Claim No: CFI 026/2009

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BEFORE THE DEPUTY CHIEF JUSTICE SIR JOHN CHADWICK

BETWEEN

(1) MR RAFED ABDEL MOHSEN BADER AL KHORAFI

(2) MRS AMRAH ALI ABDEL LATIF AL HAMAD

(3) MRS ALIA MOHAMED SULAIMAN AL RIFAI

Claimants

and

(1) BANK SARASIN-ALPEN (ME) LIMITED

(2) BANK SARASIN & CO. LTD

Defendants

ORDER OF THE DEPUTY CHIEF JUSTICE SIR JOHN CHADWICK

UPON THE QUANTUM DETERMINATION directed by the Orders dated 30 October 2014 and 4 February 2015 coming before the Court for hearing on 2 and 3 March 2015

AND UPON READING the written submissions and other documents filed on behalf of the parties

AND UPON hearing the parties by their respective Counsel

AND FOR THE REASONS set out in the judgment of the Court dated 7 October 2015

THE COURT DETERMINES that the losses under Head (B), Head (C) and Head (D) be quantified as follows:

	Head (B)	Head (C)	Head (D)	Heads (B)+(C)+(D)
	US$	US$	US$	US$
Mr Al Khorafi	1,225,160	3,454,172	0	4,679,332
Mrs Al Hamad	5,794,885	4,664,897	2,526,709	12,986,491
Mrs Al Rifai	1,443,972	5,473,630	0	6,917,602
All Claimants	8,464,017	13,592,699	2,526,709	24,583,425

IT IS HEREBY ORDERED THAT:

1. Subject to paragraph 6 below, the First Defendant, Bank Sarasin-Alpen (ME) Limited, shall within 10 days of the date of issue of this Order pay to the Claimants, in addition to monies already paid, sums amounting in aggregate to US$59,611,899 (being the aggregate of (i) US$24,583,425 in respect of losses quantified under Head (B), Head (C) and Head (D) and (ii) US$35,028,474 by way of additional damages under Article 40(2) of the Law of Remedies and Damages (DIFC Law No 7 of 2005)), that aggregate sum to be attributed to the individual Claimants as follows:

	US$
Mr Al Khorafi	10,622,213
Mrs Al Hamad	34,512,982
Mrs Al Rifai	14,476,704

2. Subject to paragraph 5 below, the Second Defendant, Bank J. Safra Sarasin Ltd, shall within 10 days of the date of issue of this Order pay to the Claimants, in addition to monies already paid, sums amounting in aggregate to US$24,583,425 in respect of losses quantified under Head (B), Head (C) and Head (D) that sum to be attributed to the individual Claimants as follows:

	US$
Mr Al Khorafi	4,679,332

Mrs Al Hamad	12,986,491
Mrs Al Rifai	6,917,602

3. The Defendants are to be jointly and severally liable for payment of US$24,583,425: being such part of the sums payable to the individual Claimants by the First Defendant under paragraph 1 as are payable in respect of losses quantified under Head (B), Head (C) and Head (D) and the sums payable to the individual Claimants by the Second Defendant under paragraph 2 in respect of the same losses. The First Defendant alone is to be liable for payment of US$35,028,474: being such part of the sums payable to the individual Claimants by the First Defendant under paragraph 1 as are payable by way of additional damages under Article 40(2) of the Law of Remedies and Damages (DIFC Law No 7 of 2005).

4. The Defendants shall pay to the individual Claimants, jointly and severally, interest on Head (A) losses (being the sums ordered to be paid by sub-paragraphs 3(a) and 5(a) of the Order dated 28 October 2014) from 8 October 2008 until 11 November 2014 (or until such date, if later, on which those sums were paid into Court pursuant to the Order dated 10 November 2014 made in proceedings CFI 036/2014) at the rate from time to time charged by the Second Defendant to commercial customers in good standing. Such rate is to be determined by the Court, if not agreed, pursuant to paragraph 9 below. Payment shall, subject to paragraphs 5 and 7, be made within 10 days of the date of issue of this Order if the amount of such interest is agreed, or (if not agreed) within 10 days of the date of determination by the Court.

