IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE FINANCIAL MARKETS TRIBUNAL (FMT)

Case: FMT 21016

BETWEEN

(1) KPMG LLP

(2) MILIND NAVALKAR

Applicants

and

THE DUBAI FINANCIAL SERVICES AUTHORITY

Respondent

DECISION

Before:

His Honour David Mackie QC (President)

Ali Malek QC

Patrick D Storey

A. THE APPLICATIONS AND PROCEDURAL BACKGROUND

1. The Applicants seek orders that the hearing of their References (identified below) in these consolidated proceedings be held in private; and that the Decision Notices given to them on 16 and 29 June 2021 respectively ("the Decision Notices") should not be published ("the Privacy Applications").

2. The Privacy Applications also sought other relief, including a stay of the Decision Notices and orders that the hearings of the Privacy Applications be held in private and the evidence relied on by the Applicants in support of the Privacy Applications be treated confidentially. The Dubai Financial Services Authority ("the DFSA") did not oppose that other relief. The Financial Markets Tribunal ("the FMT" or "Hearing Panel") grants this relief.

3. The Decision Notices in this case were given by the Rt Hon. Sir Stanley Burnton, acting as the DFSA Decision Maker ("Decision Maker"), and dated 16 June 2021 (in respect of the First Applicant, KPMG LLP) and 29 June 2021 (in respect of the Second Applicant, Mr Navalkar).

4. The procedural timetable relating to the Privacy Applications is as follows:

   4.1 On 18 July 2021 KPMG LLP sought an order that all future hearings in the Reference be heard in private, and an order prohibiting publication of the Decision Notice.

   4.2 Mr Navalkar filed his Notice of Appeal on 29 July 2021. He sought an order that the Notice of Appeal or the fact of his referral to the FMT, together with any documents or information relating to the referral proceedings, are subject to confidential treatment and an order staying publication of the Decision Notice pending final determination of Mr Navalkar's Notice of Appeal.

   4.3 The DFSA served a response to KPMG LLP's application dated 2 August 2021.

   4.4 KPMG LLP's Reference was formally consolidated with that of Mr Navalkar on 25 August 2021.

   4.5 Mr Navalkar filed his Application Notice and a witness statement on 26 August 2021.

   4.6 The DFSA served a combined Answer to the References of KPMG LLP and Mr Navalkar, also dated 26 August 2021.

   4.7 On 6 September 2021, the DFSA served a Response to Mr Navalkar's privacy application.

4.8 On 4 October 2021, KPMG LLP and Mr Navalkar each served Replies in respect of the Privacy Applications.

4.9 Also on 4 October 2021, the parties agreed directions, which were filed with the FMT on 5 October 2021.

4.10 KPMG LLP and Mr Navalkar both served Replies in the Reference, dated 24 October 2021.

4.11 The DFSA, KPMG LLP and Mr Navalkar exchanged Skeleton Submissions on 1 November 2021

5. The hearing took place remotely on 4 November 2021. Mr James Brocklebank QC (leading Mr Adam Temple) appeared for KPMG LLP. Mr Stephen Doherty for Mr Navalkar. Mr Thomas Robinson represented the DFSA. The hearing was in private as to do otherwise would have defeated the purpose of the Privacy Applications.

6. The FMT reserved its decision at the conclusion of the oral argument and indicated that it might be rendered after two similar applications being heard on 5 December 2021. Having drafted this decision, the FMT has decided that there is no reason to postpone it.

7. Following the hearing, on 10 November 2021 the DFSA wrote to the FMT to bring to its attention a decision of Justice Wayne Martin in the DIFC Courts proceedings "*Abraaj Investment Management Limited (In Official Liquidation) and another v KPMG Lower Gulf Limited and others, Claim No: CF1-041-2021*". This will be referred to as "*the Audit Negligence Claim*". The parties were given an opportunity to comment on the decision. It was not brought earlier to the attention of the FMT because legal representatives acting for the parties were unaware of it. KPMG LLP was aware of the decision but thought it was not relevant. The decision is clearly relevant but we make no criticism of the failure to draw the decision to the FMT's attention.

8. The hearing date for the References has not been fixed. It is currently listed as not before May 2022.

B. ISSUES

9. There are three issues before the FMT:

9.1 Whether the hearing of KPMG LLP and Mr Navalkar's References should be in private;

9.2 Whether the DFSA should publish the Decision Notice in respect of KPMG LLP; and

9.3 Whether the DFSA should publish the Decision Notice in respect of Mr Navalkar.

10. The FMT will deal with the issues in this order. This is because if it is decided that the hearing should be in private, this is likely to be determinative of the publication issues concerning the Decision Notices. This is because this would mean there was no publicity about the content of the Decision Notices in advance of the FMT's determination of the References.

11. As regards publication, the Decision Notice in respect of KPMG LLP does not refer to Mr Navalkar by name but simply as the Audit Principal. It would therefore be possible to publish that Decision Notice without identifying Mr Navalkar as a subject of these regulatory proceedings. The same is not true the other way around, and a decision to publish the Decision Notice in respect of Mr Navalkar will lead to KPMG LLP being identified as a subject of these regulatory proceedings.

C. THE BACKGROUND FACTS

12. The background to the Applications is as follows. The Hearing Panel stresses that the account below is given in order to understand the context in which the Applications are made. At this stage the Hearing Panel makes no findings other than those necessary to decide the Applications.

13. KPMG LLP is registered with the DFSA as a Registered Auditor. KPMG LLP is a separate legal entity from KPMG Lower Gulf Limited ("KPMG LG"). Reference is also made to KPMG Limited Liability Company in Oman ("KPMG Oman"). KPMG LLP and KPMG Oman are sublicensees of KPMG International. The members/owners of KPMG LLP are also capital and profit sharing partners of KPMG LG's corporate parent, KPMG Lower Gulf LP (Cayman). Staff who service DIFC clients are employed by KPMG LG (Dubai Branch). KPMG LLP compensates KPMG LG for its professionals' time on KPMG LLP audits.

14. The Abraaj group consisted of a number of companies, including:

14.1 Abraaj Holdings as the ultimate holding company.

14.2 Abraaj Investment Management Limited ("**AIML**"), a company incorporated in the Cayman Islands, which was wholly owned by Abraaj Holdings. AIML was the primary investment adviser and manager of various private equity funds.

14.3 Abraaj Capital Limited ("**ACLD**"), which was wholly owned by AIML. It was incorporated in the DIFC and was authorised by the DFSA to carry on certain financial services in the DIFC.

