In the name of
His Highness Sheikh Mohamed bin Zayed Al Nahyan
President of the United Arab Emirates/ Ruler of the Emirate of Abu Dhabi

COURT OF FIRST INSTANCE
COMMERCIAL AND CIVIL DIVISION

BETWEEN

(1) NMC HEALTHCARE LIMITED

(in administration) (subject to a deed of company arrangement)

(2) NMC HOLDING LIMITED

(in administration)

(3) RICHARD DIXON FLEMING

(in his capacity as Joint Administrator of the First and Second Claimants)

(4) BENJAMIN THOM CAIRNS

(in his capacity as Joint Administrator of the First and Second Claimants)

Claimants

and

(1) BAVAGUTHU RAGHURAM SHETTY

(2) PRASANTH MANGHAT

(3) BANK OF BARODA

Defendants

AND

COURT OF FIRST INSTANCE
COMMERCIAL AND CIVIL DIVISION

IN THE MATTER OF NMC HEALTHCARE LTD (in administration) (subject to deed of company arrangement) AND THE COMPANIES LISTED IN SCHEDULE 1 TO THE ADMINISTRATION APPLICATION

AND IN THE MATTER OF THE INSOLVENCY REGULATIONS 2015

BETWEEN

(1) NMC HEALTHCARE LIMITED

(in administration) (subject to a deed of company arrangement)

(2) NMC HOLDING LIMITED

(in administration)

(3) RICHARD DIXON FLEMING

(in his capacity as Joint Administrator of the First and Second Applicants)

(4) BENJAMIN THOM CAIRNS

(in his capacity as Joint Administrator of the First and Second Applicants)

Applicants

and

(1) BAVAGUTHU RAGHURAM SHETTY

(2) PRASANTH MANGHAT

(3) BANK OF BARODA

Respondents

JUDGMENT OF JUSTICE SIR ANDREW SMITH

Neutral Citation:	[2025] ADGMCFI 0007
Before:	Justice Sir Andrew Smith
Decision Date:	14 April 2025
Decision:	Third Defendant's application granted.
Hearing Date:	27 March 2025
Date of Order:	To be drafted
Catchwords:	Anti-money laundering legislation. Suspicious Transaction Reports. Disclosure in civil litigation.
Cases Cited	NMC Healthcare Ltd & Ors v Dubai Islamic Bank PJSC & Anor [2023] ADGMCFI 0017 Dubai Court of Cassation, Commercial Case No 1098/2018 (17 November 2019) Dubai Court of Cassation, Civil Case No 440/2021 (11 November 2021) Dubai Court of Cassation, Civil Case No 357/2022 (22 December 2022) Kirtanlal International v State Bank of India and ors [2002] DIFC CFI 041. Brendon International Ltd v Water Plus and anor [2024] EWCA Civ 220
Legislation and Other Authorities Cited:	Federal Decree-Law No. (20) of 2018 on Anti-Money Laundering, Combating the Financing of Terrorism and Financing of Illegal Organisations as amended by Federal Decree-Law No. (26) of 2021 Federal Law No. (8) of 2004 on Financial Free Zones Abu Dhabi Law No. (4) of 2013, as amended by Abu Dhabi Law No. (12) of 2020 Federal Decree-Law No. (10) of 1980 on the Central Bank, the Monetary System and Organisation of Banking, Cabinet Decision No. (10) of 2019 on the Implementing Regulation of AML 2018. Cabinet Resolution No. (24) of 2022 amending Cabinet Resolution No. (10) of 2019. ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 United Kingdom Proceeds of Crime Act 2002
Case Numbers:	ADGMCFI-2022-299; and ADGMCFI-2020-020

Parties and Representation:	***Claimants*** Mr Richard Lissack KC, Mr Henry King KC and Mr Robin Lööf (Instructed by Quinn Emanuel Urquhart & Sullivan UK LLP) ***First Defendant*** Mr Wajetan Wandowicz (Instructed by Cyril Amarchand Mangaldas) ***Second Defendant*** No appearance ***Third Defendant*** Mr Harish Salve KC, Ms Sarah Tresman and Mr Mark Baldock (Instructed by Baker & McKenzie LLP)

JUDGMENT

Introduction

1. The question on this application is whether the legislation of the United Arab Emirates (the "**UAE**") concerning money laundering, specifically Federal Law No. (20) of 2018 on Anti-Money Laundering and Combating the Financing of Terrorism and Financing of Illegal Organisations (the "**2018 AML Law**), prevents a party to civil litigation in the Abu Dhabi Global Market (the "**ADGM**") from disclosing Suspicious Transaction Reports (**"STRs**") (sometimes referred to as Suspicious Activity Reports, or "**SARs**") made by the party to the Central Bank of the UAE under the 2018 AML Law. The 2018 AML Law was amended by Federal Law No. (26) of 2021 (the "**2021 AML Law**"), and when I refer in this judgment to the 2018 AML Law, I mean the 2018 AML Law as amended.

