which would mean that arguing about the assignment was entirely useless for the focus of transferring the benefit of a judgment because the assignor, HSBC, never had the judgment to begin with.

24. As for the power of attorney point, this did not emerge until very recently, well after the application for summary judgment had been made. It is set out in the proposed re-amended defence in the report of Ms. Nasser of 8th February. This defence says that Mr. Al-Khalil, whom it is common ground, had been given by HSBC a power of attorney to act for it as a lawyer in Jordan in 2009, nonetheless did not in fact have a valid power of attorney when he issued the instant proceedings in Jordan in August 2012 purportedly on behalf of HSBC. As a result, it is said, those proceedings were invalid and any judgment obtained pursuant to them is void. Moreover, Mr Al-Khalil knew he had no authority to act but dishonestly misled the Jordanian court by failing to disclose that material fact. He thereby committed a fraud on the Jordanian court and therefore on Mr. Sharbain and indeed the companies. That, therefore, brought this defence within the ambit of the fraud exception to the enforcement of foreign judgment or, at least, there is a real prospect of so showing at trial.

25. In order to impute Mr. Al-Khalil's personal fraud, which he committed in this sense as a frolic of his own, back to the party now suing, i.e. HSBC, it is alleged that because he was acting within the scope of his authority when perpetrating the fraud of pretending that he had authority when he did not, this can and should be seen as the fraud of HSBC. Accordingly, HSBC is deemed to have authorised Mr Al-Khalil to perpetrate a fraud which consisted of him pretending to have authority from HSBC when he did not.

The evidence of Ms. Nasser

26. This is now contained in two reports which comply with the various requirements of Part 35 in terms of the declarations which experts must make. I go, first of all, to paragraph 2 of the first report where Ms. Nasser sets out her "Background and Experience". She has an LLB from the University of Jordan and an LLM from the LSE. She became a member of the Jordanian Bar Association on 3rd October 1992 when she became an Attorney of the Realm of Jordan. Since then she has practised as a litigation lawyer in the firm of Elias Nasser in Amman. In 1995 she became a Partner. That firm specialises in providing advice on commercial law issues including Jordanian banking and corporate law issues. She has advised in practice on the enforceability of judgments obtained from the Jordanian court. She is a native speaker of Arabic and is fluent in English. She attaches her CV. It is not

necessary to look at it because paragraph 2 very well summarises the key points of her expertise and experience that are set out in more detail in the CV.

27. It is to Ms. Nasser's credit, and I take it into account, that of the seven defences originally put forward, she rejected four of them as not being applicable even though they had by then been pleaded. The fifth was the assignment point which no longer became relevant and the remaining two are the live defences which she does support.

The wrong entity point

28. Let me first of all read out all the relevant extracts from Ms. Nasser's first report on the subject. It begins at 5.23 because at this stage she was dealing with a large number of defences. Under "Issue 4: the legal status of HSBC Jordan" she said that:

> "Under Jordanian law, a foreign operating company registered in Jordan is treated as having a separate legal personality from its 'mother company'. This legal separation is evident from the following provisions of Jordanian law:
>
> 5.23.1 The Civil Code/Article 50(4) and 51(2): this provides that (1) 'a legal person shall include commercial and civil companies …; and (2) a legal person shall have (a) an independent financial obligation; (b) capacity within the limits …; (c) the right of adjudication; and (d) an independent domicile.
>
> 5.23.2 [Under the] Companies Law/Article 4 … 'every company formed and registered under this law shall be considered a Jordanian corporate entity, with its Headquarters situation in [Jordan].
>
> 5.23.3 Companies law/Article 242(c): this obliges the 'branch of the foreign company operating in [Jordan]' to announce in its official documents and correspondence the name of the foreign mother company, its nationality, its legal structure, address and capital in its country, and in [Jordan], in addition to its branch registration number ...
>
> 2.24.4 Companies Law/244(b): this provides that the 'general liquidation provisions stipulated in this law, shall apply to branches of foreign companies operating in [Jordan], and whose management head office is located abroad'. [Then she says] "Accordingly, the General Rules for Liquidation set out in Part 13 of the Companies Law (Articles 252 to 272) [apply].
>
> 5.23.5 Banking Law/Article 87 provides that 'if the Central Bank has decided to revoke the licence of, or liquidate, a branch of a foreign bank, the parent company of the branch may not dispose of, or transfer abroad, any assets or funds of the branch until all of the obligations incurred by the branch in [Jordan] have been discharged'.
>
> 5.24 Viewed as a whole, these provisions show that under Jordanian law a 'branch/an operating foreign company' has its own separate legal identity which is distinct from the legal identity of its 'mother company': it is (1) subject to its own legal obligations … (2) separately registered … and (3) subject to liquidation procedures ...
>
> 5.25 The following matters also support the treatment of HSBC ME and HSBC Jordan as separate legal entities.
>
> 5.26 First, the Central Bank of Jordan's letter dated 9 March 2016 specifically refers to 'HSBC Jordan'. Further, the letter expressly recognises

> that 'HSBC Jordan legal personality shall continue to exist at the Company's General Controller'. That recognition is consistent with the branch of HSBC operating in Jordan having its own legal personality.
>
> 5.27 Second, as set out at paragraph 5.6 above, the letter of [loan] facility pursuant to which the loan was offered to Jordan Books was provided by HSBC Jordan not HSBC (as the details set out in the footer of that letter makes clear. …
>
> 5.28 Third, if a bank which is a foreign operating company registered in Jordan wishes to sue an individual or a corporate customer in relation to banking business [conducted there], only the foreign operating company registered in Jordan (i.e. HSBC Jordan), not the mother company registered abroad, could sue the company. Moreover, were the mother company to sue the customer, the claim would be summarily dismissed as lacking merit because the mother company would not be an 'interested party' ... Examples of this practice can be seen from [two reported cases both of the Court de Cassation in Jordan the first *Audi Bank*, the second *Amex*].
>
> 5.28.1 In the *Audi Bank* case, the bank (a foreign operating company registered in Jordan) sought to recover sums due from a customer … Judgment was awarded to the bank, which filed against the customer in the name of the foreign operating company not the mother company ...
>
> 5.28.2 In the *Amex* case the court dismissed the challenge to its jurisdiction on the basis that the plaintiff (a Bahraini company registered in the Registry of Foreign Operating Branches in Jordan) was not the true and lawful party to the claim. The court held that the company registered in Jordan was the true and lawful party."

29. One also needs to refer to two passages in the defendant's skeleton argument. First, at paragraph 39 it is said,

> "… it is not the defendant's case that an entity known as 'HSBC Middle East Limited (Jordan)' or 'HSBC Jordan' is registered separately in Jordan from HSBC (i.e. there are two HSBC entities registered in Jordan). It is upon HSBC being registered as an operating foreign company in Jordan … it acquired a separate legal personality from its mother company which was incorporated outside Jordan."

30. Then 46.3:

> "The naming debate set out in recent correspondence … does not advance the matter … 'HSBC Jordan' is shorthand for the foreign operating company in order to distinguish it from its Dubai-registered mother company; it is not its legal name. Naturally enough, the foreign operating company registered in Jordan has the same name as its 'mother company' (HSBC Middle East Limited). This much is clear from the registration certificates filed by HSBC … It is the act of registration in Jordan which gives rise to the foreign operating company having a separate legal identity from the mother company."