15. The Abraaj group was at one time the largest private equity group in the Middle East. It collapsed in June 2018. It is alleged that its management had been conducting a sophisticated fraud over several years.

16. ACLD was an Authorised Person. It was required to have its accounts audited by a Registered Auditor. ACLD was audited by KPMG LLP from 2006. The DFSA's allegations are limited to the period from 9 February 2012 to 30 October 2017 (referred to in the Decision Notice as the "*Relevant Period*").

17. In January 2018, the DFSA received an anonymous complaint alleging that the Abraaj Group was misusing investor funds to finance working capital and balance sheet leverage/commitments. Following an initial assessment of the complaint, on 29 March 2018 the DFSA commenced an investigation pursuant to Article 78 of the Regulatory Law into suspected contraventions by ACLD and AIML of rules and laws administered by the DFSA. Also on 29 March 2018 the DFSA required ACLD to provide the DFSA with a report prepared by its external auditor (i.e. KPMG LLP) on ACLD's financial affairs, including its bank accounts, to establish whether ACLD had any solvency issues.

18. It was while compiling documentation for this report that Abraaj Group Compliance obtained copies of ACLD's bank statements which revealed that ACLD's Capital Resources had not been maintained at the level required under applicable DFSA Rules for the majority of the preceding nine months. In turn, these investigations revealed that ACLD had employed a long-standing practice of systematically moving funds in and out of ACLD's bank accounts around the relevant reporting dates for ACLD's financial statements and PIB Returns.

19. In July 2019, Decision Notices were issued to both ACLD and AIML. ACLD's fine was USD15.3 million (discounted following settlement); and AIML's fine was USD299.3 million. Both of these Decision Notices were published on 30 July 2019 and have been in the public domain since that time. The DFSA's Decision Notice with respect to ACLD recorded in a number of places that ACLD had intentionally misled KPMG LLP, its auditor (see e.g. paragraphs 5(c), 39, 43, 51 and 133(b)).

20. The DFSA's allegations against KPMG LLP are limited to allegations about its conduct of audits of ACLD's financial statements, and the 'independent assurance' KPMG LLP gave in respect of ACLD's PIB Returns (i.e. ACLD's returns stating, amongst other things, its Capital Resources). In particular, the DFSA alleges that (a) KPMG LLP should not have signed off on ACLD's financial statements because of the way in which a 'Services Agreement' between ACLD and AIML was presented and accounted for; and (b) KPMG LLP ought to have identified 'Window Dressing' payments used by ACLD, whereby money was paid into ACLD just before quarter end-dates, and paid back out just after those dates. These matters are said to give rise to alleged breaches of various International Standards on Auditing, and of the International Standards on Assurance

Engagements 3000. The allegations against Mr Navalkar are that as Audit Principal he was knowingly concerned in KPMG LLP's alleged breaches.

21. The Decision Notices record that the DFSA gave KPMG LLP and Mr Navalkar Preliminary Notices on 12 November 2020, that KPMG LLP made written representations in response, and that the DFSA then responded in turn. Mr Navalkar also made written representations and these make extensive reference to KPMG LLP's representations.

22. The Decision Notices were issued in June 2021. They summarise the reasons for imposing sanctions as follows. As against KPMG LLP:

> "*[T]he DFSA considers that KPMG failed to:*
>
> *(1) carry out adequate audit procedures to enable it to give an opinion on whether an Authorised Firm's financial statements had been prepared in accordance with applicable International Financial Reporting Standards (IFRS) and represented a true and fair view of the condition and the state of affairs of an Authorised Firm, contrary to Article 101 of the Regulatory Law (see PART A below);*
>
> *(2) conduct its audit of an Authorised Firm's financial statements in accordance with International Standards on Auditing (ISA), contrary to Rule 8.9.1(b) of the General Module of the DFSA Rulebook (GEN) (until 20 August 2014) and Rule 6.2.1 of the Auditor Module of the DFSA Rulebook (AUD) (from 21 August 2014 until 30 October 2017) (see PART B below); and*
>
> *(3) conduct its review of an Authorised Firm's Prudential Investment, Insurance Intermediation and Banking Returns (PIB Return) in accordance with International Standards on Assurance Engagements (ISAE), contrary to GEN Rule 8.9.1(b) (until 20 August 2014) and AUD Rule 6.2.1 (from 21 August 2014 until 30 October 2017) (see PART C below).*"

23. As regards Mr Navalkar:

> "*[A]s the Audit Principal responsible for the audit of Abraaj Capital Limited (ACLD), Mr Navalkar was knowingly concerned in breaches by KPMG LLP (KPMG) of DFSA administered rules and laws. In particular, Mr Navalkar:*
>
> *(1) signed off audit reports without ensuring adequate audit procedures had been performed to enable an opinion to be formed on whether an Authorised Firm's financial statements had been prepared in accordance with applicable International Financial Reporting Standards (IFRS) and represented a true and fair view of the condition and the state of affairs of an Authorised Firm, contrary to Article 101 of the Regulatory Law (see PART A below);*
>
> *(2) failed to ensure the audit of an Authorised Firm's financial statements was conducted in accordance with International Standards on Auditing (ISA), contrary to Rule 8.9.1(b) of the General Module of the DFSA Rulebook (GEN) (until 20 August 2014) and Rule 6.2.1 of the Auditor Module of the DFSA Rulebook (AUD) (from 21 August 2014 until 30 October 2017) (see PART B below); and*

(3) failed to ensure the review of an Authorised Firm's Prudential Investment, Insurance Intermediation and Banking Returns (PIB Return) was conducted in accordance with International Standards on Assurance Engagements (ISAE), contrary to GEN Rule 8.9.1(b) (until 20 August 2014) and AUD Rule 6.2.1 (from 21 August 2014 until 30 October 2017) (see PART C below).

"Further, as an Audit Principal, Mr Navalkar was from 20 October 2014 required to comply with the DFSA's Principles for Audit Principals in AUD Section 2.6. The conduct giving rise to the contraventions set out in paragraph 3.1 also demonstrates that Mr Navalkar failed to act with professional competence and due care, contrary to Principle 3 of the Principles for Audit Principals in AUD Rule 2.6.4. In particular, the DFSA found that, in the Relevant Period, Mr Navalkar failed to act diligently and in accordance with applicable technical and professional standards, specifically by failing to ensure that audits and reviews of an Authorised Firm's financial statements and PIB Returns, for which Mr Navalkar was appointed by KPMG as the responsible Audit Principal, were conducted in accordance with ISA and ISAE."