2. Federal Law No. (8) of 2004 on Financial Free Zones provides that "*operations conducted*" in Financial Free Zones (such as the ADGM) "*shall be subject to the provisions of Federal Law No 4 of 2002 regarding the criminalization of Money Laundering*" (the "**2002 AML Law**"): article 3(1). The 2002 AML Law was repealed by article 34(2) of the 2018 AML Law, and replaced by the 2018 AML Law. Although Federal Law No. (8) of 2004 has not been amended to refer to 2018 AML Law, it is not disputed that its provisions are covered by article 3(1) of Federal Law No. (8) of 2004. The ADGM Court is a court of the Emirate of Abu Dhabi: see Abu Dhabi Law No. (4) of 2013, as amended by Abu Dhabi Law No. (12) of 2020. Accordingly, questions about the interpretation, application and effect of the 2018 AML Law are not questions about a foreign law but about the Court's domestic law.

The Application

3. The Bank of Baroda ("**Baroda**"), which operates in the UAE and is the Third Defendant in proceedings brought by NMC Healthcare Ltd, NMC Holdings Ltd and their Joint Administrators (the "**NMC Claimants**") against it, Dr B R Shetty and Mr P Manghat (the "**JA Claim**"), made an application (the "**Application**") dated 4 February 2025 that it should not be required to disclose any STRs of which it has control. It is opposed by the NMC Claimants. Dr Shetty adopted a neutral stance on the Application, as did Abu Dhabi Commercial Bank ("**ADCB**"), which is the

Claimant in another action (the "**ADCB Claim**") which is to be tried next year together with the JA Claim. Mr Manghat, who is unrepresented, took no position on the Application.

4. It is not necessary to describe the proceedings brought by the NMC Claimants in much detail. I have described them more fully in other judgments in this action, including [2023] ADGM CFI 0024. It suffices to say by way of introduction that the NMC Claimants make allegations of fraud on a massive scale against Dr Shetty and Mr Manghat, and they bring against Baroda claims under UAE law alleging breach of tortious and contractual duties and that it is liable in fraud or gross negligence, relying on article 282 of the Civil Code (with regard to tortious duties), on article 283 (as regards contractual duties) and on article 285 (with regard to fraud or gross negligence). They also make claims in fraudulent trading under section 251 of the ADGM Insolvency Regulations 2022.

5. I heard the Application on 27 March 2025. Baroda was represented by Mr Harish Salve KC, Ms Sarah Tresman and Mr Mark Baldock. The NMC Claimants were represented by Mr Richard Lissack KC, Mr Henry King KC and Mr Robin Lööf.

6. Both parties adduced expert evidence of UAE law by way of reports: Baroda's reports, dated 3 February 2025 and 20 March 2025, were made by Dr Habib Mohammed Sharif Al Mulla; and the NMC Claimants' report, dated 10 March 2024, was made by Mr Ali Al Aidarous. Both witnesses produced amended versions of their reports shortly before the hearing, and after the hearing I was provided with a useful note of guidance about the changes prepared by the parties' junior counsel, for which I am grateful. Dr Al Mulla and Mr Al Aidarous are both experienced and distinguished UAE lawyers, and both are well qualified to give expert evidence of UAE law.

7. As I have said, the UAE law with which I am concerned in this case is not "*foreign*" law or the law of a "*jurisdiction outside the [ADGM]*": see the *ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015*, section 73(1). Nevertheless, it was certainly helpful to receive the opinions of UAE lawyers about the interpretation, application and effect of the 2018 AML Law and other relevant legislation. However, because they are about ADGM law, differences about the 2018 AML Law are not to be determined by reference to how they would be determined by other Courts of the UAE, which is the approach of this Court to issues of the interpretation of UAE legislation that is not directly applicable in the ADGM: see *NMC Healthcare Ltd & Ors v Dubai Islamic Bank PJSC & Anor [2023] ADGMCFI 0017* at para 24. As the NMC Claimants submitted and Baroda did not dispute, it is for this Court itself to make its own judgment about the 2018 AML Law. That said, it is important, and it promotes comity between the UAE Courts, for this Court to be properly assisted about how other UAE Courts might deal with the questions before me. By no means least, in a case such as this, it will often be best for the Court to have translations of Arabic legislation into English made by, and explained by, lawyers proficient in both languages, as Dr Al Mulla and Mr Al Aidarous certainly are.

