IN THE COURT OF FIRST INSTANCE
OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

24 January 2024
CASE No: AIFC-C/CFI/2023/0024

MR. MORIEL CARMI

Claimant/Appellant

v

ASTANA FINANCIAL SERVICES AUTHORITY

Defendant/Respondent

JUDGMENT AND ORDER

Justice of the Court:

The Rt. Hon. Sir Jack Beatson FBA

JUDGMENT

A THE PARTIES AND THE DISPUTE

1. This is an appeal pursuant to section 11(1) of the AIFC Financial Services Framework Regulations No 18 of 2017 (the "FSFR"). The appellant, Mr Moriel Carmi, challenges the decision of the Astana Financial Services Authority ("the AFSA") dated 23 May 2023 to reject his application for a licence to operate a crypto currency trading and custody facility in the FinTech Lab in the Astana International Financial Centre ("AIFC"). The application, dated 1 December 2022, was made by him as the controller of Banxe Asia Ltd. a subsidiary of Banxe Ltd., a United Kingdom registered company of which he is the sole beneficial owner. Mr Carmi launched these proceedings in a claim/application form received by the AIFC Court on 14 July 2023 and registered by the Court on 21 July 2023.

2. Mr Carmi, now aged 62, was born in the USSR. I give further details about him later in this judgment. Here it suffices to state that he changed his name from Mark Weinstein or Vaynshtein at about the time he emigrated from Russia, that he is a citizen of Israel and has been since a date between 2008 and 2010 and is currently a resident of France with a long-term residence permit issued on 26 March 2019. He has worked in the financial sector since 1991, first in Russia and between 2019 and 2021 in Latvia. Since 2020 he has established several fintech firms in Europe and England, including Banxe Ltd. Mr Carmi filed this appeal on 14 July 2023 and it was registered by the Court on 21 July 2023. His grounds of appeal are summarised at [59] – [70] below.

3. AFSA is the legal entity "*responsible for the regulation of financial services and related activities in the AIFC*" with power "*to conduct the registration, recognition and licensing of AIFC Participants*": see Article 12(1) and (3) of the Constitutional Statute of the Republic of Kazakhstan on the Astana International Financial Centre ("the Constitutional Statute").

4. The AFSA's decision, in a FinTech Division Notice, dated 23 May 2023, stated that, having considered the criteria set out in the AIFC Acts and the information provided in the application, it was of the view that Mr. Carmi had not demonstrated to its satisfaction that he is a fit and proper person to be a Controller of an Authorised Firm. The notice informed him that he had a right of appeal to this Court. Its reasons for refusing his application were given in a FinTech Division Notice dated 12 June 2023 and are summarised at [51] – [58] below. Essentially, they are

that the AFSA considered that he had not given an accurate or complete account of the information relevant to his application either in the original application or in his responses to questions asked by the AFSA during its due diligence investigation. Those omissions and material about him identified by the AFSA when carrying out open-source research on him raised questions about his integrity, honesty, and reputation. This included information concerning JSCB Russobank (hereafter "Russobank") which Mr Carmi founded in 1993 with a shareholding of 40% and of which he was Chairman of its Supervisory Board in December 2018 when, following an investigation, the Central Bank of the Russian Federation (the "CBR") revoked the Bank's licences to carry out banking operations and professional activities in the securities market, and about Mr Carmi's change of name.

5. In section 7 of his Claim/Application form Mr Carmi stated that he is not legally represented. His case is contained in section 2 of that form and three other documents. Its essence is that he sold his shares in Russobank in 2010 and thereafter had no direct managerial powers in the bank because his only position in it, as Chairman of its Supervisory Board, was honorary, and he was therefore not required to disclose information about the revocation of the bank's licence in 2018. He submitted that the AFSA erred in its understanding of the position of being the Chair of the Supervisory Board under Russian law and the consequences of being on the Board of a Bank which has had its licences revoked under the Russian Federal Law No 395-1 of 1 December 1990 on Banks and Banking Activities (hereafter "the Law on Banks and Banking Activities"). He also submitted that he had disclosed all the requested personal information about himself with his application and in response to the AFSA's questions.

6. In relation to the position under Russian law, Mr Carmi offered to provide an opinion on the legal status of the chairman of the Board of Directors (Supervisory Board) of the Bank in general and himself in particular. He filed the opinion of Mr Valery Yakovlevich Zalmanov dated 13 November 2023. The AFSA filed the expert report of Mr Vyacheslav Frantsevich Khorovskiy dated 30 November 2023. The other documents relied on by Mr Carmi are his Response dated 5 October 2023 to the AFSA's Defence and his response and objections dated 12 December 2023 to the admission of Mr Khorovskiy's expert report. I consider the expert reports, Mr Carmi's objections to the admission of Mr Khorovskiy's report, and a second report by Mr Khorovskiy dated 8 January 2024 responding to those objections at [71] – [83] below.

7. The AFSA's case is contained in two undated documents signed by Mr Ben Jaffey KC, a Defence and a Response to Mr Carmi's Final Written Submissions, which are accompanied by statements of truth signed by Mr Isaq Burney, the AFSA's Chief Legal Officer, respectively dated 18 August and 20 October 2023. Mr Jaffey's written submissions are dated 1 December 2023 as is the AFSA's application to adduce Mr Khorovskiy's report which, on or about 5 December 2023, I granted. I also granted its application dated 10 January 2024 to adduce a report by Mr Khorovskiy dated 8 January 2024 responding to Mr Carmi's objections to his earlier report.

8. As to procedure, the Court issued directions on 20 October 2023 setting a timetable for the service of written submissions. In his claim form Mr Carmi requested that his appeal should be resolved on the papers. Mr Jaffey's written submissions state that the AFSA is content for the appeal to be determined. on the papers or at an oral hearing if that would be of assistance to the Court. I have concluded that, in the light of the nature of the dispute, the material before the court, and the parties' responses to inquiries I made on 6, 8, 17 and 19 December 2023, it is possible to determine the appeal on the papers. I, however, observe that the need for those inquiries has delayed the completion of this judgment. I here refer only to my inquiry about the text of the Russian Law on Banks and Banking Activities. The Russian and English texts filed by Mr Carmi reflected the text of that statute as of 2008 rather than the up-to-date text of the statute as amended. Although what the AFSA filed was up-to-date, it only filed part of Article 16, a key provision in the parties' cases, rather than the entirety of that provision. Both parties are to be criticised for what they furnished to the court.

9. Mr Carmi's explanation, given only in response to my inquiry, is that the 2008 versions were provided because that was "*the only found translation of the entire law officially translated into English*". That is unsatisfactory. There is no excuse for furnishing an out-of-date version of a statute on which a party intends to rely. It is the responsibility of the parties to proceedings in this Court under section 31 of the AIFC Court Regulations and §§2.2 -2.4 of the AIFC Court Rules 2018 to furnish the materials on which they rely in English, if necessary, by commissioning a translation of them.