24. The Decision Notices impose fines of USD1,500,000 on KPMG LLP and USD500,000 on Mr Navalkar. These are lesser sanctions than the Enforcement Team recommended to the Decision Maker. As regards KPMG LLP, its Decision Notice records that the DFSA proposed not only a fine but also to restrict KPMG LLP from accepting any new audit clients that were a "Relevant Person" (meaning a Domestic Firm, a Public Listed Company or a Domestic Fund) and to restrict it from issuing audit reports to Public Listed Companies or Recognised Persons under the Markets Law without prior written consent of the DFSA.

25. The Decision Maker did not impose either of these restrictions. As explained in the Decision Notice:

"*The DFSA has reviewed twenty-nine KPMG LLP audit files since 2016. Of these twenty nine audit files, the DFSA rated twenty-one audit files "Satisfactory" and eight "Generally Acceptable". None was rated "Improvement Required".*

*"The [*remediation*] action taken by KPMG as set out in … KPMG's Submission dated 5 July 2020 …*

"The Onsite Assessment Report dated 29 December 2016 found that overall the audit work considered continued to be of a good quality.

The Onsite Assessment Report dated 26 November 2017 found that the Firm had addressed the matters raised at the previous visit and that there was a satisfactory standard of work in the areas of focus.

The Onsite Assessment Report 2018 found work on Regulatory Returns reasonable quality. However, the DFSA notes the omission on lack of testing on maintenance of capital resources. This will be a focus of the DFSA's future assessments of KPMG's work."

26. The Decision Notices both record that there is no suggestion that KPMG LLP committed any deliberate misconduct.

D. EVIDENCE ON THE PRIVACY APPLICATIONS

KPMG LLP

27. KPMG LLP relies on the evidence of Mr Batra, the Head of Risk Management at KPMG LG in support of its privacy application.

28. Mr Batra describes the importance of reputation to auditors in the DIFC. In his witness statement (at paragraphs 8-11) he describes this as follows:

> "*As an audit firm, the maintenance of reputation is of paramount importance to KPMG LLP (and to KPMG LG). The audit profession is unique in that audit firms generate almost no external work product which can be assessed by potential clients when attempting to generate new business. Lawyers can point to a history of winning cases or to a track record of negotiating and closing complex transactions. Financial firms can point to a history of generating above-market returns on behalf of their clients. Insurance companies can advertise a track record of meeting their clients' claims promptly and in full.*
>
> *None of these options are open to auditors. Our reputation is therefore the only means by which we can compete for work. A potential client that is satisfied that we know the applicable accounting rules and audit standards and will work diligently to apply those is likely to hire us. By contrast, a potential client that perceives a risk that we will not carry out our audit work to a satisfactory level is unlikely to retain us.*
>
> *Reputation is particularly important when competing for work in the DIFC and therefore to KPMG LLP. Many jurisdictions (and corporations) impose mandatory rotation requirements. These require companies to change their auditor every few years, in order to preserve the independence and impartiality of the audit firm. The effect of such requirements is that large audit firms (of which there are a relatively limited number) have a reasonable expectation of regular new mandates as companies roll off their existing auditor and instruct a new one.*
>
> *However, the DIFC does not impose such mandatory rotation requirements. Audit firms in this jurisdiction therefore do not have the same expectation of a regular pipeline of new clients. Attracting new business is consequently harder for KPMG LLP, and the consequences of losing existing clients more serious.*"

29. He refers to his experience working for Arthur Andersen in India at the time of the Enron collapse in the early 2000s and seeing audit and non-audit clients deciding to take their business elsewhere as a result of it. He notes that KPMG LG also suffered "negative impacts" in 2018-2019 because of: (i) negative press resulting from the collapse of the Abraaj Group, and (ii) the audit regulator in Oman, Capital Markets Authority ("CMA"),

imposing a restriction on KPMG Oman providing audit services to regulated entities for a year.

30. [redacted]

31. Mr Batra identifies specific findings in the Decision Notice that he considers particularly serious in terms of KPMG's reputation, and says that publication of the Decision Notice will cause serious reputational harm to KPMG, and financial loss. He accepts that it is extremely difficult to estimate the likely financial consequences of publication with any precision. He estimates the likely financial damage to KPMG LLP and KPMG LG resulting from publication of the Decision Notice before KPMG LLP has had the opportunity to challenge it to be in the region of [redacted].

32. He finally notes that only 25 current KPMG LG employees have ever done any work for Abraaj, meaning that "[p]*ublishing the Decision Notice at this stage would therefore damage the reputation of a large group of people who are—by any view—entirely blameless.*"

Mr Navalkar

33. Mr Navalkar qualified as a chartered accountant in 1996. He joined a KPMG member firm ("KPMG") in 1997. Between October 2014 and 30 September 2019, he was registered as an audit principal of KPMG LLP.

34. He states that he voluntarily retired from KPMG on 30 September 2019 and since 12 August 2020 has been working in a non-audit role for a private company in the UAE, which is not regulated. He states that he relied on savings to support him and his family during this gap in employment, which was caused by his inability to apply for audit roles.

35. Mr Navalkar alleges that if these proceedings were heard in public he is worried that "*there is the very real risk that I will lose my current position due to the damage this publicity would do to my employer's reputation if it was to continue to be associated with me*" (paragraph 8). He confirms he has no plans to work as an auditor again.

36. He identifies his various outgoings that would become unaffordable if he were to lose his job, including rent in the UAE, private school fees and help with medical bills for his mother-in-law. He also refers to these proceedings having a negative impact on his own health, and states that publicity will increase the stress he is experiencing and that it will have a deleterious effect on his health. He states that his employer is aware of the existence of proceedings against him, but not that they are regulatory proceedings.

The DFSA

37. The DFSA adduces evidence from Ms Keenan as to the extent to which KPMG's role as auditor to parts of the Abraaj Group is already in the public domain, together with the fact of KPMG LLP's report into ACLD in March 2018 and criticisms of it.

38. Press articles since 2018 are exhibited, reporting on matters including KPMG International working with Linklaters in 2018 on an "independent investigation" of the work that was done for Abraaj by what is described as KPMG's Dubai-based affiliate. There are allegations in the public domain concerning conflicts of interest between KPMG LG and the Abraaj Group due to ties between the personnel at both organisations.

39. The DFSA's evidence also addresses the DFSA's engagement with the audit profession in Dubai and with the media in order to enhance the reputation of the DIFC as a well-regulated financial centre. This includes extracts from DFSA reports and work on responses to journalist questions regarding other regulatory enforcement activity.