The 2018 AML Law

8. The crucial provision of the 2018 AML Law on this Application is Article 17. It appeared from the expert reports that the translation of it would be controversial, but at the hearing Mr Salve said that Baroda is content to adopt for present purposes the translation presented by Mr Al Aidarous, which is in these terms: "*The information obtained in relation to a suspicious transaction, or a crime provided for under this Decree-Law shall be considered confidential and may not be disclosed except to the extent necessary for use in investigations, lawsuits or cases*

related to the violation of the provisions of this Decree-Law". The term "*suspicious transaction*" is defined in Article 1: "*The transactions related to funds for which there are reasonable grounds to believe that they are derived from any felony or misdemeanor, or that they are related to financing of terrorism or illegal organisations, whether committed or attempted"*.

9. Thus, Article 17 comprises two parts, to which I refer as the "**Confidentiality Rule**" (in the Article as far as the word "*disclosed*") and the "**Exception**". It is not in dispute that the Exception exhaustively states what is excluded from the Confidentiality Rule; and the difference between the parties essentially concerns the proper interpretation and application of the Exception.

10. Article 25 of 2018 AML Law is also important: "*Anyone who notifies or warns a person, discloses transactions under review that relate to suspicious transactions, or discloses that the competent authorities are inquiring into or investigating such transactions or any relevant information in violation of the provisions of Article 17 of this Decree-Law shall be punished by imprisonment for a period of no less than one year and a fine no less that [AED 100,000] and no more than [AED500,000], or one of the two penalties"*.

11. I should put these provisions in their statutory context. Here I draw heavily upon Baroda's skeleton argument, which the NMC Claimants did not materially dispute in this regard.

12. In 2000, acting under Article 94 of Federal Decree Law No. (10) of 1980 on the Central Bank, the Monetary System and Organisation of Banking, the Board of Directors of the Central Bank of the UAE issued a Central Bank Circular, 24/2000, which was made to implement recommendations of a task force designed to support international action against money laundering. Thereafter, Financial Institutions operating in the UAE have been obliged to report suspicious transactions to the authorities, by way of STRs, which must provide "*all the details and information available about the operations and the relevant parties"*.

13. Money laundering was defined and criminalised in the 2002 AML Law, which was amended by Federal Decree Law No. (9) of 2014. It included at Article 12 a provision corresponding to Article 17 of the 2018 AML Law. Chapter 3 of the 2002 AML Law created offences of "*failing to report*" (at Article 15) and "*tipping off*" (at Article 16), and provided for criminal penalties for contravention of the 2002 AML Law, including the confidentiality obligation of Article 12. By Cabinet Decision No. (38) of 2014 on the Implementing Regulation of the 2002 AML Law, it was provided (at Article 22) that "*All staff members of authorities subject to the provisions of this Law shall not disclose any information on suspicious transactions relating to money laundering or financing of terrorism or unlawful organisations, except to the extent which is necessary for investigation purposes or legal actions or lawsuits for breach of provisions of the Law. In all cases, customer shall not be contacted directly or indirectly to notify him or any procedure against him, unless by written request of concerned supervisory authority"*.

14. The 2018 AML Law repealed the 2002 AML Law. Article 2 provides that "*Whoever has knowledge that the funds are derived from a predicate offence and willfully commits any of the acts set out below shall be considered as committing money laundering"*. A "*predicate office"* is defined as *"Any act which constitutes a felony or misdemeanour under the applicable legislation of the [UAE], whether such an act is committed inside or outside the [UAE], whenever it is punishable in both states"*. The legislation specifies various acts such as transferring money and conducting operations to conceal or disguise its illegal source.

15. I should refer to Article 5, under which the Governor of the Central Bank may make an order to freeze suspicious funds for up to seven working days; and the Public Prosecutor or a Court may make an order to "*determine, follow or evaluate*" suspicious funds or their proceeds and freeze them if they are a result of crime or related to a crime, and may ban the owner from travelling.

16. Article 6 provides that only the Public Prosecutor or his deputy may file criminal cases against perpetrators of money laundering offences, and offences of financing terrorism or illegal organisation.

17. Article 9 provides for a "*Financial Information Unit*" ("**FIU**") to be established at the Central Bank, to which all STRs are to be sent by Financial Institutions and other specified entities. The FIU is authorised to order Financial Institutions to provide any information or additional documents that it deems necessary to perform its duties.

18. Article 15 imposes duties on, among others, Financial Institutions: "*Financial Institutions and Designated Non-Financial Businesses and Professions, and Virtual Asset Service Providers shall, upon suspicion or if there are reasonable grounds to suspect a transaction or funds all or some of which represent proceeds, or to suspect that they are related to the crime or will be used therein regardless of their value, notify the [FIU] directly and without delay and provide the [FIU] with a detailed report which includes all available data and information on that transaction and the relevant parties. They shall also provide any additional information requested by the [FIU] without invoking confidentiality provisions as an excuse. The following shall be excluded from the above: lawyers, notaries, other practitioners of legal professions, and certified independent auditors, if the information related to those transactions were obtained in circumstances where they were subject to professional confidentiality. The Implementing Regulations of this Decree-Law shall set out the rules, controls, and cases where suspicious transactions must be reported*".