31. So what is said is that upon HSBC, as the foreign operating company or foreign company seeking to operate, registering in Jordan and seeking to operate there, then as a matter of Jordanian law and upon the instant of registration by HSBC, a separate legal entity springs

into life, as it were, and everything that happens afterwards in Jordan is, in truth, the act of this new entity, HSBC Jordan for short.

32. Before looking at the detail, HSBC's basic argument to the contrary is that upon a proper analysis of all the relevant provisions of Jordanian law and certain documents and indeed the Jordanian case law, there is no basis for this claim. These are simply references to a branch of the single entity HSBC which in fact was incorporated in Jersey and no more; there is no separate company with the same name peculiar to the Jordanian jurisdiction. The question, of course, is all about Jordanian law, as to which Ms. Nasser states the following at paragraph 3.2 of her report:

> "Jordan's legal system is based on the Constitution, the Court Establishment Law of 2001 … the civil and criminal code and (in certain cases) Islamic and ecclesiastical laws. The system developed from codes of law in line with Egyptian codes of law which were based on the Napoleonic Code. Certain laws were also derived from British laws. The Jordanian Civil Code, described below, is influenced by Islamic law especially in relation to contract formation."

33. In the light of that, Mr. Jarvis QC cautions the court against trying to resolve these questions as if they were matters of English law when they are not. I agree they are not matters of English law. What is more difficult, though, is the notion that everything that Ms. Nasser says should be viewed through the prism of what might be quite different approaches to questions of construction of documents or statutory provisions including the Code. I could follow that if Ms. Nasser then set out what particular approaches on these questions there were, but she does not. As even the extracts from her report I have read make clear, she approaches the issues of interpretation very much as an English lawyer might, albeit relating to Jordanian law. Even bearing in mind that we are working with translations, she does not put forward a methodology of interpretation or analysis which is uniquely Jordanian and which informs the views that she expresses. That being so, one is entitled and indeed must, simply consider her analysis on its own terms.

34. I now turn to the relevant provisions of the various codes, not all of which were cited by Ms. Nasser. First of all, let me go to the Jordanian Companies Law and in particular to go to Part 12 of it which is headed, "Foreign Companies". Article (240)A says that:

> "… a Foreign Operating Company ('FOC') is a company which is registered outside the Kingdom, whose headquarters is in another country and whose nationality is considered non-Jordanian. [It consists of] two types" – only the second is relevant here –
>
> "2. Companies operating permanently in the Kingdom of Jordan under licence by the competent official authorities."

35. I then go to Article (241):

> "Registration of a Foreign Company …
>
> A- The registration application for the Foreign Company or entity shall be submitted to the Controller accompanied by the following data and documents …
>
> 1. A copy of the Articles and Memorandum of Association, or any other document related to its foundation …

2. The written official documents which certify that such Company has obtained the approval of the concerned authority in [Jordan] for the carrying out the work, and investing the foreign capitals therein …

3. A list of the names of the members of the Board of Directors of the Company, or the management committee or the partners, as the case may be, along with the nationality of each of them in addition to the names of the persons who are authorised to sign on behalf of the Company.

4. A copy of the power of attorney according to which the Foreign Company authorises a resident of [Jordan] to carry out its activities and receive notifications on its behalf.

5. The financial statements for the last fiscal year of the Company at its headquarters …

6. Any other data or information …

B- The application for registration must be signed by the person authorised to register the Company before the Controller … The application must incorporate the fundamental information about the Company, especially the following:

1. The name of the Company, its form and capital.

2. The objectives of the Company which it will realise in [Jordan] …"

Article (242) Controller's Power to Accept or Reject the Registration …

A- The Controller may accept or reject the registration of the Foreign Company … In the event of approval of registration, the legal registration procedures of the Company or entity in the Foreign Companies Register shall be completed, and shall be published in the Official Gazette …

C- The branch of the Foreign Company operating in [Jordan], must announce in its official documents and correspondence the name of the foreign mother company, its nationality, its legal structure, address and capital in its country, and in the Kingdom, in addition to its branch registration number with the Controller.

Article (243) Registered Foreign Company Duties

A- The Foreign Company … registered pursuant to the provisions of this Law shall undertake the following:

1. To submit to the Controller within three months from the end of each fiscal year its balance sheet and the profit and loss account of its operations in [Jordan] duly certified by a Jordanian licensed auditor.

2. To publish the balance sheet … in at least two local daily newspapers …

Article (244) Duties of a Foreign Company Requesting Cancellation and Provisions Applicable to it

A- The Foreign Company or entity shall notify the Controller in writing of the date it expects its" – and I emphasise ***"its"*** – operations to end in the Kingdom or the date specified for the termination thereof … The Foreign Company shall prove to the Controller that it has already settled all its

> obligations resulting from its operations in the Kingdom prior to obtaining the approval for cancelling its registration.
>
> B- The general liquidation provisions stipulated in this Law, shall apply to branches of Foreign Companies Operating in [Jordan], and whose management head office is located abroad."

36. The whole thrust of those provisions this far is really all about the registration in Jordan of a foreign company rather than some new entity. None of those provisions begin to say that the effect of registration of the foreign operating company which is identified as the foreign company from abroad creates a new legal operating entity; rather it is the foreign company which has to comply with and keep complying with the relevant provisions to which I have referred. It is perfectly true that there is a reference in Article (242)C to a "foreign mother company" which might, one could suppose, taken in isolation, be suggestive of the possibility of a separate child company, as it were. But actually, the main reference in all of these provisions is to branches. It is not suggested that anything has gone wrong in translation. Article (243) in particular refers to all the required information as being of the operations of the foreign company in Jordan, that is to say, the foreign company itself not some new company. The whole context, in my judgment, is therefore one of dealing with the branch of the foreign company which is now to be operating in Jordan.

37. I then deal with Article (244) which I have already read. As to that, this is surely a reference to the obligations again of the foreign company but incurred in Jordan so that its local debts, as it were, can be settled. There are references here to "branches" and "head office". I do not accept that because there is a reference to the foreign operating company's obligations in Jordan that that must connote some separate local corporate entity having obligations in Jordan rather than the foreign company which is trading in Jordan. It is perfectly possible for it to acquire obligations in relation to the business which is undertaken there.

38. Then I go to Article (87) of the Banking Law. That provides:

> "If the Central Bank has decided to revoke the licence of, or liquidate, a branch of a foreign bank, the parent company of the branch may not dispose of, or transfer abroad, any assets or funds of the branch until all of the obligations incurred by the branch in the Kingdom have been discharged."

39. I do not accept that this provision entails a separate Jordanian corporate entity either. Again, it says "branch" and it does here make a reference to a "parent company" but "of the branch". All of this is completely consistent with the foreign company assuming particular liabilities or holding particular assets in Jordan being dealt with and indeed the injunction is against the parent company for not disposing of any assets or funds of the branch, not the branch itself which might be thought to be the proper provision if the branch was some separate corporate entity. The provisions do include liquidation. It does refer to the liquidation of the branch but that does not necessarily connote the placing of the branch into liquidation as if, and only if, it was a limited company in the same way that a limited company here goes into liquidation. Indeed in argument, Mr. Jarvis QC accepted that one can have primary and secondary liquidations (i.e. in different locations) of the same single company. But he went on to say that this was not necessarily the case in Jordan. That rather begs the question. It is not a point that is dealt with by Ms. Nasser.