40. The DFSA contends that the fall of the Abraaj Group has led to press reports criticising failures in, among other areas, corporate governance practices in the Gulf. It contends that transparency in regulation is important.

The Audit Negligence Claim

41. After the hearing on 4 November 2021, by letter dated 10 November 2021 the DFSA drew to the FMT's attention the judgment given by Justice Wayne Martin referred to above.

42. This judgment was given in the context of proceedings that were commenced on 29 March 2021. These appear to be substantial proceedings brought by the liquidators of AIML and ACLD against KPMG LG, KPMG (a Firm) and KPMG LLP. The decision concerns an appeal from an order (with reasons) of Justice Sir Jeremy Cooke dated 19 May 2021.

43. As appears from this decision, the DIFC Courts dismissed a jurisdiction challenge brought by KPMG LG to a claim in professional negligence brought against it (and KPMG LLP) by the liquidators for AIML and ACLD. It appears from paragraph 39 of the decision that KPMG LLP does not dispute the jurisdiction of the DIFC Courts in those proceedings.

44. The decision gives significant detail regarding the subject matter of the dispute and what is alleged against KPMG LLP and KPMG LG in the Particulars of Claim. The decision refers to the International Standards on Auditing (**ISA**) and sets out allegations of breaches of duty by KPMG LLP in respect of matters which are the subject of this Reference.

45. It is alleged that KPMG LLP and KPMG LG "*failed to maintain independence and an appropriate attitude of professional scepticism*". KPMG LLP's alleged breaches of duty included "*the under-statement of ACL's expenses, failure to understand and report upon the transactions between ACL and AIML, failure to account for the end of Service Benefit obligations owed to its employees, and failure to identify ACL's false statements with respect to its capital adequacy requirements*". Breaches are alleged against KPMG LLP in relation to the cash payments made by AIML to ACLD immediately before quarter end, and the return of that cash by ACLD immediately after quarter end, for the purposes of inflating ACLD's apparent capital adequacy.

46. The Claimants also assert that KPMG LLP should have identified the fact that executive managers within the Abraaj Group were using ACLD to assist AIML in carrying out financial services activities in the DIFC without the required authorisation. The details of these allegations including loss and causation are set out in the decision at paragraphs 10-37. The decision has generated a significant amount of press interest. Apart from the material sent to us there is for example;

https://gulfnews.com/business/banking/kpmg-sued-for-600-million-over-alleged-sloppy-auditing-in-dubais-abraaj-scandal-1.83630076

47. On 12 November 2021, Clyde & Co, for KPMG LLP responded to the DFSA's letter. It was pointed out that decision was not on the DIFC Courts' website but was on the website of a London chambers (and has since been removed).

48. The FMT was invited by KPMG LLP to consider the following matters:

> "*1. The fact that there is active civil litigation in the UAE against KPMG LLP was already before the Tribunal. The DFSA's Response to the Applications made explicit reference to it at paragraph 44.2, even citing the case number of the Court Decision (CFI-041-2021). Mr Robinson also referred to it during his oral submissions at the Applications hearing: 'that led to what is in the public domain, i.e. litigation against KPMG' (page 100, lines 10-11 of the draft transcript).*

2. The Court Decision, which determines the jurisdictional challenge brought by KPMG Lower Gulf, contains relatively little detail on the allegations against KPMG LLP (and KPMG Lower Gulf). It certainly contains nothing like the level of detail that is contained within the DFSA's Decision Notice issued against KPMG LLP.

3. To the limited extent that the Court Decision refers to allegations against KPMG LLP, it does so by reference to the ACLD Decision Notice, which is already in the public domain and to which the DFSA made reference in its submissions on the Applications (e.g. the DFSA's skeleton argument, paragraphs 20-21).

4. The Court Decision is clear that it sets out nothing more than the allegations of one party (e.g. [25], [27]). It does not frame those allegations as a concluded decision, and the Court Decision contains no consideration of the merits or otherwise of the allegations. This is in marked contrast to the Decision Notice which is issued against KPMG LLP.

5. The allegations summarised in the Court Decision do not have the imprimatur of (and are not the decision of) the Regulator. This imprimatur, and the fact that it represents a concluded view reached by the Regulator vis-à-vis KPMG LLP, are key features of the DFSA's Decision Notice in the context of the Applications.

6. Allegations by a litigating party are unlikely to cause the serious damage that Mr Batra envisages if the Decision Notice is published. His evidence focused on the damage to reputation caused by public knowledge of regulatory action, comparing the current situation with the CMA action in Oman. That evidence is unaffected by the Court Decision. The DFSA's investigation of KPMG LLP remains confidential and is not referred to in the Court Decision."

49. On 14 November 2021, Mr Navalkar's solicitors commented on the decision. The FMT was invited to take into account the following:

"*1. Mr Navalkar is only one of a number of KPMG employees named in the Decision (including Mr Siddiqui and Ms Dugar). As such, the information contained in the Decision does not purport to set Mr Navalkar apart from any other KPMG employee.*

2. Moreover, there is no specific reference to Mr Navalkar's position as registered Audit Principal.

3. There is nothing in the Decision which alludes to the existence of regulatory proceedings against Mr Navalkar.

4. Mr Navalkar is not a party to the DIFC proceedings, and there is nothing in the Decision which purports to highlight any wrongdoing or breaches of law on his part.

5. Instead, the evidence relates to work performed in relation to AIML, not ACLD, and simply relates to facts which are material to the DIFC Court's consideration of jurisdiction.

6. As such, the limited information now in the public domain is of little material significance to the Tribunal's considerations, and the effect of publication of the Decision Notice is likely to have significantly more profound consequences for Mr Navalkar."

50. On 16 December 2021, the DFSA responded to the letters from those acting for KPMG LLP and Mr Navalkar. The DFSA point out that there are a number of overlapping allegations in the Audit Negligence Claim and the References.