19. Article 16 provides that Financial Institutions and others shall be under various duties such as a duty continuously to identify and evaluate crime risk in their field of work and to take "*necessary due diligence measures and procedures and define their scope, taking into account various risk factors and the results of the National Risk Assessment*" and keep records of doing so.

20. Article 27 provides immunity from liability for financial institutions and others who provide information: "*No criminal, civil or administrative liability shall be borne by Regulatory Bodies, the [FIU], Law Enforcement Bodies, Financial Institutions and Designated Non-Financial Businesses and Professions, the members of their Boards of Directors, employees, and legally authorised representatives, when providing any of the required information or deviating from any restriction imposed by a legislative, contractual, or administrative provision to ensure the confidentiality of information, unless it is proven that the reporting was made in bad faith with the intention of harming others*".

21. Finally, Article 33 provides that Executive Regulations by Cabinet Resolutions may be issued to give effect to the 2018 AML Law.

Cabinet Resolutions 10/2029 and 24/2022

22. By Article 17(1) of Cabinet Resolution No. (10) of 2019 on the Implementing Regulation of 2018 AML Law, as amended by Cabinet Resolution No. (24) of 2022, it was provided that: "*In case of suspecting, or if they have any reasonable grounds to suspect, that an Operation or an attempt*

to carry out an Operation or that Funds representing Proceeds in whole all or in part are related to the crime or that they will be used or such purpose regardless of their value, Financial Institutions [and other entities] shall comply with the following without invoking bank secrecy or professional or contractual confidentiality:

(a) Report directly [STRs] to the [FIU] without delay through its electronic system ot any other means approved by the [FIU].

(b) Respond to all additional information requested by the [FIU].

23. By Article 18(1) of Cabinet Resolution No. (10) of 2019 as amended, it was provided that: "*Financial Institutions ... their directors, officials, and employees shall not disclose, directly or indirectly, to the Client or any other person, their reporting, or that they are about to report suspicious operations or information and data related to them. They shall also not disclose the existence of an investigation. ...*".

24. Finally, Article 42 set out the role of the FIU: to receive STRs from Financial Institutions and others; to request further information or documents relating to STRs; to analyse reports and information; to provide Financial Institutions and others with the results of its analysis of the information in STRs; to cooperate and coordinate with the authorities supervising Financial Institutions and others; to make references to the Law Enforcement Authorities where there are sufficient grounds to suspect connection with a crime; and to provide judicial and law enforcement authorities with information.

General Observations

25. As I have said, the Application ultimately depends upon the proper interpretation and effect of the Exception in Article 17. However, before considering the Exception, I shall make some more general observations about the Application and the Confidentiality Rule in Article 17.

26. First, it is uncontroversial that, at the material times, Baroda maintained a branch in Abu Dhabi, and that it is a "*Financial Institution*" within the meaning of the relevant legislation.

27. There was some difference between the NMC Claimants and Baroda about the importance, or potential importance, of STRs in determining the claims in these proceedings. The NMC Claimants have said that any STRs made by Baroda are "*potentially of central importance*" because they would evidence whether Baroda "*considered particular transactions to be indicative of fraud or suspicious activity, and if so what actions the bank took in response to such suspicions*". Baroda disputes this: it says that the case against it is not that it breached its obligations under the AML regime, but that Baroda knew that there was no" *legitimate basis*" for so-called Unlawful Payments, or that it ought to have known or suspected this: that is not the test under Article 15 of 2018 AML Law for Baroda being required to submit a STR. I decline to engage on this Application with this difference, which might have to be decided at the trial: here, it is beside the point. If disclosure of the STRs, or their existence, would constitute a criminal offence under ADGM law, then they should not be disclosed whether they are potentially of central or peripheral importance. Otherwise, Baroda does not dispute that any STRs are potentially disclosable.

28. Next, the NMC Claimants submit that the Court should be reluctant to accept Baroda's argument because, as is reflected in the UAE's Constitution, the UAE respects access to justice and equality before the law, and because, on Baroda's interpretation, Article 17 would interfere

with that principle in that it would curtail disclosure obligations. I am not impressed with that argument: on any interpretation of Article 17, the legislature curtailed disclosure, whether or not it excepted certain cases from the Confidentiality Rule. In any case, legislatures, in the UAE and elsewhere, have adopted stringent measures to combat money-laundering and financing of terrorism, and have enacted measures that compromise other public policies to a greater or lesser extent. The reasons for this are obvious, and it would not, to my mind, be particularly remarkable if the legislature modified the disclosure regime in civil litigation.