10. The AFSA's provision of only part of Article 16 in what appears to be an informal translation meant that, until my request, there was no copy of the complete up-to-date version of that provision. Article 16 *inter alia* refers to the need for the Directors of a Bank to meet the requirements of business reputation in it and one of the issues in this case, is the consequence of not doing so

and the period of any disqualification. In its letter responding to my inquiries, the AFSA states that what it provided highlighted the main criteria for business reputation relevant to these proceedings. Although other parts of Article 16 may note be directly relevant to the issues in this case, they may provide contextual assistance to the interpretation of the parts of it which are relevant to those issues.

B THE STRUCTURE OF THIS JUDGMENT

11. Sections C – E of this judgment deal with the jurisdiction of this court, the right of appeal against decisions of the AFSA and the grounds upon which its decisions may be appealed, and AFSA's regulatory framework, functions, and powers. Sections F, G, and H summarise Mr Carmi's application, the AFSA's review of it, and the Report to and the decision of the Committee on Authorisation of FinTech Lab Applications. Sections I, J and K summarise the AFSA's reasons for its decision, Mr Carmi's grounds of appeal, and Messrs Zalmanov and Khorovskiy's expert reports on the legal status of the chairman of the Board of Directors (Supervisory Board) of a Bank in the Russian Federation. Section L contains my discussion of, and conclusions on, the questions before this court, and Section M, my order. For the reasons given at [84] – [103] below, I have concluded that the AFSA did not make an error of law or other recognisable public law wrong when making the decision and that the appeal should be dismissed.

C THE JURISDICTION OF THE AIFC COURT

12. Article 26(5) of the AIFC Court Regulations gives this court jurisdiction to hear and determine appeals from decisions of AIFC bodies where the appeal relates to a question of law, an allegation of miscarriage of justice, an issue of procedural fairness, or a matter provided for under AIFC law. By Article 4(1) of the Constitutional Statute, AIFC law consists *inter alia* of AIFC Acts which are not inconsistent with the Constitutional Statute. Article 4(1-2) of the Constitutional Statute provides that those Acts may be based on the principles, legislation and precedents of the law of England and Wales and the standards of leading global financial centres, adopted by the AIFC Bodies in the exercise of the powers given by the Constitutional Statute.

D RIGHT OF APPEAL & GROUNDS UPON WHICH DECISIONS MAY BE APPEALED

13. Articles 11(1) and (2) of the FSFR makes provision for appeals against the decisions of the AFSA and set out the grounds upon which such decisions may be appealed. They provide:

    "(1) A person aggrieved by a decision of the AFSA may appeal to the AIFC Court against the decision.

    (2) The grounds of an appeal under this section are that:

    (a) the decision was ultra vires or there was some other error of law;

    (b) the decision was unreasonable;

    (c) the decision was made in bad faith;

    (d) there was a lack of proportionality; or

    (e) there was a material error as to the procedure."

14. I note that the grounds enacted in Article 11(2) are those available in a common law application for judicial review which are used to supervise governmental and regulatory bodies and the legality and procedural fairness of their decisions. The supervisory jurisdiction is the means by which the exercise of power by a public authority is "*strictly limited to the scope and purposes of the [legislation granting it authority] and to the common law's insistence on rationality and fairness*": see e.g. *Sheffield City Council v Smart* [2002] EWCA Civ. 4, at [20] *per* Laws LJ. Article 11(2) does not provide for an appeal on the substantive merits of a decision but on whether the decision-maker has made a recognisable public law wrong.

E AFSA's REGULATORY FRAMEWORK, FUNCTIONS AND POWERS

15. I have referred to the AFSA's power under Article 12(3) of the Constitutional Statute of the Republic of Kazakhstan on the AIFC "*to conduct the registration, recognition and licensing of AIFC Participants".*

16. The AFSA's main functions and powers are set out in FSFR, Article 7. That provides that in performing its functions and exercising its powers, it will pursue the objectives listed in Article 7(3). Those objectives include:

    "*(b) ensuring that financial markets in the AIFC are fair, efficient and orderly*",

    …

(d) fostering and maintaining confidence in the AIFC's financial system and regulatory regime",

…

(f) preventing, detecting and restraining activities that may cause damage to the reputation of the AIFC or to the financial activities carried out in the AIFC by taking appropriate measures, including by imposing sanctions,

(g) protecting the interests of investors and users of financial services", and

(h) implementing in the AIFC a regulatory regime that complies with international standards in the sphere of regulation of financial services".

17. Part 3 of the FSFR deals with the licensing of AIFC participants. Chapter 1 provides for the licensing of Authorised Firms to carry on Regulated Activities. Articles 31, 34 and 35 respectively provide for the form and content of applications, the criteria for the grant of a licence, which include whether the AFSA is satisfied that the applicant is "*fit and proper*", and what is required when the AFSA grants or rejects an application. In particular, where it rejects an application, it must inform the applicant in writing of the refusal and, where requested by the applicant, the reasons for such refusal, and of the applicant's right to appeal the decision to this Court: Article 35(3).

18. Since Mr Carmi's application was to operate in the FinTech Lab, the AIFC Financial Technology Rules (the "Fintech Rules") also applied to it. Section 2.4 of those Rules provides for the application process. Section 2.4.2 requires a pre-application form to verify the eligibility of a person to test and/or develop FinTech activities within the lab as well as an application. The eligibility criteria are set out in sections 2.2.1 and 2.3.1. The matters to be considered in assessing the application in section 2.4.3(b) include whether the applicant is "*fit and proper*". AFSA has also issued Fintech Lab Authorisation Procedures to describe its approach to the assessment and authorisation of firms. Section 3 of those states that the authorisation process consists of three main sequential phases; pre-application review and eligibility assessment; application review and risk assessment; and the licensing process.

19. Article 119 of the FSFR provides that a person commits a contravention if he *(a) fails to comply with any prohibition or requirement imposed on him by the AFSA; … (c)* "*does not do something that the Person is required to do under any legislation administered by the AFSA; … (e) acts in a deceptive, misleading or dishonest manner in any context, or (f) otherwise commits any contravention described as such in these Regulations or Rules made by the AFSA*".

20. The regulatory framework in the FSFR operates together with the AIFC General Rules. Rule 1 of those Rules deals with licensing of AIFC participants, and *inter alia* in Rule 1.1.2, the form and content of applications for a licence, and in Rule 1.1.5, the considerations AFSA "*will consider*" in assessing whether an applicant is fit and proper for the purposes of Article 34(1)(b) of the FSFR. Those considerations include: "*(a) the fitness and propriety of the members of its governing body; (b) the applicant's connection with any person or membership of any group; (c) the fitness and propriety of the applicant's Controllers or any other person associated with the applicant; (d) the impact a Controller may have on the applicant's ability to comply with the applicable requirements; (i) any matter which may harm or may have harmed the integrity or the reputation of the AFSA or AIFC …".*

21. Rule 4 of the AIFC General Rules sets out 13 Core Principles for Authorised persons. In the context of this case the relevant principles are Principle 1, integrity, Principle 2, due skill, care and diligence, and Principle 11, relations with the AFSA. Rule 4.2.1 provides that "*an Authorised Person must observe high standards of integrity and fair dealing".* Rule 4.2.2 provides that "i*n conducting its business activities, an authorised person must act with due skill, care and diligence".* Rule 4.2.11 provides that "*an Authorised Person must deal with the AFSA in an open and cooperative manner and keep the AFSA promptly informed of recent events or anything else relating to the Authorised Person of which the AFSA would reasonably expect to be notified*".