51. The key part of the DFSA's letter states:

"*For example, the decision states:*

• *"The Claimants further assert that [ACLD's] staff costs and the rent for the DIFC offices leased by [ACLD] were systematically paid or accounted for by AIML and not by [ACLD]. However, [ACLD's] financial statements showed only its net expenses, after deducting the amounts borne by AIML, whereas in fact they should have shown the total expenses, with the amount borne by AIML shown as income. According to the Claimants, this created an illusion that [ACLD] was profitable and solvent, whereas in fact, at all material times, it was loss-making, and both cashflow and balance sheet insolvent without the subsidy from AIML. The Claimants further assert that AIML accounted for the End of Service Benefit obligation relating to [ACLD's] employees, when those obligations should have been included in [ACLD's] accounts." [§20]*

• *"The Claimants further assert that another effect of this manipulation of [ACLD's] expenses was to "massage" [ACLD's] capital adequacy requirements set by the Dubai Financial Services Authority, which was calculated by reference to [ACLD's] adjusted expenses." [§21]*

• *"The Claimants further assert that notwithstanding this manipulation, [ACLD] was unable to satisfy its capital adequacy requirements without engaging in other window dressing transactions, including the receipt of funds from AIML in the days before each quarter end, and the return of those funds in the days afterwards. The effect of those transactions is that [ACLD] would only have the required liquid assets for a few days around each quarter end. The Claimants assert that otherwise [ACLD] had liquid assets that were less than 10% of its capital adequacy requirements." [§22]*

• *The Claimants allege breaches of contractual and tortious duty by all Defendants, and in respect of KPMG LLP breach of specific duties said to be imposed under ISAE 3000 because of its letter of engagement with ACLD dated 28 October 2015 [§24].*

• *"The Claimants further assert that each of the Defendants failed to maintain independence and an appropriate attitude of professional skepticism." [§26]*

• *Specific breaches of duty alleged against KPMG LLP include the under-statement of ACLD's expenses, failure to understand and report upon the transactions between ACLD and AIML, failure to account for the End of Service Benefit obligation owed to employees and failure to identify ACLD's false statements with respect to its capital adequacy requirements [§28].*

• The Claimants also allege breaches of duty by KPMG LLP in relation to cash payments made by AIML to ACLD immediately before quarter end, and the return of that cash by ACLD immediately after quarter end, for the purposes of inflating ACLD's capital adequacy [§29].

• The Claimants allege that if the defendants had complied with their duties, KPMG Lower Gulf would have identified the irregularities relating to AIML and KPMG LLP would have identified the irregularities relating to ACLD [§31].

• The Claimants assert that such irregularities should have been discovered and reported by the Defendants no later than 30 September 2013 (for the 2013 financial year) but they continued for each successive financial year up until the 2017 financial year, resulting in the irregularities continuing until the collapse of the Abraaj Group in 2018."

E. PRIVACY APPLICATION: HEARING

Legislative and Regulatory Framework

52. Article 31(6) of the Regulatory Law provides:

> "*Proceedings and decisions of the FMT shall be heard and given in public unless the FMT orders otherwise, or its rules of procedure provide otherwise*."

53. It is common ground that this is not a case where the "*rules of procedure provide otherwise*".

54. The Regulatory Law sets out the DFSA's statutory objectives shortly before this section on Proceedings in the FMT. The Regulatory Law lists those objectives in Article 8(3) as follows:

> "*(a) to foster and maintain fairness, transparency and efficiency in the financial services industry (namely, the financial services and related activities carried on) in the DIFC;*
>
> *(b) to foster and maintain confidence in the financial services industry in the DIFC;*
>
> *(c) to foster and maintain the financial stability of the financial services industry in the DIFC, including the reduction of systemic risk;*
>
> *(d) to prevent, detect and restrain conduct that causes or may cause damage to the reputation of the DIFC or the financial services industry in the DIFC, through appropriate means including the imposition of sanctions;*
>
> *(e) to protect direct and indirect users and prospective users of the financial services industry in the DIFC;*
>
> *(f) to promote public understanding of the regulation of the financial services industry in the DIFC.*"

55. Rule 16 of the FMT Rules of Procedure ("the FMT Rules") provides:

> "*All proceedings and decisions of the FMT shall be heard and given in public unless the Hearing Panel orders otherwise on its own initiative or the application of a party. No hearing shall be non-public where all parties request that the hearing be made public.*"

56. Rule 19 of the FMT Rules has been held to have an indirect application to the issue of public hearings, even though its direct application is to the issue of confidential treatment of specific information (see: *Arqaam Capital Limited v Dubai Financial Services Authority* (4 September 2012) (at paragraph [18]):

> "*In determining an application for confidential treatment, the Hearing Panel shall consider, so far as practicable:*
>
> *(a) whether the disclosure of information would in its opinion be contrary to the public interest;*
>
> *(b) whether the disclosure of commercial information would or might, in its opinion, significantly harm the legitimate business interests of the undertaking to which it relates;*
>
> *(c) whether the disclosure of information relating to the private affairs of an individual would, or might, in its opinion, significantly harm the person's interests: and*
>
> *(d) the extent to which any such disclosure is necessary for the purpose of explaining the reasons for the decision.*"

57. These provisions give the FMT a broad discretion to order that hearings should take place in private.

Case Law

58. The approach to privacy applications is that set out in the FMT's decision dated 16 January 2020 in the *Al Masah* case (FMT 19007).

59. At paragraph 99 of that decision the FMT stated the test to be applied on an application for a hearing in private as one first set out in *Arqaam*, which requires the FMT to "*weigh the harm that would be caused to Arqaam's legitimate business interests if the proceedings were heard in public against public interest in publicity*".

60. Paragraph 130 of *Al Masah* summarises the applicable principles:

> "*a. Hearings are to be in public unless an order for privacy is made. This is reflected in the statutory presumption contained in Article 31(6) of the Regulatory Law and Rule 16 of the FMT Rules.*

b. There are important public policy considerations as to why hearings should not be private. See: R (Guardian News and Media Limited) v City of Westminster Magistrates Court [2012] EWCA Civ 420 at [1-4] per Toulson LJ.

c. It is important that the FMT's procedures are transparent so that there must be public scrutiny of its actions.

d. The onus is on the Applicants to demonstrate a real need for privacy by showing unfairness.

e. It applies the legal test referred to in Arqaam. This requires the Hearing Panel to weigh the harm that would be caused to Applicants legitimate interests (business and personal) if the proceedings were heard in public against the public interest in publicity. In particular, the Hearing Panel has a discretion that entitles it to take into account the matters in Rule 19 of the FMT Rules. The two categories that are relevant in the current proceedings are: (1) disclosure of commercial information would or might significantly harm the legitimate business interests of the undertaking to which it relates and (2) whether the disclosure of information relating to the private affairs of an individual would, or might, significantly harm the person's interests.

f. Decision Notices are provisional subject to the references to the FMT.

g. The Applicants are entitled to have the findings and allegations of the DFSA in the Decision Notices tested in the FMT. The FMT will deliver a decision in public which will refute unfounded findings and allegations.