29. Baroda emphasises that it does not make its Application in order to evade its proper disclosure obligations. In its skeleton argument, it said that it is fully cognisant of its duties, but that, if it made disclosure, it would be committing a crime, and, "*as a matter of ADGM law, this constitutes a basis on which it may object as of right to disclosing the existence of any STRs*". I accept that: there is no good reason to attribute any improper motivation to Baroda in making the Application. Indeed, I would put the matter more strongly: Baroda is not only entitled to object to disclosure if it is right about the meaning of the 2018 AML Law: it is obliged to do so.

30. Finally, by way of these general observations, some reference was made by the parties to the position under the *United Kingdom Proceeds of Crime Act 2002*, the key legislation for the anti-money laundering regime in that country. The regimes in the United Kingdom and in the UAE are quite different, and I do not consider that consideration of other regimes affords any real help to the meaning and effect of Article 17.

The Confidentiality Rule

31. The Application is that Baroda should not be required to disclose any STRs (or SARs) that it might have in its control. In his evidence in support of the application, Mr Charles Thomson, a partner of Baroda's solicitors, Baker & McKenzie LLP, expressly refrained from saying whether or not Baroda has in its control any STRs which would be disclosable in the NMC proceedings because, he argued, the 2018 AML Law prohibits disclosure of even that information.

32. In the course of the hearing, Mr Salve said that the Application was intended to cover not only STRs actually made to the FIU but also the drafts of any reports. I observed that it did not specifically cover any further information that was provided by Baroda in response to requests from the FIU: see Article 17(1) of Cabinet Resolution No. (10) of 2019. Mr Salve responded that Baroda was not "*expanding [its] Application at all today*". I shall invite further submissions about the terms of any order that I make about these matters when I have issued this judgment.

33. However, Baroda does not contend that the Confidentiality Rule extends to information about the transactions or activities that gave rise to suspicion and so to STRs: its case is that the Confidentiality Rule is concerned only with the (hypothetical) fact that it made such reports and if so what reports. It contends, as Mr Salve put it in his oral submissions, that the 2018 AML Law is a "*complete code*", with its own definitions, and its own "*raft of duties and obligations*", its own penalties, enforcement authorities and enforcement mechanism. Accordingly, it was argued, the Confidentiality Rule in Article 17 is to be understood as requiring confidentiality for the procedures under the "*code*" established in the 2108 AML Law.

34. The NMC Claimants agree that Article 17 does not preclude disclosure of documents that give rise to suspicions that result in an STR, but they come to that common ground by a different route. They say that the Confidentiality Rule extends to matters that cause a transaction to be suspicious, but that the Exception also covers information causing suspicion so as to allow it

to be disclosed and deployed in civil litigation. As Mr Salve expressed it, the NMC Claimants give the Confidentiality Rule a" very *wide meaning"* and then "*invit[e] the Court to construe the latter half, which is the Exception, equally widely to protect"*.

35. I cannot accept the NMC Claimants' contention. The Exception operates with regard to investigations and legal proceedings only if they are related to violation of the provisions of the 2018 AML Law. (I come later to the differences between the parties about what lawsuits are covered by it.) As a result, the NMC Claimants' position would lead to strange results, with regard to both civil litigation and the conduct of ordinary business. As for litigation, suppose that the NMC Claimants had not included in their claims any suggestion of breach of the 2018 AML Law so that the Exception was irrelevant. Is it said that therefore none of the documents about the "*predicate offences"* alleged against Dr Shetty and Mr Manghat would be disclosable?

36. With regard to the conduct of business, during the hearing I asked Mr Lissack about the position if a bank provided a facility that was supported by a guarantee which required it to give the guarantor notice of certain payments: if any such payments were suspicious, would a bank be prohibited from giving the guarantor notice of them (albeit without indicating any suspicions or intention to make a STR). Other examples might readily to be supposed, for example in cases of syndicated loans. Mr Lissack responded that problems of this kind are "*just a hazard of doing business*" and I accept that, if the 2018 AML Law clearly prohibited such communication in the course of business, that response would, no doubt, suffice. But, in the absence of clear wording, the Court will generally prefer a more commercial interpretation.

37. To my mind, Baroda's narrower interpretation of the Confidentiality Rule makes better commercial sense. What is deemed confidential is "*information obtained in relation to a suspicious transaction*". The purpose, it seems to me, is to prevent disclosure that might alert persons that an STR has been made and prejudice the investigation and enforcement in accordance with the provisions of the 2018 AML Law.

38. I consider this consistent with the language of Mr Al Aidarous' translation of Article 17 (and so I must suppose that it is consistent with the language of the Arabic language). It does not refer simply to information about suspicious transactions: it refers to information "*obtained in relation to"* one (or to a crime provided for under the 2018 AML Law). The natural connotation of the word "*obtained"* is that it refers to information being obtained by the FIU by way of an STR (or by way of further information that it required).

Does the Exception cover disclosure in civil proceedings?