22. The final relevant component of AFSA's regulatory system is the AIFC's Regulatory Guidance on Fitness and Propriety ("the Regulatory Guidance"). Introduced in June 2022, it is, see §1.2, to be read in conjunction with other relevant rules, in the present context, the FSFR and the AIFC General Rules. By §1.3 of the Regulatory Guidance, where the Authorised Person is a legal person, "*the fit and proper assessment will be conducted on the legal person, natural persons who are the beneficial owners, controllers and persons in Controlled Functions".* Section 5 provides guidance on the assessment of the fitness and propriety of individuals. §5.9 provides that when making the assessment "*<u>the burden is on the</u> authorised person, ASP or <u>applicant</u> sponsoring the application <u>to satisfy the AFSA that the person is fit and proper</u> to perform the function for which the person is proposed to be engaged".* §5.10 states that *"Applicants and persons are expected to provide <u>complete and truthful information</u>" (*emphasis to both paragraphs added)*.*

23. In relation to integrity, honesty and reputation, §5.16 of the Regulatory Guidance provides that AFSA will consider matters including but not limited to the 13 items listed at §5.16(a) – (m) "*which*

may have arisen in the Republic of Kazakhstan or elsewhere". Three of these items are of particular relevance to this case. The matter identified by §5.16(g) is whether the person has been involved with an organisation *"which has been refused registration, authorisation, membership or a licence to carry out a trade, business or profession or has had such registration authorisation membership or licence revoked, withdrawn or terminated"* by a governmental or regulatory body. That identified in §5.16(h) is whether because of the removal of the licence, registration or other authority, the person has been refused the right to carry on a trade, business or profession, and that identified in §5.16(j) is whether the person *"has been investigated, disciplined, censured, or suspended by a regulatory or professional body, a court or tribunal, whether publicly or privately".*

24. As Mr Jaffey observed at §§16-17 of his written submissions, these regulations substantially mirror the financial services regime in the United Kingdom on which the AIFC regime was based. Both deploy the concepts of fitness, propriety, and integrity. Both require candid and truthful dealings with regulatory bodies, and both provide that one of the factors to which a regulator should have regard is whether the applicant has been involved with a company which has had its authorisation revoked or investigated by a regulatory or government body. Accordingly, useful guidance can be obtained from decisions of courts and tribunals in the UK such as that of the Tax and Chancery Chamber of the Upper Tribunal in *Page v Financial Conduct Authority* [2022] UKUT 124 at [55] – [59], which concerned the conduct of the chief executive of a regulated insurance firm. It was there stated that "*what constitutes acting with integrity … is a fact specific exercise*", and that the concept "*is wider than the concept of dishonesty and does not necessarily involve deliberate behaviour*". It was also stated that a failure to disclose "*appropriately any information of which [a regulatory authority] would reasonably expect notice"*, may, "*depending on the circumstances … amount to acting without integrity"* in breach of the FCA's Principle 1.

25. After considering the tribunal's decision in *Forsyth v FCA and PRA* [2021] UKUT 0162 (TCC) in which the earlier authorities on regulated businesses and professions were reviewed, the conclusion in *Page's* case was that essentially, as Rupert Jackson LJ had stated in relation to the conduct of solicitors in *Wingate v Solicitors Regulation Authority* [2018] 1 WLR 3696 at [95], [97] and [100], "*in professional codes of conduct, the term 'integrity' is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members*". They are expected to be more scrupulous about accuracy than members of the general public in daily discourse and to take particular care not to mislead

because (see *Page's* case at [59]) of "*the trust that the public rightly put in those who lead regulated financial services firms*".

F MR CARMI's APPLICATION

26. Mr Carmi's Pre-Application form to operate in the FinTech Lab is dated 1 September 2022. In its pre-Application eligibility report dated 27 September 2022 the AFSA recommended granting him a Participant Certificate, and, on 30 September 2022 it invited him to complete the full application form for the Fin-Tech Lab online. His full application was submitted on 1 December 2022. In both forms Mr Carmi is named as the person lodging the application and his position is stated to be "law[y]er". Mr Vadim Chshukin (or Schukin) is named as the person for the AFSA to contact. Mr Schukin was the person who communicated on Mr Carmi's behalf with the AFSA, on a number of occasions attaching documents responding to the AFSA's requests which are signed by Mr Carmi.

27. The first page of the FinTech Lab Pre-Application form contains an initial note. This *inter alia* states: "*You must answer every question in this Pre-application and attach [the documents that may be relevant to support your answer".* It also states: *"Is important that you provide accurate and complete information and disclose all relevant information. If you do not, it will call into question the applicant firm's suitability to be authorised, and you may be breaching article 119 (e) of the AIFC Framework Regulations".* The first page of the full Application form reiterated what had been stated in the initial note in the Pre-Application form, including the two statements set out above.

28. In the Pre-Application form, Mr Carmi's "country of origin" is stated to be Israel. On page 1 of his full application his country of origin is stated as "IL"; that is Israel, and in the "*Controllers"* section on page 3 his nationality is given as "*Israel*", and his country of residence is stated to be "*France".* The answer given to the question in section 2.1 of the "*Compliance"* section: "*Have you performed a rigorous due diligence on the legal and regulatory requirements of AIFC for deploying the proposed Fintech activities and understood them?",* was "yes".

29. The Application form contained a "*Fit and Proper Questionnaire*". The answer to the question "*Has the applicant or any member of your Group been made aware, whether formally or informally, that it is the subject of a current or pending investigation, review or disciplinary procedure by any regulatory authority, professional body, Financial Regulator, self-regulatory*

organisation, regulatory exchange, clearing house, government body, agency, or any other officially appointed inquiry was "No". The same answer was also given to questions asking whether Mr Carmi or any member of his Group had at any time been (i) the subject of disciplinary procedures by a government body or agency or any financial services regulator, self-regulatory organisation, or other professional body, (ii) refused or had a restriction placed on the right to carry out a trade, business or profession requiring a licence, registration or other permission, and (iii) censured disciplined, publicly criticised or the subject of any investigation or inquiry by any regulatory authority.

30. The last section of the form, which, as noted above is stated to be lodged by Mr Carmi, contains a "Declaration by Applicant" stating *inter alia* that "*by submitting this application*" the applicant declares that the information in it "*is true and correct to the best of my knowledge and belief*" and that he "*has taken all reasonable steps to ensure that the attached documents to Application (sic) are accurate and complete".* The declaration also states: "*the Applicant understands that AFSA is entitled to such enquiries (sic) and can seek such further information as they think appropriate at any time before or after the applicant has been authorised to verify the information given on this Application or in the provided documents …"* and "*If at any time after making this declaration , applicant becomes aware of a material change in any information in this application (including any attachment thereto) that is reasonably likely to be relevant to the AFSA consideration of this Application, applicant will inform the AFSA in writing about that change without delay"*.