h. Where information is already in the public domain which may lead to speculation adverse to the Applicants and their reputation, it may be of benefit if the Decision Notices were published and the Applicants are able to respond in order to add clarity.

i. It is required to consider the evidence before it. There is a requirement of cogent evidence which indicates that the FMT has to conduct an evaluative exercise rather than merely relying on bare assertions, speculation or a "ritualistic assertion of unfairness".

j. The issue that needs to be considered in relation to each of the Applicants is whether they have produced cogent evidence of how unfairness will arise and how they could suffer a disproportionate level of damage if publication were not prohibited.

k. A disproportionate loss of income or livelihood would mean that it would be unfair to publish. Risk of damage to reputation is unlikely to be sufficient.

l. If Decision Notices are published before the Hearing Panel has determined the references in respect of them, steps can and should be taken to mitigate any potential unfairness to the Applicants. The precise steps to be taken will depend on the particular case.

m. Usually the Hearing Panel will direct that any press release issued by the DFSA in connection with the publication of the Decision Notices must state prominently at its beginning that the Applicants have referred the matter to

Hearing Panel where they will present their respective cases. The press release will also state that the Hearing Panel will then determine what (if any) is the appropriate action for the DFSA to take and remit the matter to the DFSA with such directions as the Hearing Panel considers appropriate for giving effect to its determination. In referring to the findings made in the Decision Notices, rather than give any suggestion of finality, those findings must be prefaced with a statement to the effect that they reflect the DFSA's belief as to what occurred and how the behaviour in question is to be characterised."

61. The Hearing Panel sees no need to revisit the principles stated in *Al Masah*. However, it makes four points:

62. First, *Al Masah* at paragraph 119 (by reference to the UKUT decision of *Burns (UKUT, 1 May 2013))*, establishes that privacy or confidentiality may be justified if the applicant can demonstrate a "*significant likelihood*" of "*severe damage or destruction of livelihood*" (as opposed to a '*possibility*' of such damage or destruction, or a significant likelihood of loss of reputation).

63. Secondly, KPMG LLP's Reply objects to the DFSA's submission that there is a "*strong presumption*" in favour of public hearings. It appears to the FMT that what matters is how the statutory presumption is to be applied. It is all about the importance of open justice. As the FMT said in *Bhandari*, the presumption in favour of public hearings can only be departed from for "*good reason*" (at [16]). The presumption reflects the importance that hearings should be in public.

64. Thirdly, as to the need for "*cogent*" evidence, which *Al Masah* identified in [130(i)], this means that factual disputes are not resolved on the basis of bare assertion. It cannot be speculative evidence. The evidence must be evaluated and tested against the likely probabilities and contemporary documents.

65. Finally, in *Al Masah* at [159] it was held: "*There is little doubt that publicity will be unwelcome and questions will be raised. The Hearing Panel accepts that there is a real possibility of reputational damage to the Applicants. However these are features of open justice. It involves consequences that cannot be avoided*".

66. At [160] the FMT held on the facts of that case that there is "*no sufficient factual basis for contending*" that public hearings would result in, or risk resulting in, "*the destruction of businesses and careers*". (It is because of this that it is necessary when publication takes place it is made clear that the findings in the Decision Notices "*are provisional and capable of challenge before the FMT*", and that "*Readers of the Decision Notices will appreciate this.*")

Discussion

KPMG LLP

67. The Hearing Panel considers that KPMG LLP has not shown a valid reason for the hearing to be private. A public hearing is appropriate. The FMT reaches this conclusion exercising its discretion in accordance with the principles summarised above with the following considerations in mind.

68. First, the Hearing Panel accepts that a public hearing will give rise to reputational issues. Potential and actual clients may elect to move elsewhere with an adverse financial impact. But this cannot be decisive on the issue of whether a public hearing takes place. There are means to manage this risk. Moreover, as stated in *Al Masah* at [159]: "*There is little doubt that publicity will be unwelcome and questions will be raised. The Hearing Panel accepts that there is a real possibility of reputational damage to the Applicants. However these are features of open justice. It involves consequences that cannot be avoided*". This is not the type of case where the reputational damage might be such as to destroy a business.

69. The FMT has carefully considered the evidence about reputational damage. But there is nothing exceptional or even uncommon in what is said. Where a substantial company collapses as a result of fraud, the attention often turns to auditors and indeed regulators and whether they bear legal responsibility for what happens. This is what has happened in the present case.

70. Second, the application has to be seen in the context of the existing publicity which will inevitably be considered by readers without applying some of the distinctions made by the Applicants' lawyers. The FMT refers to the Audit Negligence Claim. It is alleged that KPMG LLP and KPMG LG are liable for breach of duty. These allegations are now in the public domain. Clearly allegations of professional negligence are being made against KPMG LLP by its former client. The FMT is satisfied that there is an overlap in the allegations that are being made in those proceedings and these References. The nature and extent of the overlap does not matter. The fact is that similar allegations are being made. No doubt a vigorous defence will be conducted but it cannot be said now that there is no publicity. On the contrary the allegations being made by the Claimants in that case are out and prominently so.

71. Third, the FMT does not accept some of the more detailed arguments of the Applicants. For example, it considers that reliance on the impact of a sanction imposed by the CMA in Oman is given too much weight. The sanction prevented KPMG from auditing entities regulated by the CMA for a year. It seems that the majority of the audit clients lost by KPMG Oman was because of the *restriction to stop working with KPMG Oman*. The evidence adduced does not deal with the impact of the CMA's own decision being made public, rather than that of the appellate body. As the DFSA pointed out in its submissions,

KPMG LLP relies on three email reports of meetings with prospective clients who declined to engage KPMG. All three post-date the appellate body's decision of 28 February 2019 (published 3 March 2019). Only one of the three even mentions the CMA proceedings, and then only as one of a number of reasons why KPMG did not win that piece of business.

72. Although it appears that the DIFC Courts' decision of 3 November 2021 is not on the website of the DIFC Courts, the decision is out and been the subject of significant press interest.

73. It is right for KPMG LLP to point out that the Audit Negligence Claim is brought by its former client (in liquidation) and the References concern regulatory action by the DFSA. There is therefore a difference between allegations made by a claimant and findings by the DFSA which are subject to review by the FMT. But it seems to the FMT that it is the fact that the allegations have been made and are public which matters. They are unproven allegations which will have to be determined in due course.