39. There are two issues about the Exception that I am to decide:

    a. Does it cover disclosure in civil proceedings?

    b. Are these proceedings "*related to the violation of the provisions*" of 2018 AML Law?

    Baroda would answer both questions "no"; the NMC Claimants would answer them both "yes". The first question is properly a matter for expert evidence. In expressing their views on the second question, both the expert witnesses strayed into a question that is beyond the relevant principles of UAE law and concerned their application to the facts of the case, a matter which is strictly not for expert witnesses. This matters little because the parties adopted the arguments of their respective experts.

40. Does the Exception cover disclosure in civil proceedings? In his first expert report, Mr Al Mulla put forward this translation of the Exception: "*The information obtained in relation to a suspicious transaction or the crimes provided for in this Decree-Law shall be deemed confidential, and [such information] may not be disclosed except to the extent necessary for use in investigations, prosecutions or cases related to the violation of the provisions of this Decree-Law*".

41. In his response report, Mr Al Aidarous took issue with the translation. He put forward the translation set out at para 8 above. One difference is whether the translation better refers to information obtained "*in relation to …a crime*" or obtained "*in relation to crimes*". As far as I can see, nothing turns on this. Mr Al Mulla explained that the Arabic expression (which may be transliterated "*jarima min al jara'im*") literally would be translated as "*a crime of the crimes provided for in this Decree -Law*", and I do not consider that either Dr Al Mulla's or Mr Al Aidarous' translation materially misrepresents the Arabic text.

42. The more material issue of translation between Dr Al Mulla and Mr Al Aidarous concerns the translation of the Exception itself. Mr Al Aidarous prefers the translation "*except to the extent necessary for use in investigations, lawsuits or cases related to the violation of the provisions of this Decree-Law*": he criticised Dr Al Mulla's use of the word "*prosecutions*". He explained that the Arabic word that Dr Al Mulla so translated, in transliteration "*al da'awa*" (or "*al daawah*"), is the plural form of "*da'wa*", to which Faruqi's Law Dictionary (2008) gives the meaning "*case, lawsuit, action (at law), cause instance*". The term is wide enough to cover both criminal and civil actions.

43. Dr Al Mulla does not dispute that, taken in isolation, the word transliterated *al da'awa,* which he translated as "*prosecutions*", is general enough to cover civil as well as criminal legal proceedings. However, he argued that his translation best conveys its sense in the context of Article 17. Mr Lissack referred to Dr Al Mulla's translation being "*corrected*" in Baroda's submissions in that Mr Salve was content to make its submissions on the basis of Mr Al Aidarous' English version of Article 17. This does not seem to me fairly to describe the position: translation does not involve merely finding the closest equivalent for individual words but the best rendition of the sense of a passage: that was what Dr Al Mulla was properly seeking to achieve, and the presentation of Baroda's argument does not compromise his position. Further, Dr Al Mulla's translation provides a rational basis for the legislature referring to proceedings "*related to the violation of the provisions of this Decree-Law*". The NMC Claimants proffered no explanation as to why the legislature might have had the Exception apply to civil cases covered by that expression, but not to other civil cases. I can see no sensible reason.

44. Mr Al Aidarous found support for his view that the Exception covers disclosure necessary for use in civil litigation in Article 27: he said that the scope of the Exception mirrors the immunity from liability in Article 27 of 2018 AML Law in that the Exception covers "*use of relevant information in regulatory and criminal investigations and proceedings, as well as civil proceedings*". I am not persuaded of that: Article 17 allows disclosure to the extent necessary for use in proceedings related to the violation of the provisions of the 2018 AML Law. Article 27 is concerned with protecting those who report suspicious transactions or crimes in good faith. There is no requirement in Article 27 that the "*criminal, civil or administrative liability*" be associated with proceedings related to alleged violation of the 2018 AML Law.

45. I see more force in a point that Dr Al Mulla made in support of his view that the Exception does not cover civil litigation. It is common ground that the words "*related to the violation of the*

provisions of this Decree-Law" qualify the three nouns which Mr Al Aidarous translates as "*investigations*", "*lawsuits*" and "*cases*". On Mr Al Aidarous' interpretation, no distinction is to be drawn between "*lawsuits*" and "*cases*": the latter term would be surplusage. Dr Al Mulla explained that "*If two terms or words that are interchangeable are used in a context then they must offer different meanings. This stems from the principle of Islamic doctrine on interpretation rules, according to which 'repetition requires differentiation', ... According to this principle, when two (or more) subsequent words in a phrase have the same meaning, then they must be interpreted as having distinct meanings. In other words, distinct meanings must be prioritized over repetition, in order to avoid redundancy*".