31. Mr Carmi's *curriculum vitae* was attached to the application. This states that his citizenship is "The State of Israel" and that he is a resident of France. It gives his educational background at Institutions in what is now the Russian Federation and his work experience between 1983 and August 2019 as in the USSR and then the Russian Federation. Of central importance to these proceedings are the entries about the Russian Coal and Raw Materials Bank which he founded in 1993. The *curriculum vitae* states:

"1993	*The Founder of the Russian Coal and Raw Materials Bank ("JSCB Russobank"), Moscow, shareholder (ownership interest 40%) renamed Russobank (1999) and transformed into a stock company.*
1993-2010	*Chairman of the Board of Directors of the Bank 'Russobank"*
2010-2019	*Chairman of the Supervisory Board of the Bank 'Russobank'"*

32. The *curriculum vitae* has entries stating that between August 2019 and April 2021 he was the Commercial Director of SIA New Solution, a company incorporated in Latvia, now owns a small cosmetic company "*Philosophy of Aesthetics +*" with his wife, and that since 2020 he has "*established several fin-tech firms in Europe and England to commence activities in the field of finance around the world".* He stated that he was the sole beneficial owner of two United Kingdom registered companies, Bankxe Ltd, and Tompay Ltd., respectively incorporated in January 2019 and February 2020, and one Estonian company, OÜ NeuroNext Platform, incorporated in February 2020.

G THE AFSA's REVIEW OF MR CARMI'S APPLICATION

33. The AFSA's review of Mr Carmi's 1 December 2022 application and its due diligence exercise took until 18 May 2023. It first conducted what is described as a brief risk analysis. A document dated 27 December 2022 refers *inter alia* to public information that Mr Carmi is one of the controlling individuals of SMT Holding OÜ, which operates several regulated that unregulated payment processors for high-risk industries and merchants including Banxe Ltd and NeuroNext OÜ. It also refers to the positions Mr Carmi held in Russobank until 2019 and states that on 21 December 2018 the CBR revoked Russobank's licences to operate as a bank and in the securities market. The reasons the CBR gave for doing so were the repeated violation of local Anti-Money Laundering legislation and involvement in dubious transit operations. A copy of the CBR's Order and links to its press release and media reports were attached to the AFSA's document. The CBR's press release stated that *"it should be noted that a significant part of these transactions was related to the shadow sale of cash proceeds by retail trade entities to third parties and the withdrawal of funds abroad"* and that a temporary administration was appointed for Russobank until the appointment of a bankruptcy manager or liquidator.

34. On 24 February 2023, as part of the AFSA's assessment of Banxe Asia's financial soundness, Aibek Mukhambekov, an Associate at its Authorisation Division, wrote to Mr Schukin asking for the origin of US$ 2,000,000 which Bank Zenith PJSC, on Mr Carmi's instructions, had informed the AFSA he had on deposit. The email also asked for supporting documents and disclosure of the activities involved in obtaining the funds. At some stage, the AFSA wrote to the CBR asking it to confirm the revocation of Russobank's licence and to provide information about Mr Carmi's role within the Bank's management structure. It appears from page 2 of the report on the application

to the FinTech Lab committee assessing Mr Carmi's application (see [44] below) that in a letter dated 6 March 2023, the CBR confirmed the revocation of the banking licence but was unable to identify Mr Carmi's position in the Bank without the necessary identification documents and a certificate of name change.[1] On 9 March 2023, Mr Mukhambekov wrote asking whether Mr Carmi was still a shareholder in Russobank and, if he was not, to whom his shares were sold, what influence he has had in its management and decision-making since its inception, and "*in connection with what did Mr Carmi leave the bank in 2019"*. The email also asked about Mr Carmi's position and duties at SIA New Solution, the Latvian company named in his *curriculum vitae,* and the reason he left that company.

35. Mr Schukin forwarded Mr Carmi's replies to these requests on 15 and 18 March 2023.[2] In the letter attached to the email dated 15 March, Mr Carmi stated that he sold his 40% shareholding in Russobank in 2010 to three identified individuals and has not been a shareholder since. He also stated that he resigned as chairman of the Bank's Management Board in 2010 due to immigration to Israel and later to Europe and took "*the honorary position of Chairman of the Bank's Supervisory Board*". He stated that his competence as Chairman of the Supervisory Board was limited to the coordination of the strategic planning of the bank's activities and that operational management and audit control were not within it. He stated that he:

> "*… actually, left the bank in 2010 due to migration to Israel (and later to Europe). The honorary position of the Chairman of the Supervisory Board had no impact on the actual management of the bank. Thus, since 2010, Mr Carmi had no influence on the management of the bank and its activities, either as a shareholder or as a top manager*".

36. In that letter Mr Carmi also stated that he was additionally providing the AFSA with information about his change of name in 2008. His letter states that this was for religious reasons in connection with immigration (repatriation) to Israel. He stated that his previous name was Mark Mikhailovich Weinstein and that "*Israeli law requires both names (current and previous) to be published in an Israeli passport within the first 7 years after a name change"* but that after 7 years "*only the changed (so-called new) name is published in the passport".* He attached a copy of the

[1] The CBR's letter is not before the court but a later letter dated 4 May 2023 responding to a request by the AFSA dated 7 April 2023 which provided the documents requested is: see [41] below.

[2] A number of quotations from Mr Carmi's responses summarised in this and the next 5 paragraphs are set out at [45] – [47] below.

Change of Name certificate issued by Israel's Ministry of Internal Affairs which stated that the change of name was effective as of 16 June 2010, and an extract from the Population Register dated 20 February 2020 stating that on 19 November 2008 he was registered at an apartment in Holon.

37. In the letter attached to the email dated 18 March, Mr Carmi stated that the origin of the funds in his account at Bank Zenith PJSC were the sale of a house in Jurmala, Latvia but that since sanctions had been applied to that bank, funds with it could no longer be offered as proof of Banxe Asia's financial soundness. To do this, he provided evidence of a deposit of €1.394 million in his account with TomPay Ltd., and stated that the source of the deposit was the sale of a yacht on 17 March 2023. He provided the sale agreement which identified him as "*Mr Carmi Moriel AKA Mark Vaynshtein*".

38. On 27 March 2023, Mr Mukhambekov wrote to Vadim Schukin asking for further information within 15 working days. There were three questions about Russobank. The first was who owned the remaining 60% of its shares. The second was for Mr Carmi to provide documents such as the Articles of Association or another corporate document which confirmed what he had stated about the limitations of his competence as Chairman of the Supervisory Board of Russobank. The third was for further information about the three persons to whom he sold his 40% stake in the bank, including transaction details. A fourth question asked Mr Carmi to explain whether information in an article in the newspaper Kommersant was accurate. Kommersant stated that after Russobank received notice in June 2018 from the Central Bank of Russia about violations by it, Mr Carmi sought the help of people, including Colonel Kiril Cherkalin of the FSB, who could help. It also stated that after Russobank received a second notice in the autumn of 2018 Colonel Cherkalin offered to resolve the issue "*but not for free of charge*". Two other questions asked whether Mr Carmi had affiliations with two particular companies and, if so, for further information about them.