74. Fourth, at the public hearing, KPMG LLP will be able to defend itself against the allegations advanced by the DFSA. The collapse of the Abraaj group and the involvement of auditors is a matter that is already covered in the press. KPMG's evidence makes clear some of the information and speculation already in existence regarding its own conduct while auditing Abraaj. In view of publicity, it is reasonable to suppose that the sophisticated clients of KPMG would enquire whether KPMG is subject to regulatory concerns and actual sanctions. It seems unlikely that clients who have elected to remain with KPMG will terminate the relationship because of these proceedings. The reality is that where there is a corporate collapse and losses incurred that the focus will be on the auditors to see if they are responsible. The sophisticated clients of KPMG will understand the allegations being made and the responses. It is clear that the findings in the Decision Notice are provisional and are being challenged before the FMT. As regards KPMG's staff, initially KPMG LLP relied on damage to their reputation as a reason not to hold a public hearing. KPMG LLP's Reply now relies on the alleged financial impact of holding proceedings in public, which allegedly may result in some staff losing their jobs. The FMT considers this evidence as speculative. It is also a factor in many cases where the current generation have to deal with issues created by their predecessors.

75. Finally, there is a discussion before us of whether auditors should be treated in a different way to other professionals. The Hearing Panel considers that the principle of open justice applies to auditors as much as other professionals.

76. In *Taveta Investments Limited v The Financial Reporting Council and Others* [2018] EWHC 1662 (Admin) Nicklin J. stated at [53]:

> "*The importance of regulators operating with transparency and openness hardly needs stating. It inspires confidence both in those who are regulated and in the*

> *wider public, and it allows areas of concern or weakness to be identified. When a regulator sanctions one of its regulated community, publicity for the sanction (and the reasons for it) promotes the maintenance of standards and protects the public from those whose standards fall below the required level.*"

77. Swift J. in *R. (on the application of T) v FCA* [2021] 1 WLR 3246 at [42] stated:

> "*I must now balance this risk of serious injustice against the strong public interest in seeing that regulatory proceedings are not impeded. The generic public interest in favour of prompt enforcement action by regulators such as the FCA is a weighty consideration in all cases. Prompt and effective regulatory action not only provides individual deterrence but also has a general deterrent effect, supports the integrity of the financial services sector and promotes public confidence.*"

78. KPMG LLP (and Mr Navalkar) argue that in deciding whether to order that the hearing should be public or private, the Hearing Panel should take into account that it is not argued that the process should be permanently concealed from the public. The point here is that transcripts of the hearing can be made public together with any elements of the Decision Notice that are upheld.

79. Although it is a factor we bear in mind a difficulty with this argument is that the Hearing Panel considers that reading transcripts after the hearing is no substitute for witnessing the proceedings as they take place whether from the perspective of journalists or members of the regulated community seeking to draw lessons for future conduct. Nor is it satisfactory to see only "*elements*" of the Decision Notices.

80. In conclusion, KPMG LLP has not displaced the presumption that proceedings should be public (cf Article 31(6) of the Regulatory Law). KPMG LLP has not adduced cogent evidence showing how unfairness or prejudice or significant harm will or might arise. The FMT considers it is the public interest that there should be a public hearing. Had KPMG LLP shown unfairness or prejudice of significant harm (which it has not), the FMT would still have found in this particular case that a public hearing was appropriate. Transparency is essential in this type of case.

Mr Navalkar

81. The Hearing Panel considers that a public hearing is appropriate in relation to Mr Navalkar's Reference. This is for the following reasons.

82. First, his current employer is aware of the existence of proceedings against him, but not that they are regulatory proceedings.

83. There is no evidence that the new employer is so far from being fair-minded (or even lawful) that it will dismiss Mr Navalkar immediately if it learns of this Reference rather than at least await the outcome of the FMT proceedings.

84. Secondly, there is no cogent evidence of how unfairness will arise. It is speculation that a public hearing will damage the reputation of Mr Navalkar's new employer (or be feared to do so) so much that it will dismiss Mr Navalkar for that reason alone. The FMT notes that the employer is not in a regulated industry and Mr Navalkar is not serving in a regulated role. Mr Navalkar, at or before the public hearing, will be able to make it clear that the allegations against him are contested.

85. Thirdly, the Reference against KPMG LLP is going to be heard in public. The References are consolidated. It follows that the hearing concerning Mr Navalkar will be in public. The References should be treated in the same way, in other words, in a public hearing.

86. Finally, the FMT considers that the Audit Negligence Claim is relevant. There is significant publicity surrounding this claim. Mr Navalkar is clearly linked to the claim in view of his position. The judgment also refers to and comments upon Mr Navalkar's evidence to the Court about his role as audit partner on the Abraaj audits [paragraphs 58 and 85-96].

Summary

87. In these circumstances the FMT refuses to grant a private hearing of the References.

F. PRIVACY APPLICATION: WHETHER TO PUBLISH THE DECISION NOTICES

Legislative and Regulatory Framework

88. As regards publication, Article 29 of the Regulatory Law, as amended with effect from February 2020, provides in relevant part:

> "*(5) If a person refers a decision to the FMT, the DFSA must publish such information about the decision as it considers appropriate unless:*
>
> *(a) in the DFSA's opinion, publication of such information would be prejudicial to the interests of the DIFC; or*
>
> *(b) the FMT has made an order under Article 31(5) preventing such publication.*
>
> *(6) Information about a decision referred to in paragraph (5):*
>
> *(a) must be published as soon as practicable after the referral of the decision to the FMT;*

(b) may be published in such manner as the DFSA considers appropriate; and

(c) must include a statement that the person has exercised their right to refer the matter to the FMT and the decision is subject to review.

(7) Nothing in paragraph (5) limits the DFSA's power under Article 116 to publish information or statements about a decision or matter in other circumstances.

(8) The FMT may make an order referred to in paragraph (5)(b) prohibiting publication of information only if it is satisfied that:

(a) such publication would be likely to cause serious harm to the person to whom the decision relates or to some other person; and

(b) it is proportionate to make such an order, having regard to the principle that the DFSA should exercise its powers as transparently as possible and that proceedings of the FMT should generally be in public."

89. Accordingly, Article 29(8) imposes a two-stage approach. The first stage is whether the FMT is satisfied that publication would be likely to cause serious harm to the person to whom the decision relates or to some other person. The second stage is whether publication is proportionate having regard to "*the principle that the DFSA should exercise its powers as transparently as possible*". Both stages must be considered. We have considered both stages and are not satisfied of either requirement.