46. The NMC Claimants pointed out that Dr Al Mulla made this point only in his report in reply to Mr Al Aidarous, and therefore the Court did not have a response to it from Mr Al Aidarous. But they did not have a cogent answer to it. The common law recognises a similar (albeit flexible) principle of statutory interpretation, sometimes expressed as a "*presumption that every word in an enactment is to be given meaning*": see Bennion, Bailey and Norris on Statutory Interpretation (8th Ed, 2020), section 21.2. I consider that there is force in Dr Al Mulla's observation.

47. However, Baroda has a more fundamental point: its interpretation of the Exception fits well with its narrower interpretation of the Confidentiality Rule. It argued that the Arabic word transliterated as "*al da'awa*" is coloured by its context after "*investigations*" in relation to violations of 2018 AML Law and the word "*cases*", which, it is said, covers administrative proceedings brought by an authority or regulator, typically after a regulatory investigation. Dr Al Mulla referred by way of examples of such administrative proceedings to investigations by the FIU under article 42 of the 2022 Cabinet Resolution, and investigations or examinations of Financial Institutions and others by the Central Bank. Cases of this kind would be directly concerned with allegations of breach of the 2018 AML Law.

48. I am in the unenviable position of deciding between the views about the scope of the Exception expressed by two distinguished UAE lawyers about the interpretation of the Arabic language and its application. I have concluded that Baroda's case, supported by Dr Al Mulla's evidence, is to be preferred.

Are these proceedings related to the violation of the provisions of 2018 AML Law?

49. If I am right in this conclusion, Baroda does not need its further argument that these proceedings are not "*related to the violation of the provisions*" of the 2018 AML Law. However, I would also uphold this argument.

50. The NMC Claimants' pleaded claims against Baroda do not include one for breach of the 2018 AML Law. Indeed, they specifically say in their Response dated 17 September 2024 to Baroda's Third Request: "*The Claimants do not plead a claim for breach of regulatory duty; rather, they plead a claim for breach of specific contractual and tortious duties that are informed by the regulatory duties applicable to Baroda's relevant activities at the material times. The Claimants' case is that Baroda breached those duties, including because it failed to take the steps required by the applicable regulations (which any reasonable bank in its position would have adhered). ... For the avoidance of doubt, the Claimants do not rely upon any breach of statutory duty separate from the pleaded breaches of contractual or tortious duties (those duties arising at least in part, from Statute)*".

51. Thus, the NMC Claimants plead that the 2018 AML Law, and other regulatory obligations inform the standard to be applied when determining the claims that Baroda was in breach of its contractual and tortious duties. They also allege, as part of their case against Baroda, that it "*failed to carry out proper [Know Your Customer] or [Anti-Money Laundering] checks or to heed or properly to investigate AML and internal compliance alerts in respect of payments processed by it*" (at para 149 of the Re-Re-Amended Particulars of Claim); and that "*Baroda … failed to carry out that KYC or AML checks to be expected of a reasonably competent banker, or to heed or investigate (in the manner to be expected of a reasonably competent banker) AML and internal compliance checks in respect of*" specified payments that are said to be unlawful (at para 162). They plead (at para 164) that "*It is inferred that Baroda did not follow KYC, AML or compliance procedures because its employees knew that the intention behind each of these payments was fraudulent, or recklessly turned a blind eye to the same (including because, it is inferred, they were instructed to accommodate the NMC Group's account activity by more senior persons within Baroda). No honest or (in the alternative) reasonable banker could have failed to apply and pursue proper procedures and/ or conduct proper investigations into the payments in the circumstances, or to block or otherwise report these transactions*". However, it is not said, or suggested, that it is either a necessary or a sufficient requirement of any of the claims against Baroda (or any of the Defendants) that the NMC Claimants establish a breach of the 2018 AML. On the face of it, there might well be no need for the Court to make a determination about whether Baroda did violate its provisions (or if so, which).

52. Whatever reason might be suggested for the 2018 AML Law (on the NMC Claimants' case) distinguishing between civil litigation "*related to the violation of [its] provisions*" and other civil litigation (and, as I have said, the NMC Claimants advanced no case about that), I cannot accept that the Exception covers all proceedings where there is an allegation of violation, however remotely or peripherally relevant to the claims. It is not, to my mind, a natural characterisation of these proceedings to describe them as proceedings "*related to the violation of the provisions*" of the 2018 AML Law: that would be to characterise the proceedings as a whole by refence to a single, minor feature of the litigation. I therefore reject the NMC's argument about this.

The Dubai Court of Cassation cases

53. Mr Al Aidarous identified three judgments of the Dubai Court of Cassation that he described as illustrating "*the correct interpretation of the practice of the onshore courts … where banks used STRs and associated information to defend themselves against claims brought by customers*". He said that, in all cases, "*the Court dismissed the case and found that banks are immune from any civil liability from any civil liability arising from reporting STRs, relying on Article 20 of the 2002 AML Law*" which broadly corresponds to article 2018 of the 2018 AML Law.