39. Mr Schukin attached Mr Carmi's responses to these requests with supporting documentation to an email to the AFSA dated 2 May 2023. Mr Carmi's letter gave information about the details of the sale of his shares in Russobank including the dates of the sales, the price (their par value), and the dates of payment. Copies of the sale and purchase agreements, the list of the registered persons in the security holders' register as of 22 January 2019, and of Russobank's Regulations on the Board of Directors approved on 2 October 2017 were attached to Mr Schukin's email. On

3 May 2023, Mr Mukhambekov wrote to Mr Schukin saying that the AFSA had requested Russobank's Regulation on the Competence of the Supervisory Board of Directors but had been provided with the Regulation on the Board of Directors and asked for the correct document and the relevant corporate resolution adopting it. Mr Schukin replied on 5 May stating that "*The Board of Directors and the Supervisory Board are one and the same body of the bank, there is no difference in competence. Regulations on the Board of Directors were approved by the general meeting of shareholders".*

40. Mr Carmi's letter attached to Mr Schukin's email dated 2 May 2023 also contained his responses to the AFSA's request for explanations about the information in the article in Kommersant. His letter stated that the article in Kommersant "*largely coincided with the truth*" but "*differed significantly in the statement about [a bribe of € 500,000 allegedly] offered by [him]".* That, he said was a lie and not substantiated by further interviews or other sources, but nevertheless was echoed by other Russian news channels, seemingly without further fact checks. He also referred to media reports that Colonel Kirill Cherkalin of the FSB was involved in a large-scale corruption scheme including extortion and forced liquidations of small Russian banks and to media reports of a case in the Moscow District Military Court against Colonel Cherkalin who was accused of organised crime and taking bribes. Under the heading "additional comments", the letter referred to Mr Carmi's attempts to contact Mr Yuri Polupanov at the CBR and his meetings with Colonel Cherkalin which he stated were evidenced by correspondence "*which was presented during an interrogation at the Investigative Committee of the Russian Federation where [he] demanded a criminal case against Cherkalin*".

41. The CBR's reply to the AFSA's request for information about Mr Carmi's role in Russobank's management structure is in a letter from VV Chistyukhin, First Deputy Governor of the CBR dated 4 May 2023. The letter stated that according to the information available to it a person with a similar name, surname and date of birth had been chairman of the board of directors from 1 February 2012 to 23 December 2020. The letter also stated:

> "*in connection with the exercise by the indicated person of the functions of the Chairman of the Board of Directors of JSCB RUSSOBANK During the 12 months preceding the day of revocation of the licence to carry out banking operations and the appointment of a temporary administration to manage the designated credit institution, Marc Weinstein has no right to hold positions/ perform the functions of a member of the board of directors, who*

are subject to business reputation requirements established by relevant legislation, as well as be the owner of more than 10% of shares (rights of participation) of financial organisations, the controller of such owners and their sole executive body:

in the period from 21 December 2018 to 21 December 2028 in Russian credit institutions;

in the period from 21 December 2018 to 21 December 2023 in Russian non-credit financial institutions".

H THE REPORT TO THE COMMITTEE ON AUTHORISATION OF FINTECH LAB APPLICATIONS AND THE COMMITTEE'S DECISION

42. The final stage of the process was the preparation of a report to the AFSA FinTech Lab Committee assessing Mr Carmi's application in the light of the information he disclosed in his application, the information he gave in response to the further questions the AFSA had asked as part of its process of due diligence, including matters identified in its research into open-source material. That report, dated 10 May 2023, was prepared by Mr Mukhambekov and reviewed by Mr Yagub Zamanov, a Director at the AFSA's FinTech Division. It first summarised Mr Carmi's background, history and principal activities, including his role at Russobank. Their assessment is under a general heading of "*Integrity*" which has five sections which I now summarise.

43. The first section is "*Name and Surname Change*". It records that the assessors identified that Mr Carmi changed his name and surname and what information about this Mr Carmi then gave in response to their inquiry. It states:

> "*However, we have reason to believe that Mr Carmi possesses two passports: one issued by the Israeli state authority to Moriel Carmi and the other issued by the Russian Federation to Mark Weinshtein. This information was discovered in the Purchase Contract of Immovable Property No. Z2, dated 29 September 2020, between Mr Carmi and Marina Gulaeva. In the contract Mr Carmi provided his passport details issued on 25 September 2017 in Moscow. It is worth noting that Mr Carmi has submitted his Israeli passport, which bears a new name and surname along with his application."*

44. The second section is "*Banking Licence Revocation*". It states:

> "*As we mentioned earlier, the CBR has revoked the banking licence of [Russobank], and as a result, the bank was liquidated in 2020. In order to conduct due diligence on the Bank, we requested the CBR as the home regulator of the bank to confirm the revocation of the banking licence and to provide information about Mr Carmi's role within the Bank's management structure. In response to our request, the CBR issued a letter … dated 6 March 2023 confirming the revocation of the banking licence but was unable to identify Mr Carmi's position within the Bank without the necessary identification documents and a certificate of name change. We have since obtained these documents and submitted a new request to the CBR, and we are still waiting for a response. It should be noted that Mr Carmi failed to disclose the aforementioned information in his Application, despite being required to do so.*"

The reply is given in the letter dated 4 May 2023 from the First Deputy Governor of the CBR Referred to at [41] above. It is not clear whether it had not reached the AFSA by 10 May 2023, the date of this Report, or whether the writers of the Report omitted to update this paragraph or did so orally at the Committee meeting on 23 May 2023.

45. The third section is "*Management Influence in the Bank*". It *inter alia* states:

> "*… In order to gain clarity on Mr Carmi's management influence over the bank, we have requested: (i) an official document certifying the ownership rights of the Bank's shareholders, and (ii) information regarding Mr Carmi's involvement in the management of the Bank. Mr Carmi provided a written explanation indicating that he withdrew from the composition of the Bank's shareholders in 2010 and has not been involved in any operational activities since then. Additionally, he stated*

that he did not possess any decision-making powers in the bank. For reference, please see the citations below:[3]

> *"Mr. Carmi withdrew from the shareholders of JSCB RSUUOBANK in 2010, having sold the entire block of his shares to three persons: Ivanova L.V., Shved S.I. and Andrusev A.M. Thus, from 2010 to the present, Mr. Carmi has not been a shareholder of JSCB RUSSOBANK."*

> *"In 2010, Mr. Carmi resigned as Chairman of the Management Board of JSCB RUSSOBANK due to emigration to Israel (and later to Europe), taking the honorary position of Chairman of the Bank's Supervisory Board. **Competence of the Chairman of the Supervisory Board was limited only to the coordination of the strategic planning of the bank's activities**. Operational management, audit, control over the activities of JSCB RUSSOBANK and making other decisions were not within the competence of Mr. Carmi as Chairman of the Supervisory Board."*

*As part of this pursuit, Mr Carmi provided a list of the Bank's shareholders as of 22 January 2019 (hereinafter referred to as the "**List**") which revealed that Ms Liubov Ivanova, Mr Stanislav Shved, and Mr Alexey Andrusev (these individuals were previously mentioned in the first citation) collectively own approximately 40% (21,020 shares) of the Bank's total issued shares of 52,128. However, we have been unable to verify through the transaction records whether Mr Carmi had fully divested his shareholding while the Bank was undergoing under the administrative processing by the CBR. This uncertainty arose from the Share Sale and Purchase Agreement dated 2*

[3] The underlined passages in this and [46] and [47] below are quotations from Mr Carmi's responses to AFSA's requests dated 24 February and 27 March 2023.