40. While I accept that perhaps the use of the word "branch" cannot necessarily exclude the possibility of a separate corporate entity in Jordan, one does need to give effect to the fact that the agreed translation does say on numerous occasions the word "branch". It makes complete sense to talk of the obligations of the branch of the foreign company in Jordan

because, as already noted it is the obligation of the foreign company in so far as they are incurred in Jordan. The Jordanian authorities are obviously not interested in obligations incurred outside Jordan. Furthermore, there is no express provision in any of the relevant codes or the laws – and one needs to bear in mind that this is, to a large extent, a codified system at least in this context – which actually say what Ms. Nasser contends: that a separate company comes into existence upon the registration of the foreign company to do business here. And, as we will see, when one then comes to look at the contemporaneous documents, for example, from the Central Bank of Jordan and the Department of Companies Control (which I will refer to as "DCC") and indeed the judgments of the Jordanian court, the only realistic interpretation is that they are all referring to HSBC and not the putative HSBC Jordan.

41. Referring to the particular paragraphs of Ms. Nasser's report 5.23 refers to the Civil Code/Article 50(4) talking about the attributes of a legal person. I agree that that is exactly what it says but it does not take the matter any further. The question is whether there is a new legal person here. Even if HSBC could be sued in Jordan because it conducts business here through a branch, as indeed foreign companies can be sued in this jurisdiction if they have a branch, that does not address the prior question which is whether a new separate company arises. So that part of her report does not take the matter any further. We then come to 5.23.2 which refers to Article 4. Article 4 is part of the beginning section of the Companies Law. It says:

> "Formation and registration of the Company
>
> The formation and registration of companies in the Kingdom shall be realised in accordance with this Law. And every company formed and registered under this Law shall be considered a Jordanian corporate entity, with its Headquarters situated in the Kingdom."

Quite so. But I fail to see how this has anything to do with the argument before me. That is obviously concerned with companies that are formed and registered in Jordan, emphasised by the fact that they have their headquarters situated in Jordan. It does not bear at all on the question of foreign companies which has its own section devoted to it.

42. We then get to point 5.24. This is where Ms. Nasser says, "Viewed as a whole, these provisions show that under Jordanian law a 'branch/an operating foreign company' has its own separate legal identity." She has recited in the rest of 5.23 some of the provisions but not all of them that I have recited under the Code, the Banking Law and the Companies Law. But when one looks at all of those provisions, there is really no support for a separate company existence at all. What is most surprising is that Ms. Nasser has not in this section of her report put forward any separate legal commentary, whether in the form of an article or a textbook or anything like that, to support this thesis at all. It appears to be very much her own construction of the provisions. Thus far, I simply do not accept that the court has to accept her assertion of the thesis just because she has said it.

43. But in fact the position gets worse when one turns to the documents which Ms. Nasser relies upon. So at paragraph 5.26 she refers to the Central Bank of Jordan's letter dated 9th March 2016. It is necessary to refer to all of it. It is addressing the judge in the first instance court and it says:

> "Reference to your letter … dated 24/01/2016 and its related attachment of the petition submitted by the petitioner (Arab Jordan Investment Bank PLC) … and the licence granted to HSBC Bank as a foreign bank operating in Jordan has been cancelled ...

> We would like to inform you the approval of the cancellation of the licence was granted to HSBC Bank Middle East Limited at the end of the day of 19/06/2014, knowing that its assets … have been transferred to AJIB … and the continuation of the follow-up for the legal cases raised by HSBC or against it in front of the court before 19/06/2014 shall be the responsibility of HSBC Jordan and in its name to the highest degree of litigation and execution, and that HSBC Jordan legal personality will exist at the Companies General Controller in the Kingdom until the end of the last legal case."

44. So Ms. Nasser emphasises the use of the words "HSBC Jordan" and "legal personality". She in fact does not put it very high because what she says is that, "This is at least consistent with the branch in Jordan having its own separate legal personality." In my view it is a little odd to opine on the effect of Jordanian law by reference to particular pieces of correspondence. However, lest there be any doubt about the matter, the Central Bank of Jordan clarified the position in its later letter dated 24th February 2019 as follows. It is addressed to "HE Chairman of Board of Arab Jordan Investment Bank". It is with regard to the letter seeking information to the effect that the bank, HSBC Jordan is HSBC Bank Middle East Limited "whenever mentioned" in CBJ's letters and states:

> "Kindly note that Bank HSBC Jordan is HSBC Bank Middle East Limited whenever the same [is] mentioned in our letters or to whom may concern certificates issued to that effect by the Central Bank of Jordan."

45. Of course, what the prior letter was dealing with is who should be responsible for litigation either before or after the removal of any banking licence to HSBC. In the light of that, the Central Bank of Jordan's communication provided no support at all for Ms. Nasser's thesis.

46. Then at paragraph 5.27 she says that the underlying facility letters themselves show that there must be a separate legal entity or at least that it is consistent with that possibility. She refers to the footer of the Loan Facility letter to Jordan Books which had been provided, she says, by HSBC Jordan and not HSBC. But the footer to the original page which, at this stage, was otherwise in Arabic simply says this: "HSBC Bank Middle East Limited Area Management" and then there are details in Jordan. Then it says underneath all of that, "Incorporated in Jersey, regulated by the Jersey Financial Services Commission". It is true that the word "Jordan" appears there. But reading that footer entirely it provides no support at all for the notion that there has arisen some separate legal entity other than HSBC.

47. Indeed, we now have the English translation for the Facility Letter as a whole. One notes that it begins by saying, "We confirm our approval". It has the HSBC logo at the top. It has the footer on, it would appear to be, the second page as well. There is a seal on this page, "HSBC Bank Middle East Limited Area Management". Over the second page, when dealing with securities it says that there will be a "bank guarantee to HSBC Bank Middle East Limited, a valid fire insurance for HSBC Bank Middle East Limited" and the end of the letter says, "Best regards for and on behalf of HSBC Bank Middle East Limited" and there is a seal for HSBC Bank Middle East Limited Area Management by Ms. Isis Sunna, Corporate Credit Risk Manager and Mr. Sayyeda Rafu Corporate Credit Department Manager. It is hopeless, in my view, to suggest that this facility letter is made by any entity other than HSBC, the Jersey incorporated entity.

48. Then at paragraph 5.28 Ms. Nasser relies upon two cases which she says support the notion that there is a separate corporate entity in Jordan and that if the foreign operating company itself, i.e. the mother company, had sued in Jordan, its claim would be summarily dismissed.

I have already read the passages. But as to the cases, first, in the *Audi Bank* case the foreign bank itself appears to have sued. It is described as "*Audi Bank SAL*" and all the first instance judgment says is, "The defendant was liable to pay to it the unpaid loan. The Court of Cassation dismissed the appeal." There is this sentence in what purports to be the report of the case produced by Ms. Nasser:

> "The point of that judgment is that the case was filed by the foreign operating company registered in Jordan and not by the head office mother company against one of the Bank's customers."