54. The cases are these:

    a. A judgment dated 17 November 2019 in Commercial Case No. 1098/2018, in which the defendant bank froze its customer's account in accordance with letters from the Central Bank instructing it to do so, one of which was in relation to an STR. The customer alleged that it was "*established in the case papers*" that the defendant had unjustifiably procured the Central Bank to order that its accounts be frozen.

    b. A judgment dated 11 November 2011 in Civil Case No. 440/2021, in which the defendant bank froze its customer's funds and informed the Public Prosecutor of a suspicious

transaction. A committee established by the Public Prosecutor concluded that the funds came from a legitimate source. The Central Bank ordered that the defendant release the frozen funds, and the claimant sought damages from the defendant by way of interest on the funds that had been frozen, alleging that it had made a STR. The customer claimed interest on the funds that had been frozen.

c. A judgment dated 22 December 2022 in Civil Case No. 357/2022, which was consequential upon Civil Case No. 440/2021, about the quantum of the claim for interest.

55. I do not consider that these cases assist the NMC Claimants. First, none of them makes any reference to Article 17, or considers the issues raised on this Application. Secondly, it appears from the reports that the defendant banks' answer to the claims in each case was not based on an exemption from liability in the 2002 AML Law, but that it was not liable for "*harm*" because it dealt with its customer in accordance with the requirements of the Central Bank. Thirdly, although the facts are not entirely clear from the reports, I agree with Dr Al Mulla that the judgments do not state that any STR was disclosed in the proceedings, and I reject the NMC Claimants' submission that this is an "*implausible reading of the reports*". To my mind, the reports are quite consistent with, for example, the Courts having before them directions from the Central Bank to the defendants giving instructions to freeze the accounts "*on the basis of information reported*".

The Kirtanlal International case

56. In evidence in response to the Application, Mr Nicholas Marsh, a partner in Quinn Emanuel Urquhart & Sullivan UK LLP, the NMC Claimants' solicitors, drew attention to a judgment at first instance of the Dubai International Financial Centre ("**DIFC**") Courts, *Kirtanlal International DMCC v State Bank of India (DIFC Branch) and ors [2002] DIFC CFI 041*. In his judgment in that case, Justice Sir Jeremy Cooke made clear reference to an STR that had been filed with the FIU and described its contents. He said at para 76 of his judgment, "*No issues arise in relation to the requirements of Federal Decree-Law No. 20 of 2018 in relation to money-laundering and [the State Bank of India's] obligations to report to the FIU/[Dubai Financial Services Authority] on transactions or activities which it suspected were connected to criminal activity. No complaint was or could be made as to the internal [Suspicious Activity Report], the [Money Laundering Reporting Officer Investigation Report] or the STR*".

57. Mr Marsh considered that "*there can be little doubt that the relevant STR was disclosed by the State Bank of India (DIFC Branch) and referred to in open court in that case*". Baroda did not contend otherwise, and I accept it. However, the judgment makes no reference to Article 17, and Justice Sir Jeremy Cooke did not consider its meaning or effect. In these circumstances, I cannot accept that it provides any real support for the NMC Claimants on their issues with Baroda.

Dr Al Mulla

58. One further matter raised by the NMC Claimants remains for mention. They raised a concern about whether Dr Al Mulla might have an interest in the outcome of the Application that compromises his ability to provide impartial assistance to the Court. They say that Dr Al Mulla, or the law practice which he founded, has acted on behalf of various potentially interested parties, including Dr Shetty. They accept that this would not disqualify Dr Al Mulla from giving impartial evidence, but suggest that it might affect the weight to be given to his evidence: see *Brendon International Ltd v Water Plus and anor [2024] EWCA Civ 220* at para 82.

59. I do not criticise the NMC Claimants for raising the point, and Mr Lissack presented it in appropriately moderate and respectful terms. However, I see no reason to doubt that Dr Al Mulla has formed and presented his properly independent and detached views on the questions that he was asked to consider. His reasoning is clear, and, to my mind, cogent. Indeed, I found the evidence of both expert lawyers impressive and clear and am grateful to them both for their assistance.

The ADCB Claim

60. I add that, if I had concluded that any STRs are potentially disclosable, I should have had to engage with a difficult question about whether they are also potentially disclosable in the ADCB Claim. In the event, I did not need to receive submissions about that, and I say no more about it.

Conclusion

61. I therefore grant Baroda's Application and invite the parties to seek agreement about the terms of the order that I should make, in particular as to whether it should cover (i) any draft STR; and (ii) any particulars provided in accordance with article 17(1) of Cabinet Resolution No. 10 of 2019.

62. As for costs, Baroda seeks an order that costs be in the case. I will hear, but do not encourage, any application for a different order.

Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
14 April 2025