90. The decision in ***Al Masah*** on publication arose under a different statutory framework. At the time of that decision there was no express obligation on the DFSA to publish information about decisions referred to the DFSA such as there now is in Article 29(5) of the Regulatory Law. At the time that ***Al Masah*** was decided, the DFSA had a general discretion under Article 116(2) of the Regulatory Law which provides that the DFSA "*may publish in such form and manner as it regards appropriate information and statements relating to decisions of the DFSA and of the Court, censures, and any other matters which the DFSA considers relevant to the conduct of affairs in the DIFC*".

91. As pointed out in ***Bhandari*** at [21]:

> "*The amended version of Article 29 is now similar to the provision applicable in the UK (see Al-Masah at §105). The main difference is that the English provision permits the FCA not to publish information about a decision if it considers that publication would be unfair to the person in respect of whom the action is taken; the amended Article 29 contains no such exception, instead leaving that question to the Tribunal.*"

92. And at [32] of ***Bhandari***:

"*Following the amendment of Article 29 we agree with Mr Cleaver that the question of non-publication should in general be approached in the same way as the question of privacy and confidentiality. Under Article 29 the DFSA has a discretion as to the appropriate information it publishes about a matter referred to the FMT. The Tribunal is not in a position to say that publication of the Decision Notice itself is irrational or otherwise outside the scope of that discretion. Under Article 29 the Tribunal only has power to make an order prohibiting publication if such publication would be likely to cause serious harm to the person to whom the decision relates or to some other person and it would be proportionate given the requirements of transparency. Under Article 31 the applicant has a heavy burden to provide cogent evidence that disproportionate unfairness would be created without an order*."

Discussion

93. The FMT considers that the Decisions Notices should be published after 21 days of this ruling. The FMT has not overlooked Article 29(6); this publication must take place "*as soon as practicable after the referral of the decision to the FMT*". But it considers that 21 days is sufficient for the Applicants to consider how they wish to respond to any publicity that might be generated by publication.

94. The FMT's reasons for publication are these.

95. First, the starting point in the analysis is that the Hearing Panel has decided that the References are to be heard in public. It follows from this that the Decision Notices have to be published in advance of the hearing. This is because the Decision Notices will be considered at the hearing and it would not be possible to follow the proceedings without them. Advance notice is required that makes clear what is (and what is not) alleged and the reasons for the sanctions that have been imposed. Those notices also explain sanctions that have not been imposed. This consideration applies to both KPMG LLP and Mr Navalkar.

96. As explained in *Al Masah* at paragraph 167:

"*The Hearing Panel has decided that the merits hearing will take place in public. Since the subject matter of hearing concerns the matters covered in the Decision Notices, the Hearing Panel considers that the Decision Notices should be released to the public when the hearing commences. This is because the public is unlikely to be able to follow the proceedings without the Decision Notices; the written and oral submissions are likely to refer to the Decision Notices and it is likely that there will be repeated references to the Decision Notices during the hearing particularly where the Applicants will be contending that they should be set aside and the DFSA will be contending that they should be affirmed.*"

97. The issue that has to be determined is one of timing. In particular whether the Decision Notices should be published now rather than at a later time. It is likely that the decision

on non-publication will be closely connected to the decision on privacy and confidentiality. There is also an issue as to whether it is appropriate that only parts of the Decision Notices should be disclosed.

98. Secondly, the Hearing Panel agrees with the position of the DFSA that non-publication of the Decision Notices undermines the transparency of the exercise of the DFSA's functions.

99. This is because transparency is recognised as a statutory objective of the DFSA in Article 8(3)(a). It is one of the '*guiding principles*' the DFSA is required to take into consideration in exercising its functions and powers in Article 8(4)(g) of the Regulatory Law. It is also expressly recorded in Article 29(8)(b) as a factor to which the FMT must have regard in deciding to make an order restraining publication of information about a decision.

100. Thirdly, the Hearing Panel does not consider that the Applicants have adduced cogent evidence of serious harm, sufficient to displace the statutory presumption in Article 29(5) for the Decision Notices to be published. The FMT repeats what is said above in relation to the issue of whether there should be a public hearing. The same considerations apply.

101. Fourthly, the FMT has considered whether it is appropriate that only part of the Decision Notices should be published. The FMT decides that Decision Notices in general should be published in full (subject to any appropriate redaction of confidential or sensitive information or to protect third parties). It is difficult to see any principled basis for anything less than this without running the risk of omitting important information about the DFSA's allegations or action against the person concerned.

102. Fifthly, any publication of the Decisions Notices will include appropriate language to mitigate any potential unfairness to the Applicant of making disclosure.

103. The FMT therefore directs that any press release issued by the DFSA in connection with the publication of the Decision Notices must state prominently at its beginning that the Applicants have referred the matter to the FMT where they will present their respective cases. The press release will also state that the FMT will then determine what (if any) is the appropriate action for the DFSA to take and remit the matter to the DFSA with such directions as the FMT considers appropriate for giving effect to its determination. In referring to the findings made in the Decision Notice, rather than give any suggestion of finality, those findings must be prefaced with a statement to the effect that they reflect the DFSA's belief as to what occurred and how the behaviour in question is to be characterised.

104. Finally, the Hearing Panel recognises that the DFSA has a discretion when it comes to publication. The Hearing Panel does not consider that the DFSA decision is outside the scope of that discretion. It refers to the passage at [32] of ***Bhandari*** quoted above.

105. The Hearing Panel considers that publication is required, as for the above reasons and taking into account all the submissions and evidence of the parties, neither of the two requirements under Article 29(8) are met.

106. Costs are reserved.

DIRECTIONS

107. The Hearing Panel directs as follows:

107.1 All hearings in these proceedings shall be in public.

107.2 There is a stay of the Decision Notices (but only in respect of the financial sanctions).

107.3 The witness statements of Mr Batra and Mr Navalkar and the skeleton arguments filed for the hearing of the Privacy Applications be treated confidentially, not to be made available to the public without further order of the FMT.

107.4 Relevant details about the References be recorded in the "pending matters" table on the FMT section of the DFSA's website but not before the Decision Notices are released to the public.

107.5 The DFSA is at liberty to release the Decision Notices to the public after 21 days of this decision (subject to any appropriate redaction of confidential or sensitive information or to protect third parties). Before the Decision Notices are released the text of any press release relating to the Decision Notices should be shared with the Applicants no less than 48 hours before the proposed publication.

107.6 This decision shall be published on the DFSA website (redacted to remove references to confidential information) but not before the Decision Notices are released to the public.

Signed by the President on behalf of the Hearing Panel

His Honour David Mackie QC

14 December 2021