49. That is clearly a commentary by Ms. Nasser and it was not suggested otherwise. But (a) that comment is not justified by the brief report of the case and (b) if the case was filed by the foreign operating company registered in Jordan, then that completely begs the question as to whether a separate company is involved or not. There is no doubt here that HSBC was registered for banking activity in Jordan. But that is not the issue. The issue is whether such registration then produced a separate and different corporate entity.

50. As for the *Amex* case, the claimant was described there as "Amex Middle East, a Bahranian limited company registered as a foreign operating company in Jordan". The Court of Cassation found that the Bahranian company was indeed registered in Jordan as HSBC was and in fact I think still is. Since it rendered the credit card services of Amex International, it was the proper plaintiff and there was privity between it and the defendant. But again, none of this demonstrates any support for the notion of a separate entity. It simply shows that the plaintiff was a foreign incorporated company being registered here.

51. I have to say that it is wholly unclear to me how Ms. Nasser was able to draw the conclusion she did at paragraph 5.28 from these two cases. The point actually goes further because to take an example of the judgment of the Jordanian court in this case at page 77 it says:

> "… HSBC is a foreign company that is registered at the operative foreign companies register in [Jordan] with the DCC … being of the English nationality while it is being in represented in Jordan by Ms. Karen Dawn Adams while its purposes are practising all the banking business in the Kingdom."

52. Consistently with the *Audi* and the *Amex* cases, the legal entity suing is described as "the company registered in Jordan", but there is no reference to any other company. In fact it refers to HSBC as "being of the English nationality" which is not actually accurate because it is Jersey, but that does not seem to me to be relevant here. Yet, according to Ms. Nasser's analysis, if this was so, and it was only the foreign company that was suing, then this claim should have been dismissed at the outset. But it was not and no one suggested it should be.

53. Ms. Nasser concluded at paragraph 5.30 of her report that "the nomenclature used to describe the plaintiff [in the action] is consistent with the plaintiff being the branch/foreign operating company (HSBC Jordan)". I do not agree if, by that – and it is not clear – she means a separate legal corporate entity. If she does, then she appears to be saying, as HSBC submitted in argument, that both companies are being described in precisely the same way ie HSBC Middle East Limited. The additional words "Operating in Jordan" do not assist because that would be true for either entity. As to this, paragraph 46.3 of the defendant's skeleton argument says in terms that the foreign operating company in Jordan as a separate company has indeed the same name as HSBC and this relies on the registration certificate. But that does not show any separate legal entity.

54. The certificate says "Registration Certificate of a Foreign Operating Company in the Kingdom". The name of the company is, HSBC Bank Middle East Limited. Its nationality

is British. Its objectives are banking affairs in and out of Jordan. The capital of the Jordan branch is 25 million. Its representative in Jordan was Ms. Adams and that this particular version was signed on 7th September 2008. None of that shows the existence or emergence of a separate legal entity. The name of the company registered is HSBC as I have already indicated. There is nothing here to indicate the creation of any new entity whether of the same name as HSBC or a different one. The skeleton argument of the defendant at paragraph 46.3 contends that, "It is the act of registration [by HSBC] which gives rises to the [new entity]".

55. But in truth there is nothing on the contemporaneous document to show this. The relevant registration body is DCC. At one stage Ms. Nasser relied on a screenshot from DCC's website to show the existence of a separate company. But when one looks at the translation what it says is this. It gives the national number of the enterprise. It says, "Type of company: foreign corporation. Active branch. Company name HSBC Bank Middle East Limited. Company status: existing company. Registration date: 3.3.1963." It does say later on, "Company's head office", Amman, City Amman" and then it says, "Company's headquarters: Britain. Capital of the parent company" and then it gives a figure. Then it gives a registration date. Then it says, "The purpose of the company headquarters and the purpose of the contracting party". But looked at as a whole, none of that is any support for Ms. Nasser's thesis.

56. To bring the position up to date, there is then a further letter from the DCC dated 11th February 2019. This states as follows:

> "Pursuant to the documents filed with the Companies Control Department at the Ministry of Industry, Trade & Supply, then our records denote no entries to the effect of having a company named HSBC but there is a company named (HSBC Bank Middle East Limited) Jersey … of the nationality of the United Kingdom registered with us at the foreign operative company's registry under No. (3) ...
>
> In addition, that the company is still practising according to our registers till this date."

All of that can only mean that there is only one company which is concerned, and it is the Jersey company albeit that it is registered to do business in Jordan.

57. All of the above demonstrates not merely that paragraph 5.27 of the report is wrong, but it also suggests, since there was never any challenge to the legality of the underlying Loan Agreement in this regard, that HSBC was the permissible corporate entity to lend to a Jordanian company. That would be odd if Jordanian law required all business conduct there to be undertaken by the putative alleged new corporate entity established upon registration. Indeed, the English translation of the facility letter (which I have already referred to) shows clearly, in my judgment, that the lending entity is HSBC and not some other company.

58. If, as it seems, the only answer to these points is that both companies have precisely the same name and both can be described as being registered in Jordan, then it would be impossible in any document to tell them apart. It would also be impossible to tell whether Ms. Nasser's thesis as to a separate entity was even arguably correct or not. In the absence of a clear statement of the law to this effect in any provision of the relevant codes or in a text or in a reported case (of which the court has not seen any evidence), if all that is really being said is that whenever there was a reference to HSBC being in Jordan, it must be to some separate legal entity, I reject it. There is simply no support for that at all. I would add, though it is not necessary for my decision here, that if the notion of a separate legal entity

was so plain and so fundamental as Ms. Nasser suggested it is, it is truly remarkable that it was never raised initially in the Jordanian proceedings or in these proceedings.

59. Ms. Nasser made a further observation on the wrong entity point at paragraph 3 of her second report, but I do not consider this adds anything to what she had said previously. She did make one point by reference to the power of attorney which the subject of the next defence. I will deal with that point but in that context.

60. On the basis of what is set out above and noting the opinion volunteered by Ms. Nasser under "Jordanian Law" that there is a separate legal entity which emerges when the foreign company is registered, she has, in truth, provided nothing of any real substance to support it. Most, if not all, of the legal materials clearly indicate the opposite. Where there is such a dearth of support for an expert's view, HSBC is entitled, in my judgment, to challenge that view on that basis without adducing any expert evidence of its own. Of course, it should be said for the sake of completeness that Mr. Al-Khalil challenges what Ms. Nasser has said. He is a lawyer and he exhibits a number of useful documents. But I recognise, of course, he cannot be regarded as an independent witness because, at least as far as HSBC is concerned, he acted as their lawyer pursuant to a power of attorney.

61. In this vein I refer to Mr. Sharbain's counsel's further supplemental note which was sent yesterday. I intend to read the material parts in full.