AND UPON further consideration of the terms of the order to be made consequent upon the judgment of the Court dated 7 October 2015

AND UPON reading the written submissions filed on behalf of the parties since that judgment and the documents referred to therein

AND UPON the First Defendant giving the undertaking referred to at paragraph 6 below

AND FOR THE REASONS set out in the Schedule to this Order

IT IS HEREBY FURTHER ORDERED AND DIRECTED THAT:

5. Provided that (i) payment into Court of the aggregate sum of US24,583,425 ordered to be paid to the Claimants under paragraph 2 of this Order is made by the Second Defendant within the period which expires at 4pm on the date which is 10 days after the date of issue of this Order and/or (ii) payment into Court of the interest ordered to be paid by the Second Defendant to the Claimants under paragraph 4 of this Order is made by the Second Defendant within the period which expires on the date applicable under that paragraph (as, in each case, is required by paragraph 1 of the Order of the Court of Appeal dated 5 April 2015), the order for payment of such aggregate sum to the Claimants under paragraph 2 of this Order and/or (as the case may be) the order for payment of such interest by the Second Defendant to the Claimants under paragraph 4 of this Order shall be stayed until the judgments of the Court of Appeal in appeal CA 003/2015 have been delivered.

6. In the event that the First Defendant has issued an application to stay the orders (i) for payment of the aggregate sum of US$59,611,899 to the Claimants made under paragraph 1 of this Order and (ii) for payment of interest to the Claimants under paragraph 4 of this Order by 4pm on Thursday 5 November 2015 (and upon its undertaking to take all reasonable steps to have, and to co-operate with the Claimants and the Court in having such application determined expeditiously) the sums due by the First Defendant under paragraphs 1 and 4 of this Order shall be stayed until the determination of such application.

7. The First Defendant is granted permission to appeal from so much of paragraph 1 of this Order as provides that it shall pay to the Claimants US$35,028,474 by way of additional damages under Article 40(2) of the Law of Remedies and Damages (DIFC Law No 7 of 2005). Save in that respect permission to appeal is refused. Time for seeking permission to appeal from the Court of Appeal is extended until 14 days after the delivery of judgments in CA 003/2015.

8. In the event that the rate at which interest is to be paid under paragraph 4 of this Order is not agreed by the parties within 3 days of the date of issue of this Order, the rate shall be determined by the Court on the papers and without a hearing. The parties may make such written submissions as to the applicable rate as they are advised; such submissions (if any) are to be filed in accordance with the timetable set out in paragraph 10 of this Order.

9. The costs of and occasioned by the Quantum Determination (including the costs of the Defendants' applications which were determined by the Order dated 4 February 2015) shall be determined by the Court on the papers and without a hearing. The parties may make such written submissions as to costs as they are advised; such submissions (if any) are to be filed in accordance with the timetable set out in paragraph 10.

10. The timetable for submissions reads as follows:

    (a) The Claimants shall file and serve their written submissions on costs (and, if not agreed, the interest rate to be applied under paragraph 4 of this Order) by 4pm on the date 14 days after the date of issue of this Order.

    (b) The Defendants shall file and serve their written submissions in answer by 4pm on the date which is 28 days after the date of issue of this Order.

    (c) The Claimants shall file and serve their written submissions in reply by 4pm on the date which is 42 days after the date of issue of this Order.

SCHEDULE OF REASONS

1. I am satisfied that it is appropriate that the Court of Appeal should have the opportunity to consider in principle the circumstances in which an award of additional damages under Article 40(2) of the Law of Remedies and Damages can be made, both (i) in conjunction with an

award of compensation under Article 94(2) of the Regulatory Law and (ii) more generally. I am not persuaded (pending the delivery of the judgments of the Court of Appeal in appeal CA 003/2015) that the Defendants (or either of them) have a real prospect of success on the other points determined against them in my judgment dated 7 October 2015. The applications for permission to appeal can be renewed after the judgments in appeal CA 003/2015 have been delivered (and in the light of those judgments) if the Defendants are so advised; and, in so far as an extension of time for that purpose is needed, it is granted.

2. I do not think it appropriate to make anticipatory orders for the payment out of monies paid into Court pursuant to the order dated 10 November 2014 made in CFI 036/2014. If (following the delivery of judgments in appeal CA 003/2015) the Defendants are advised to seek orders for the payment out of monies paid into Court pursuant to the order dated 10 November 2014, they should make an application in proceedings CFI 036/2015.

3. Nor do I think it appropriate to make anticipatory orders for the payment out of monies paid into Court pursuant to the order dated 15 April 2015 made by the Court of Appeal in these proceedings. If (following the delivery of judgments in appeal CA 003/2015) the Defendants are advised to seek orders for the payment out of monies paid into Court pursuant to that order, they should make an application to the Court of Appeal.



Issued by:

Natasha Bakirci

Assistant Registrar

Date of Issue: 3 November 2015

At: 10am