December 2011 between Mr Carmi and Mr Igor Shved6, which indicated that Mr Carmi only transferred 7,985 shares, whereas the List shows that Mr Stanislav Shved owned 10,418 shares. Therefore, it is conceivable that Mr Carmi may have retained a measure of control over the Bank and may have exerted his shareholder rights when the CBR revoked the banking license.

In addition, we have identified that the Board of Directors and the Supervisory Board of the Bank are the same body according to Russian Federation law. We have also received an email confirmation from the applicant's contact person that these bodies are the same. This means that Mr Carmi continued to hold his position on the Board of Directors, despite claiming to have resigned from it. The law stipulates that the Board of Directors has a range of competencies, including but not limited to:

- *Determining the priority areas of the company's activities;*
- *Convening annual and extraordinary General Meeting of shareholders;*
- *Approving of an agenda of the General Meeting of shareholders;*
- *Appointing and dismissing the executive body of the Bank if authorized by the company's charter;*
- *Defining principles and approaches for organizing risk management, internal control, and internal auditing in the company.*

Moreover, as per the Ruling of the Supreme Court of the Russian Federation No. 305-ЭС21-16982 dated 23 September 2021, the Court determined that Mr Carmi was serving as the Chairman of the Board of Directors of the Bank, which made him the Head of the executive body of the Bank, when the CBR revoked the banking license.
Given the above, we believe that Mr Carmi has not presented with sufficient evidence to support the claim that his powers were limited during his tenure as Chairman of the Bank's Supervisory Board."

46. The fourth section is "*Misconduct*". It *inter alia* states that during due diligence via various open sources the reviewers observed plenty of adverse reviews about Mr Carmi, including the

allegations about his attempts to enlist the help of people including Colonel Cherkalin who could influence the outcome of the CBR's investigation of Russobank referred to at [38] – [40] above. The explanation Mr Carmi gave is set out in the report:

> "'***I, M. Carmi in Nov. 2018 he tried to contact Mr. Yuri Polupanov at the Central Bank of Russia (CBR) to discuss potential issues****. This happened after Konstantin Krupsky, Managing Director of Russobank, showed an unofficial document form the Internet which showed a list of ca. 10 - 15 Russian banks challenged by CBR, which included Russobank.* ***I met Colonel Cherkalin several times.*** *In the second meeting with Mr. Cherkalin, the latter told that Russobank will face a process unless if I did not pay an amount of EUR 500'000. Cherkalin reportedly said that Russobank's shareholders had the money referring to a 1 million rubles allegedly spent for a wedding cake for Mark11 and Ekaterina12 Tipikin in 2017. Mr. Cherkalin remained without an answer. In a subsequent meeting of the shareholders of Russobank the situation was discussed with the decision that the shareholders did not want to pay the bribe. I, M. Carmi, stressed that some media wrote about me and that I allegedly was ready to pay a "smaller bribe" to Mr. Cherkalin, but this was not true.'*
>
> *'The evidence of meetings with Mr. Cherkalin is my correspondence with Cherkalin in the messenger Threema, which was presented during an interrogation at the Investigative Committee of the Russian Federation, where I demanded a criminal case against Cherkalin.'*
>
> *Based on the information above, we believe that Mr Carmi's handling of regulatory issues with state authority officers raises questions about his integrity, honesty, and reputation before the AFSA.*"

47. The fifth section of the Report is "*Fintech companies in other jurisdictions*". It *inter alia* states that during its due diligence on NeuroNext OÜ, an Estonian fintech company providing virtual currency services, it discovered that NeuroNext OÜ may have an affiliation with SMTP Holding OÜ, on which see [33] above. The report refers to inquiries the AFSA has made to the Estonian Financial Intelligence Unit ("FIU") through the Kazakh FIU about whether NeuroNext OÜ is subject to any

unresolved complaint, regulatory or criminal action or sanction, and whether it has an affiliation with SMTP Holding OÜ or ExFrame OÜ. It states that it has not yet had a response but observes that in his written clarification in response to the AFSA, Mr Carmi stated:

> "*We hereby inform you that SMTM Holding OU is not affiliated with Banxe LTD, Neuronext OU and Tompay LTD, does not have the same members of the company, directors, and other staff members. Moreover, Dmitry Orlov, who is a member of the board of SMTM holding OU, has not held the position of director of Neuronext OU since December 19, 2022, which is confirmed by the attached extract from the register.* ***Dmitry Orlov indeed simultaneously held the position of director at Neuronext OU and was a member of the board of SMTM holding OU at the same time, but during combining these positions, the companies themselves were not affiliated, only Dmitry Orlov himself was associated with both companies.***"

48. The Report concluded that:

> *"Having regard [to] the above facts as well as pursuant to section 5.16 of the Regulatory Guidance On Fitness and Propriety, and most importantly the risk of undermining the AFSA Regulatory Objectives by damaging the reputation of the AIFC, including reducing the level of confidence in both the financial system and the regulatory regime, we assume that Mr Carmi is not fit and proper to be authorised [to] carry on the Regulated and Market Activities in the AIFC."*

49. In the section of the Report containing their recommendations, Mr Mukhambekov and Mr Zamanov stated that, after reviewing the relevant criteria and the Application, considered that the application did not comply with principles 1, 2, and 11 in the AIFC General Rules (set out at [21] above) and that they were of the view that Mr Carmi is not "*fit and proper".* They stated that "we *therefore recommend the AFSA FinTech Lab Committee to reject the Application*".

50. Mr Carmi's application and Mr Mukhambekov and Mr Zamanov's assessment of it came before the AFSA Committee on Authorisation of FinTech Lab applications on 18 May 2023. The brief minutes state that Mr Mukhambekov presented the assessment and answered questions by the Committee. Asked how long it had taken him, he said that it had taken approximately six months to complete the report. The minutes also record him stating:

> "*They had also received a message from the contact person that* Morial *Karmi denied the fact of being accused of state government and the actions were not legal. He also added that CBR has revoked the banking licence of the bank for repeated violations of the AML/CFT legislation taken by the Bank. Also Morial Karmi changed his name and did not inform AFSA".*

When there were no further questions a vote was taken, and the Committee unanimously voted to reject the application. The minutes state:

> "*Having reviewed the provided documents … the members of the Committee recommended to reject the in-principle approval of Banxe Asia Ltd.*".

I THE REASONS FOR THE AFSA'S DECISION

51. As stated in [4] of this judgment, the AFSA's reasons for its decision dated 23 May 2023 refusing Mr Carmi's application were given in a FinTech Division Notice dated 12 June 2023. After a summary of the application and of the decision notice dated 23 May 2023, Page 1 of the Notice stated that section 2.4.3(b)(iii) of the Fintech Rules (set out at [18] above) and §1.3 of the Regulatory Guidance (set out at [19] above) were the relevant statutory provisions and guidance. Page 2 set out the facts and matters the AFSA relied on and its Reasons in more detail under two headings; "*failure to demonstrate integrity*" and "*misconduct*".