> "5. At the hearing on 11th March there was some discussion as to HSBC's decision not to oppose Mr. Sharbain's expert evidence on Jordanian law by relying on expert evidence from its own independent expert.
>
> 6. Mr. Sharbain invited the court to conclude that a possible explanation was that (1) HSBC has obtained such Jordanian law expert evidence; but (2) that evidence had been unhelpful … (or at the very least had given rise to a triable issue) causing HSBC not to rely on it for the purposes of its summary judgment application and to focus instead on undermining the credibility of Mr. Sharbain's expert evidence.
>
> 7. Upon reviewing HSBC's costs schedule in advance of tomorrow's hearing …
>
> 7.1 On page 2 the figure of £12,000-odd is ascribed to 'Attendance on others (i.e. counsel, experts and Jordanian lawyers. It is not clear what the difference is between experts and Jordanian lawyers) …
>
> 7.2 On page 4 the figure of £15,300 is ascribed to 'Expert fees'. (Notably, this figure significantly exceeds the fee of £10,000 incurred by Mr. Sharbain in relation to the preparation of Ms. Nasser's two reports.)
>
> 8. These two items therefore clearly suggest that HSBC (1) has extensively consulted an expert or experts on Jordanian law; and (2) has instructed an expert to prepare a report, but has chosen not to serve that expert evidence in support of its application.
>
> 9. Mr. Sharbain submits that the information in HSBC's costs schedule is consistent with [his] case theory that HSBC has elected not to rely on its evidence because … it is harmful to its prospects of succeeding in relation to its summary judgment application …
>
> 10. Mr. Sharbain therefore invites the court to take into account the entries in HSBC's costs schedule when making an assessment at the summary

judgment stage of (1) the viability of HSBC's legal arguments made in relation to Jordanian law (made without the support of an independent expert report) and (2) whether there are matters of Jordanian law which ought to be investigated at trial."

62. The response later that day from HSBC's counsel was to say:

> "3. As to paragraph 8 of the Post-hearing note, HSBC did not suggest to the court that it did not take the opinion of an independent Jordanian lawyer … There is no reason why it should not have taken such an opinion..
>
> 4. Paragraph 9 … is insinuating. Mr. Sharbain's submission is that 'the information in HSBC's costs schedule is consistent with Mr. Sharbain's case theory that HSBC has elected not to rely on that evidence because … it is harmful ...'
>
> 5. It is a feature of Mr. Sharbain's submissions (and indeed of the expert report of Ms. Nasser) that the point is taken repeatedly that this or that detail 'is consistent with' some feature of their case. This, however, while it pretends to make a point in Mr. Sharbain's favour, contains an admission that in reality the detail does not support the case, which accordingly is not advanced by the evidence.
>
> 6. Thus, Mr. Sharbain says that the information in the costs schedule is consistent with his case theory (i.e. speculation) that some opinion was expressed by an expert …
>
> 7. That information is, however, patently also consistent with the explanation given by Mr. Tregear to the court that the evidence of Ms. Nasser is so weak, and so unsupported by the actual provisions of Jordanian law on which she supposedly relies, that there was no need to produce an expert report … and, had a report been served, it would only have given the (wrong) impression that Ms. Nasser's evidence required expert rebuttal. If an expert report had been served by HSBC, it would have been seized on by Mr. Sharbain as proof that there was a serious issue of Jordanian law between the experts, which only a trial could resolve.
>
> 8. [Finally] HSBC submits that the court should decide on the value of Ms. Nasser's evidence, not by speculating about what materials might have been available to HSBC, but by studying the evidence itself."

63. There is a short answer to all of this. I am going to decide this application on the basis of the materials before me and not on the basis of material not before me. I am certainly not going to speculate on what expert opinion HSBC may have taken or not taken or what it said or what it did not say. In my view, the further supplemental note has added nothing to the debate before me. I need to say no more about it.

64. Accordingly, for all the preceding reasons in my view there is no basis for saying that there is a real prospect of Mr. Sharbain successfully arguing at trial that upon registration of HSBC as a foreign operating company with a branch in Jordan, an entity with the same name or a different name arose. That is in fact the end of the first defence, but I would deal with the second limb of the defence had it been relevant.

Did the separate entity obtain the judgments in Jordan?

65. HSBC argue that even if there was a real prospect of showing at trial that there was a new corporate entity established following registration of HSBC in Jordan, it does not matter because the recipient of the Jordanian judgments, i.e. the judgment creditor, prior to the assignment, was HSBC. If so then it is the correct claimant because it holds or held the Jordanian judgment.

66. As I have already said it is not necessary to decide this point given my rejection of the notion of a separate entity, but the further point is undoubtedly right, as made by HSBC. As already noted, the relevant lender, in my judgment, from the documents is clearly HSBC not some further entity. If so, it would be very odd if HSBC was not the plaintiff in the Jordanian claims. For the reasons also given above, it is clear that the Jordanian court thought HSBC was the plaintiff. That is also shown by the underlying claim documents which clearly identify the claimant (page 198). The claimant is described as "HSBC Bank Middle East Limited represented by Mr. Al-Khalil". Then at 6 it says, "The plaintiff is an entity conducting business in Jordan." The same passages almost identically can be found in the other claim document.

67. Paragraph 55.1 of the defendant's skeleton argument says:

> "The statements of case filed by Mr. Khalil do not identify [HSBC] but the Jordanian operating company. The plaintiff is identified as 'HSBC Middle East Limited'. Without more, this description is equally apt to apply to the Jersey entity or the foreign operating company …"

68. But again, that begs the very question and it would be an impossible question to answer if the supposed new company was to bear precisely the same name as HSBC. So that does not take the matter any further. The reference to "an entity conducting business" takes the matter no further because the question is still begged: HSBC can be perfectly described as the corporate entity which is conducting business in Jordan among other places.

69. I do not accept that the foreign operating company is not HSBC and in my view, for the reasons I have already given, there is nothing in Ms. Nasser's report which suggests that it should be. There is nothing in the judgments in the Jordanian court at first instance to indicate that the judgment creditor is other than HSBC. But, if that is right and HSBC is indeed the correct creditor here, then even if (which I have rejected) there could be a notion of some separate operating company, the result of that is that the second element of the first defence must be rejected as unarguable as well.

The power of attorney defence

70. Mr. Sharbain makes a direct challenge to the veracity and honesty of the evidence of Mr. Al-Khalil which has been filed in relation to this issue. As a preliminary matter, it is worth looking at two of these challenges by way of example. At paragraph 8 of Mr Al-Khalil's witness statement he says that his power of attorney has not expired and it had not been withdrawn by HSBC. This was said in argument to be deliberate untruth because HSBC had submitted a request for deregistration on 3rd June 2014 in which it had listed 14 representatives to take proceedings for that purpose and Mr. Al-Khalil was not one of them. This is dealt with in paragraph 2.9 of Ms. Nasser's second report. The request concerned is exhibited to that report. She then says in paragraph 2.9.1.2 that the nominated persons to act on behalf of the Liquidator can only act on behalf of the Liquidator and no other person. Hence, by the operation of all of this Mr. Al-Khalil's power of attorney had expired and accordingly he was wrong to say it had not and, moreover, he falsely acted for HSBC in the later Jordanian appeals.

71. However, all of this proceeds on a false premise. Although deregistration was sought, it never happened. Indeed, Ms. Nasser expressly recognised this in paragraph 4.4.8 of her first report saying: "HSBC Jordan has not yet been deregistered in Jordan" referring to the screenshot I described above. The fact that there has been no deregistration is also clear from the letter from DCC which I have already read out dated 11th February 2019 so there is nothing in this point.

72. Secondly, Mr. Al-Khalil was taken to task because in paragraph 14 he said:

> "As a standing attorney from the Bank I relied upon the 2009 power of attorney to bring hundreds of other proceedings in Jordan on the Bank's behalf. In none of these proceedings has the validity of the 2009 power of attorney ever been successfully challenged. I would also point out that under article 41 of Jordan's Bar Association Law, 'The litigating parties cannot appear … unless by lawyers representing them'. It is normal practice for the court to require to see a copy of an attorney's power of attorney before he is allowed to act for a party and I recall this was done in the case of Jordanian proceedings."

73. It is said against that that, first, Mr. Al-Khalil had not referred to the fact that very recently Mr. Sharbain has launched a claim through Ms. Hazboun to set aside a judgment of the Jordanian court in a case called *Philadelphia* based on his lack of a power of attorney to act in that case regarding a settlement. That is said to be a precursor to challenging the instant Jordanian judgments whose enforcement is the subject of this application; see in particular the first and second witness statement of Ms. Hazboun. That hardly means that Mr. Al-Khalil was wrong or lying to say that none of his appointments have ever been successfully challenged. It was then said, somewhat pejoratively, that he had simply chosen his words very carefully because he could not say that his authority had never been challenged at all. All he could say is that it had never been successfully challenged. I confess I was unable to understand the criticism here. On the face of it what he said was true and I can see no reason why he necessarily had to refer to challenges which were unsuccessful. So these two criticisms of Mr. Al-Khalil made as a starting point seem to me to be entirely baseless.

74. Accordingly, I now turn to the first and central question under the power of attorney defence which is the scope and duration of the power of attorney. The challenge to Mr. Al-Khalil's authority to act for HSBC in the Jordanian proceedings was not made until the proposed re-amended defence. Accordingly, it was not one of the subjects which Ms. Nasser had to consider in her first report. According to Mr. Hazboun, Mr. Sharbain, the defendant, told him that he (Mr. Sharbain) had had a discussion with Ms. Nasser following a review of the documents in the Jordanian proceedings. Mr. Sharbain told Mr. Hazboun about this on 4th February. Once this issue was raised by Mr. Sharbain in these proceedings, Mr. Al-Khalil produced his witness statement dated 1st February rebutting any challenge to his authority to act at any relevant time. This, in turn, led to the second report from Ms. Nasser of 5th March.

75. The arguments have developed somewhat since they were first raised but in summary Ms. Nasser's opinion, set out in section 2 of her second report, is as follows:

(1) The representative of HSBC who signed the power of attorney granted it to Mr. Al-Khalil in 2009. That was Ms. Karen Adams its then CEO in Jordan. Ms. Adams left in May 2011. Her powers, as authorised representative, were revoked by a letter dated 11th May 2011. She was replaced by Ms. Betley;

(2) Once Ms. Adams' powers expired so did Mr. Al-Khalil's;

(3) The reason for that is that on a proper interpretation of the power of attorney, Mr. Al-Khalil's authority was tied exclusively to that of Ms. Adams so that when her authority expired so did his.

(4) At the time the Jordanian proceedings commenced Mr. Al-Khalil had no authority to act for HSBC because Ms. Adams had gone by then. As a result the proceedings and any judgment therein are a nullity.

76. That, of course, can only be the first stage of the argument for present purposes. It is then said, though not by Ms. Nasser, that because Mr. Al-Khalil knew he had no authority but persisted in acting as if he did, he misled the Jordanian court and thereby Mr. Sharbain and the other defendants and perhaps even HSBC, all of which amounts to a fraud affecting the Jordanian judgments sought to be enforced here or at least there is a real prospect of that argument succeeding at trial. I will deal with this second element of this second defence later on.

77. Returning to the first stage, the first and critical question concerns the scope of the power of attorney. I read out the salient parts as follows. It is headed "General Power of Attorney". It starts by saying this:

> "On the date shown hereinbelow, I, Karen Dawn Adams, in my capacity as representative of HSBC Middle East Limited in the Hashemite Kingdom of Jordan, as per the general power of attorney I hold which has been granted to me by the management of the said bank on 17th July 2008 which is duly certified by all competent authorities, and in my capacity as the authorised signatory on behalf of the Bank in accordance with the certificate of registration of a foreign operating company issued by the DCC, have appointed on behalf of HSBC Bank Middle East Limited Attorney Mr. Al-Khalil to act on behalf of the Bank in filing lawsuits, submitting defence, opposition and to follow up every lawsuit that is filed or shall be filed between the Bank and any other person in whatever matter, before all competent authorities and before courts of all types, jurisdictions and levels, first instance, objection, appeal, cassation, remission and correction and to submit statements and petitions … and to reinstate and to notify and to receive notice and to request copies and documents and to enter as a third party or a defendant or to request third party to enter and under third-party objections, and to submit counterclaims, and to claim interest and .. execution and release and to seize and to declare bankruptcy and to request oath"

and then there are numerous other specific powers there ending with

> "and to settle and release and discharge, and to refer the dispute to arbitration and to appoint the arbitrators and the umpire and to sign and submit all motions related to the arbitration or to the judgments issued therein and to offer admissions, and to deny signatures and generally to do all that the said representative may do by law; and to appoint any attorneys to carry out all or some of the matters that the said attorney is authorised and to remove the said attorneys, time and time again. This being a general power of attorney."

On the left-hand side that is then signed by Ms. Adams on behalf of HSBC Bank Middle East Limited. There is the translator's signature and a stamp of the Court of the First Instance.

78. Albeit in translation, it looks and reads very much like the sort of document an English lawyer might be familiar with down to the use of "herein", "said representatives" and "said

attorney". As already noted, while I have been cautioned against approaching this simply as if this is a matter of English law, it is rather difficult to know what other particular principles of interpretation should apply since Ms. Nasser nowhere says what particular rules of interpretation of Jordan law she is applying. When one reads the relevant part of her report (which I will come to in a moment) her approach itself is reminiscent of how an English lawyer might look at the document, whether it is right or wrong. Be that as it may, her analysis is comprehensible enough for me to consider it and decide whether there is any real prospect of it being correct on its own terms.

79. What Ms. Nasser says in her second report is this at 2.4.2:

> "The list of acts which Mr. Al-Khalil is authorised to undertake on behalf of HSBC Jordan concludes with the phrase '... and generally to do all that the said representative may do by law'. The reference to 'said representative' is a reference to the description of Ms. Adams in the first two lines of the 2009 Power of Attorney (contrast the description of Mr. Al-Khalil himself who is described as the 'said attorney' in the penultimate line of the 2009 Power of Attorney). Accordingly, the continuing authority granted to Mr. Al-Khalil by Ms. Adams pursuant to the 2009 Power of Attorney was qualified by and limited to acts which Ms. Adams was legally authorised to do at the time she was authorised to do them."

80. That is it, save for paragraph 2.6 which really deals with the consequences but says this:

> "As a consequence of the express revocation of Ms. Adams' powers of attorney, the powers granted to Mr. Al-Khalil pursuant to the 2009 Power of Attorney ceased to have effect after 11th May 2011. This is consistent with the language of the 2009 Power of Attorney which limited Mr. Al-Khalil's powers '… generally to do all that [Ms. Adams] may do by law' …"

81. In my judgment Ms. Nasser's analysis is plainly wrong for the following reasons:

(1) Most of the power of attorney is taken up with the all the particular powers and authorities which are given to Mr. Al-Khalil, all the various acts which he is allowed to carry out and they are all given without any qualification at all as to time, nor are they said to depend on any continuing authority on the part of the grantor, Ms. Adams.