52. ***(1) Failure to demonstrate integrity*****:** Page 2 of the Notice stated that when assessing a person's integrity, honesty and reputation the AFSA acted in accordance with §§5.16(g)(h) and (j) of the Regulatory Guidance (these are set out at [23] above). The matters to be considered whether they occurred in the Republic of Kazakhstan or elsewhere included whether:

- "the applicant "*has been involved with a company … that has … had its authorisation, membership or licence revoked, withdrawn or terminated*".
- "*because of the removal of the relevant licence … or other authority, the person has been refused the right to carry on a trade, business or profession requiring a licence*". It is stated that the AFSA should be informed about all such occurrences but would consider the circumstances only where relevant to the regulatory requirements.
- "*the applicant or any business with which the person has been involved, has been investigated, disciplined, censured or suspended by a regulatory or professional body, a court or tribunal, whether publicly or privately*".

53. Essentially, AFSA's reasons in the Notice were that Mr Carmi had not given an accurate or complete account of the information relevant to his application, in particular in relation to Russobank. The Notice acknowledged that his application stated that he was Chairman of Russobank's Board of Directors until 2010 and between 2010 and 2019 was Chairman of its Supervisory Board. But page 2 of the Notice states that the AFSA observed during its due diligence that the CBR revoked Russobank's banking licence in December 2018. It also refers to the CBR's official statement (the CBR's Press Release summarised at [33] above) that Russobank repeatedly violated "*the AML/CFT legislation of the Russian Federation by failing to properly identify and report information on transactions subject to mandatory control*". The Notice also states that "*several factors indicated that the Bank purposefully engaged in suspicious transactions, and its management showed no intention of taking effective measures to halt such activities*". It concluded that "*it should be noted that the aforesaid information has not been disclosed in the Application to the AFSA FinTech Lab".*

54. Page 3 of the Notice sets out or summarises Mr Carmi's responses (summarised at [39] above) to the AFSA's requests for an official document certifying the ownership rights of the bank's shareholders and information regarding his involvement in the management of the bank. It records that Mr Carmi stated that in 2010 he resigned as Chairman of the Board due to emigration to Israel and then to Europe, took the honorary position of Chairman of the Bank's Supervisory Board, and sold his shares. He also stated that, since then he has not been involved in any operational activities and did not have any decision-making powers in the bank. He also provided a list of the Bank's shareholders as of 22 January 2019 identifying the three individuals to whom he had sold his approximately 40% holding. The Notice states that the AFSA was "*unable to verify*

through the transaction records whether Mr Carmi had fully divested his shareholding while the bank was undergoing... the administrative processing by the CBR" because "*the Share [SPA] dated 2 December 2011 between Mr Carmi and Mr Igor Shved … indicated that Mr Carmi only transferred 7,985 shares, whereas the list [of shareholders] shows that Mr Stanislav Shved owned 10,418 shares. Therefore, it is conceivable that Mr Carmi may have retained a measure of control over the bank and may have exerted his shareholder rights when the CBR revoked the banking licence*".

55. Page 3 also states that the AFSA "*have identified that the Board of Directors and the Supervisory Board of the Bank are the same body according to Russian Federation law"* and that it had "*received an e-mail confirmation from Mr Carmi's contact person that these bodies are the same*"*. That means that Mr Carmi continued to hold his position on the Board of Directors, despite claiming to have resigned from it*". The Notice states that Russian Federation Law stipulates that the Board of Directors has a range of competencies. These, it is stated, include determining the priority areas of the company's activities; convening annual and extraordinary General Meetings of shareholders; approving the agenda of General Meetings; appointing and dismissing the executive body of the company if authorised by the company's charter; and defining principles and approaches for organising risk management, internal control, and internal auditing. Page 4 of the Notice refers to the Ruling of the Supreme Court of the Russian Federation *No. 305-ЭС21-16982* dated 23 September 2021. It states that "*the Court determined that Mr Carmi was serving as the Chairman of the Board of Directors of the Bank, which made him the Head of the executive body of the Bank, when the CBR revoked the banking license*".

56. The AFSA concluded that:

> *"Based on the information mentioned above, we believe that Mr Carmi has not provided sufficient evidence to substantiate his claim regarding limited powers during his tenure as Chairman of the Bank's Supervisory Board, which in turn undermines the fitness and propriety of Mr Carmi. Furthermore, providing misleading information in the application reflects dishonesty and a lack of transparency in relation to the regulator. Consequently, the AFSA has determined that Mr Carmi's ability to adhere to the principles of integrity and relations with the AFSA, as outlined in rules 4.2.1 and 4.2.11 of the AIFC General Rules, cannot be assured."*

57. ***(2) Misconduct:*** Page 4 of the Notice stated that, during the assessment, the AFSA "*observed plenty of adverse reviews about Mr Carmi*" and referred to the open source (the article in Kommersant referred to at [38] above) which stated that Russobank had received a notice from the CBR about identified violations and what it alleged were Mr Carmi's attempts to manage the situation, including that he arranged a meeting with Colonel Cherkalin. It also set out Mr Carmi's response to the AFSA which I have summarised at [40] above and therefore do not do so again. At page 5 of the Notice, it is stated that "*considering the information above, the AFSA believes that Mr Carmi's handling of regulatory issues with state authority officers raises questions about his integrity, honesty, and reputation before the AFSA*".

58. The AFSA's conclusions on page 5 state that "*given the facts and matters described above, the AFSA has determined that Mr Moriel Carmi has not demonstrated to the AFSA's satisfaction that he is a fit and proper person to be a Controller of an Authorised Firm*".

J THE GROUNDS OF APPEAL

59. Mr Carmi's factual case is set out in his claim form. He only addresses the grounds of appeal in Article 11(2) of the FSFR on which he relies in his Response to the AFSA's Defence, substantial extracts of which have been cut and pasted into his Response.

60. An important part of Mr Carmi's factual case set out in his claim form is that he sold his shares in Russobank in 2010 and thereafter had no shares and no direct managerial powers or and ability to exercise significant influence over its activities: Claim, page 3. This was *inter alia* because under the Federal Law of the Russian Federation on Banks and Banking Activity 1990 the position of Chairman of Russobank's Supervisory Board was an honorary one: Claim, page 2.

61. Secondly, he claims that during a routine inspection of Russobank in 2018 by the CBR, a member of a group of extortionists working *"under the guise of the FSB"* and with corrupt officials of the CBR, demanded payment of a bribe of €500,000 in exchange for not revoking Russobank's licence. When the bank refused to pay, its licence was revoked: Claim, page 2. Mr Carmi's claim form refers to the article in the *Kommersant* newspaper about the arrest and indictment of Colonel Cherkalin discussed at [38], [40] and [57] above and the allegation that Mr Carmi was willing to

pay a bribe, an allegation which it stated he "*categorically denies*" but was "*echoed by other Russian news channels*": Claim, pages 3-4.

62. Mr Carmi also submitted that the reasons given by the CBR for revoking Russobank's licence were not, as stated in the Order, "*repeated violation*" of the Russian legislation dealing with money-laundering and the financing of terrorism, but purposeful persecution of Russobank by what he described as "*the ultra-right nationalist media*": Claim, page 3. At page 4 of his claim, he states that he is "*still experiencing serious consequences from the decision to confront corruption in the person of Cherkalin*" and that he "*was harassed not only for refusing to pay a bribe, but also because [he is] Jewish, like some employees in the bank*".