(2) The reference at the end to "generally to do all that" is simply a sweep-up clause. It does not qualify the specific powers which had previously been conferred.

(3) The point is simply to say that otherwise Mr. Al-Khalil would have all the powers that such a legal representative would usually have in less, lest for some reason they are not included in the very extensive list of specific powers that have been set out above.

(4) The reference to "said representative" and "said attorney" simply refer to such a representative or such an attorney in my judgment. Thus, in particular, the reference to "said representative" is not a reference back to the particular position of Ms. Adams. It would be very odd if it was. Because as a CEO her own position may very well go wider than the particular sort of legal functions which would be conferred on an attorney such as Mr. Al-Khalil.

(5) Further, if there was a reference back to Ms. Adams' own particular powers, then one would expect it to be in the first person because there is a reference to she being the person who is granting the power of attorney. She refers to herself as "I, Karen Adams" in her capacity as authorised signatory.

(6) Any other interpretation would do real violence to the language of the preceding part of the power of attorney. It would be absurd. It would mean that Mr. Al-Khalil's power to act could cease at any moment depending on whether Ms. Adams left or was incapacitated so she could no longer act or whether she suddenly died. The same would, presumably, be true of any sub-attorneys, as it were, Mr. Al-Khalil might appoint.

(7) It is noticeable that Ms. Nasser does not even attempt to deal with other possible interpretations having regard to the preceding parts of the power of attorney or other possible meanings of, in words, "said representative" or "said attorney".

82. It is, I regret to say, in my analysis, a wholly inadequate analysis and it is clearly wrong. At this point I should add that on the wrong entity point Ms. Nasser had said that the power of attorney clearly showed that it had itself been granted by the alleged separate entity. In that regard she refers to the fact that at the beginning it says, "As a representative of HSBC Middle East Limited in the Hashemite Kingdom of Jordan" and then at the end it says "HSBC Middle East Limited" and then gives her name as "authorised signatory". But I fail to see why that entails a reference to "any other separate entity" just because there was a reference to "Jordan". At paragraph 3.7 of her second report she in fact again only says that such nomenclature may be "consistent" with the thesis of another entity. That is not actually supportive of the first defence but, in any event, I do not agree with it.

83. The next question then is whether there could be any other reason why, under Jordanian law, Mr. Al-Khalil's power of attorney could expire simply because Ms. Adams' own authorisation has been revoked in 2011. In his witness statement, Mr. Al-Khalil cites three Jordanian cases which all make the unsurprising point that provided an authority was properly granted to an attorney at the time, the fact that there are later changes to the authorised signatories do not terminate the granted power of attorney: see the three Court de Cassation cases which Mr. Al-Khalil has noted in paragraphs 9 to 11 of his witness statement. In paragraph 9 he quotes the Court de Cassation saying:

> "… The case law has been consistent that the termination of the capacity of the authorised signatory does not terminate the power of attorney, as the power of attorney signed the authorised signatory of the company … remains in full force and effect as long as the legal personality of the company still exists, unless a ground for expiration of the power of attorney under Article (862) of the Civil Code has occurred …"

In essence, the case he refers to in paragraph 10 and the case he refers to in paragraph 11 say the same thing.

84. Ms. Nasser does not challenge that the above extracts are genuine extracts from those judgments but she distinguishes them on the following grounds:

(1) The particular issue in case 965/2004 and 1095/2008 arose where the authority of the representative who granted the relevant power of attorney had ceased after the proceedings had been commenced by the holder of the power of attorney and not before as here was the case, on the defendant's case, with Mr. Al-Khalil. But I can see no logic in that distinction or how it sits with the general statements of principle made by the courts to which I have referred.

(2) In Ms. Adams' case it is said that her authority was expressly revoked while it seems that the authority in these cases ceased for some other reason. But again I fail to see how the way in which the authority of the original grantor of the power of attorney ceased is relevant to the principles expressed.

(3) In case 965/2004 it is said that the court observed that a power of attorney may expire on any of the grounds set out under Article (862). This provides, among other things that the agency can terminate

> "1. by the completion of the delegated work.
>
> 2. by the expiry of the period fixed for it.
>
> 3. by the principal's death or his loss of capacity unless others' rights are attached to the agency.
>
> 4. by the agent's death or his loss of capacity …"

85. I fail to see how that has anything to do with any issue here. Of course, in an individual agency the agency would terminate if the principal (that is the party for whom he acts) dies and the analogy here would be the disappearance of the underlying company. But that is not the point so far as the argument before me is concerned. I have already said that the power of attorney of Mr. Al-Khalil did not in its own terms expire just because Ms. Adams' authority has ceased. The issue at this stage is simply whether, as a matter of general Jordanian law, the cessation of the grantor's powers then terminates the power of the grantee.

86. Finally, Ms. Nasser says at paragraph 2.8.5:

> "The decisions pre-date the decree issued by HE" – which I suspect is "His Excellency" – "Dr. Bassam Talhouni in 2008. As a result, it is doubtful whether the Court of Cassation would take the same position if faced with the same facts today."

That is a pretty opaque statement. In the absence of any further details so as to allow proper consideration of it, I can only disregard it. In fact, it was not a point pursued in argument.

87. I regret to say that Ms. Nasser's analysis of the power of attorney here is no more impressive than her analysis of the wrong entity point. I am well entitled to reject her expert evidence as to Jordanian law even in the absence of an independent expert to the contrary from HSBC. I do, of course, note that Mr. Al-Khalil did provide the summary of the three cases which I have just referred to, which he was entitled to do and which in fact support HSBC's case. As the notes at 35.3.3 to the White Book state, I am entitled to disregard scientific expert evidence if the circumstances warrant. It is, in one sense, easier to reject non-scientific expert evidence on foreign law, for example, especially where the approach taken by the expert to assert what the effect of the foreign law is: (a) does not invoke any particular principle of the foreign law which would guide that analysis; (b) where the expert's report is devoid of any references to textbooks or commentary; and (c) the analysis of the decided cases and the correspondence is plainly wrong.

88. In reaching those views, I have, of course, taken account of the fact that Ms. Nasser did at least reject four of the other pleaded defences of Mr. Sharbain which is some evidence of her independence. However, that cannot affect or reduce the deficiencies in her analysis as far as the remaining defences are concerned.

89. For all of those reasons I reject the criticism that Mr. Al-Khalil's power of attorney was not valid when he commenced the Jordanian proceedings. Nor did it vanish subsequently because of the deregistration of HSBC in Jordan. That is because no deregistration in fact took place.

Fraud

90. That in fact renders it unnecessary to deal with the second element of the second defence. However, I do so: (a) because it has been debated before me; and (b) out of fairness to Mr. Al-Khalil who has had to defend himself against allegations of serious professional misconduct. I note from the recent witness statement of Ms. Hazboun that steps are now being taken to bring civil proceedings against Mr. Al-Khalil in Jordan on the basis of his acting without authority. What Mr. Sharbain chooses to do in Jordan is not a matter for me, but it does not add weight to the submissions before me as far as this application is concerned.

91. I have already dealt with two particular allegations made against Mr. Al-Khalil above. A third was that he showed to the Jordanian court before commencing the proceedings the 2008 Certificate of Registration which referred to the authorised representative or the signatory as being Ms. Adams and yet is it said he deliberately did not disclose to the court the decision to revoke her authority in May 2011 and replace it with Ms. Betley's which was shown on a later certificate of registration. But that is a red herring. For the reasons given above, what was important was that Ms. Adams had power to grant him the power of attorney in 2009 when she granted it. She had that power then from 2008 which is why Mr. Al-Khalil said that he produced that document to the Jordanian court as well as his own power of attorney. What happened later was irrelevant.

92. As to that, Ms. Nasser says at paragraph 2.9.3 of her second report that while:

> "Mr. Al-Khalil refers to the normal practice of the Jordanian courts being to require to see a copy of the attorney's power of attorney, it is also normal practice for the court to request an up-to-date copy of a company's certificate of registration. If this was requested (which would be usual), it appears that Mr. Al-Khalil did not provide it and instead relied on the out-of-date certificate of registration identifying Ms. Adams as the appointed representative. It is clear from the judgment in the JBC action that the judge was thereby misled by Mr. Al-Khalil as to the identity of the HSBC Jordan's appointed representative."

93. That assumes for present purposes it is a matter of practice if not the law for the court to require an up-to-date certificate of registration. If Mr. Al-Khalil was asked for it, he could have produced it. The fact that it then showed Ms. Betley as an authorised representative and not Ms. Adams would be nothing to the point for all the reasons I have given. But what it would show is that the company was still validly registered and it still had a valid authorised representative.

94. I note that the court in its judgment at page 77 (which I have already referred to) did refer to Ms. Adams as "the representative on the registration certificate from 2008" and referred to her as "still representing HSBC". That was inaccurate because Ms. Betley was now in. But that cannot affect: (a) the fact that HSBC was still registered as a foreign operating company; and (b) it is irrelevant to Mr. Al-Khalil's authority. Nor do I consider as relevant the question of authority that in this question, the fact that according to Ms. Hazboun in her witness statement of 8th March at paragraph 4.5 she says, referring to the recent proceedings:

> "instead of announcing the final judgment the Court of Appeal … the judge ordered AJIB attorney to submit a copy of the power of attorney of Mr. Al-Khalil to represent AJIB in the settlement agreement which he failed to present for two following hearings."

95. But I do not see how that, again, has anything to do with the question of the power of attorney before me and the actual materials or otherwise that have been submitted before me.

96. On that footing I cannot see any basis for the suggestion that Mr. Al-Khalil not only had no authority to act when commencing the proceedings in Jordan, as he plainly did, but that – rightly or wrongly – he himself actually believed he had no such authority and simply went ahead deliberately regardless. It is not suggested the HSBC knew nothing of the Jordanian proceedings. That would be absurd. As a matter of fact, Mr. Al-Khalil said that he took instructions in the litigation from Ms. Isis Sunna, being the HSBC's Corporate Risk Manager and Financial Analyst. As I have indicated, she was also one of the signatories on the facility letters granting the loans to the defendants. It is now suggested that even this statement must be false or might be false because a Risk Manager, in the position of Ms. Sunna, could not possibly have authority to give such instructions.

97. I regard that suggestion as hopelessly speculative. I can see no reason at all why Mr. Al-Khalil, as attorney for HSBC (and who would obviously need to take instructions from his client from time to time on the litigation) should not do so and take them from Ms. Sunna. Equally, I reject the further point made by Mr. Sharbain going the other way, which is that if Mr. Al-Khalil took instructions from Ms. Sunna in the course of litigation, it must mean he did not otherwise have any valid power of attorney in the first place. That, I am afraid, is equally absurd.

98. But what his statement shows is that, of course, HSBC knew of the proceedings while they were being conducted by Mr. Al-Khalil and taking instructions from Ms. Sunna. When I asked why, on Mr. Sharbain's case, Mr. Al-Khalil would go off on a frolic of his own to issue proceedings for moneys which were admittedly unpaid on HSBC's case by the principal debtors and the guarantor, I was told perhaps it was a dishonest scheme which he would wish to undertake because he could get paid somehow by way of a percentage of the amount recovered. Apparently he would be able to do all of this under the nose of HSBC in Jordan without them knowing and without them needing to be involved so that he could recover damages or have access to funds. This departure from reality, as I see it, is emphasised by the fact that HSBC has positively relied on the Jordanian decisions said to have been fraudulently obtained by Mr. Al-Khalil for his own purposes.

99. That brings me to a final point on the fraud argument. It is unusual in that the fraud here consists of the fact that: (a) Mr. Al-Khalil has no authority to act in the proceedings; and (b) he dishonestly continued to act knowing that he had no such authority in bringing these proceedings to enforce the judgment. It is conceded on behalf of Mr. Sharbain that HSBC could, and indeed has, ratified his acts in Jordan by agreeing to be the second claimant in these proceedings. That is explicitly acknowledged in the last part of paragraph 9(a) of the re-amended defence. But that would mean that he is to be regarded as always having had the relevant authority because of the ratification. But if that is so, it is impossible to see how the fraud, which goes to the very same question of authority, could have existed. This was not a case, for example, of the presentation by a party of false evidence to the foreign court which then led to a judgment in favour of the relevant party which would not otherwise be the case. It is purely Mr. Al-Khalil representing he had authority when he did not. But once it is established, through ratification or otherwise, that he did have that authority, the fraud must disappear.

100. I do not accept that the fraudulent conduct which is said to have existed prior to the ratification can somehow continue to exist afterwards so as to be operative on the judgments now sought to be enforced in this court. This last point can be put another way: the fraud

exception exists in relation to foreign judgments to prevent a party from seeking to enforce a judgment by which they would be relying on their own wrongdoing in the foreign court. But this does not work here. While Mr. Al-Khalil was acting, apparently, for his own purposes, the putative wrongdoing was Mr. Al-Khalil's not the Bank's. But once the Bank ratified it, then there was no longer any wrongdoing by anyone and certainly no wrongdoing by the Bank. Accordingly, the Bank is not in any way seeking to take advantage of its own wrong in enforcing these foreign judgments here.

101. Accordingly, and for all of those reasons, there is nothing in the second defence either. There is no real prospect of it succeeding at trial.

Natural Justice

102. The separate but subsidiary point was that there was a breach of natural justice in the Jordanian courts which somehow prejudiced Mr. Sharbain. This is all tied either to the wrong entity point or the power of attorney point including fraud. Since neither of those points are arguable neither can this defence have any real prospect of success. If there is no lack of authority or fraud based upon it, there is, in truth, no irregularity in the Jordanian judgments nor any other form of irregularity and no other form of irregularity or injustice is put forward.

Conclusion

103. Accordingly, and despite the forceful submissions made to me on behalf of Mr. Sharbain, it is plain there is no real prospect of a successful defence to the claim to enforce these judgments here. Nor, for the sake of completeness, do the matters relied upon possibly constitute other compelling reasons for a trial as set out by Simon J in paragraph 15(10) of his judgment in *JSC VTB*.

104. Accordingly there will be judgment for the claimant. I will now hear counsel on consequential matters.