63. Mr Carmi's grounds of appeal are essentially as follows. First, that the decision is unreasonable within Article 11(2) of the FSFR and violates the general principles of law. Paragraph 4 of his Response to the AFSA's Defence (hereafter "Response") states that the decision was made "*without a thorough analysis, without taking into account the real state of affairs and my arguments, without taking into account objective arguments, but guided solely by prejudices and a subjective assessment of my person, which led to the adoption of an unreasonable decision that violates the general principles of law, as well as the norms of applicable law*".

64. Secondly, he argues in §11 of his Response that the AFSA did not provide any evidence that his judgment that he had no direct managerial powers over Russobank was incorrect. He states that the decision of the Supreme Court of the Russian Federation *No. 305-ЭС21-16982* dated 23 September 2021 in which it was stated that he "*was allegedly the head of the bank*" is not true because the "*the Law on Banks and Banking Activities expressly prohibits a member of the Supervisory Board from managing a bank, therefore the provisions of the law must be followed*". He stated that he had provided a copy of Russobank's Regulations on the Board of Directors and other documents but needed more time to prepare and submit an opinion on the legal status of the chairman of the Board of Directors (Supervisory Board) of a bank in general and in particular on his own status. §13 of his Response stated that the reason the full PWC Report which the Claim form maintained provided "*independent confirmation of the transparency and legality of the origin of my funds and property*" had not been provided was "*due to the confidentiality regime established in relation to this expert opinion*". Mr Carmi said that he would prepare a different opinion for the trial, and he has since filed Mr Zalmanov's legal opinion.

65. Thirdly, in §12 of his Response Mr Carmi states that he provided media publications and other arguments "*that proved that the regulatory proceedings in Russia were not genuine but were an attempt to commit extortion by the Russian FSB (Federal Security Service) in concert with officials of the CBR*", and that "*members of the FSB were later caught 'red-handed and arrested'*".

66. Mr Carmi's fourth submission on his position is that the information about him is in the public domain and "*It is quite obvious that such well-known supervisory authorities as FIU (Estonia) and FCA (Great Britain) have similar information about me, moreover, it was also provided upon receipt of the relevant licences and company registration*": see Response, §14.

67. In the section of his Response dealing with his reliability, Mr Carmi states that he is a trustworthy and conscientious person, and a fit and proper person to be a controller of an authorised firm pursuant to the Financial Technology Rules and the principles in Rules 4.2.1 and 4.2.11 of the AIFC General Rules and sets out the reasons which he maintains confirms that this is so.

68. He states (at §§16 and 21-23) that he disclosed all the requested personal information about himself, including his participation in various companies and projects, information about his personal life, financial status and all other information as part of the procedure when applying for a licence. He submits that he complied with §§5.16(g),(h) and (j) of the Regulatory Guidance in relation to Russobank. He was not required to disclose any information about the revocation of the Bank's licence because he didn't exert any influence or play a role in those events and was not a beneficiary or a shareholder in the Bank when its licence was revoked. He was then only "*indirectly de jure Chairman of the Supervisory Board of Russobank"* and played only "*a formal role"* in accordance with the express prohibition in the Law on Banks and Banking activity on a member of the supervisory board from managing a bank.

69. Paragraph 18 of Mr Carmi's Response states that his answers to the "*Fit and Proper Questionnaire*" in the FinTech Lab Application were correct because he has never been censured, disciplined, publicly criticised, or the subject of any investigation or inquiry by any regulatory authority, financial services regulator, or officially appointed inquiry, or made aware either formally or informally that he was the subject of current or pending investigation.

70. The essence of Mr Carmi's submissions in support of his appeal are thus that the AIFC (i) did not use objective methods of finding and using information in particular in relation to his position at

Russobank, the revocation of its licence by the CBR and the reasons for that revocation, (ii) proceeded on the basis of an error as to the status of the Supervisory Board of Directors under Russian law, (iii) did not thoroughly study information about him and his participation and non-participation on the boards of various companies, and (iv) did not take into account the experiences of his successful projects and his obtaining licences from financial regulators in other jurisdictions.

K THE EXPERTS' REPORTS

71. The Preamble to Mr Zalmanov's legal opinion on the legal status of the chairman of the Board of Directors (Supervisory Board) of a Bank in the Russian Federation states that he is Chairman of the Moscow Bar Association "Interterritorial", an Honoured Lawyer of the Russian Federation, has been repeatedly elected to the Presidium of the Federal Bar Chamber of Russia, the author of many scientific publications, and has had legal experience in the field of civil law since 1973.

72. The opinion contains 9 sections: 1 A review of legal regulation in the field of corporate governance and control in a joint-stock company; 2 The role of the Central Bank of Russia ("CBR") in regulating corporate relations and ensuring control in the corporate sphere, with the peculiarities of the legal status of credit institutions; 3 Board of directors of a joint stock company (general legal regulation); 4 Features of the competence and organisation of activities of the board of directors (supervisory board) of a credit organisation (special legal regulation); 5 The competence of the board of directors (supervisory board) of a joint stock company and the legality of decisions made by it; 6 The legal nature of the relationship between the joint stock company and the board of directors (supervisory board); 7 Chairman of the Board of Directors in the Joint Stock Company; 8 Responsibility of members of the board of directors of the bank and, 9 grounds for releasing controlling persons from subsidiary liability.

73. The opinion refers to Article 16 of the Law on Banks and Banking Activities in section 4 of the opinion which is concerned with the competence and organisation of the supervisory board. It is stated that:

> *"A person performing the functions of a member of the board of directors (supervisory board) of a credit organization and a candidate for the specified position must meet the requirements for business*

> *reputation established by paragraph 1 of part one of Article 16 of this Federal Law, as well as the qualification requirements established in accordance with federal laws.*": Opinion, page 18, page 146 of the bundle.

It is then stated that if a member of the supervisory board is convicted of committing an intentional crime or there is a court decision holding a member of the supervisory board vicariously liable for the organisation's obligations, or an administrative penalty disqualifies the member, the member is considered to have resigned from the supervisory board. It concludes that the competence of the supervisory board is "*three-level"*; first determined by the organisation's charter, secondly, determined by Article 65 of the Law on Joint-Stock Companies, and thirdly, by the issues specifically identified in Article 11.1-1 of the Law on Banks and Banking Activities. He does not, however, cite Article 11.1-1.

74. At page 48 of the Opinion, page 176 of the bundle, Mr Zalmanov noted that the revocation of Russobank's licence did not lead to its bankruptcy because it had sufficient funds to fulfil all its obligations and "*the termination of the bank's activities was carried out through a liquidation procedure controlled by the Central Bank.*" Mr Zalmanov's overall conclusion is that:

> *"An analysis of the Charter and Regulations on the Board of Directors of Russobank allows us to conclude that the specified body did not belong to the management bodies of the bank and Moriel Carmi when performing the functions of a member of the Board of Directors of JSC JSCB RUSSOBANK, that is, a collegial management body, and as chairman, did not have the right to act on behalf of JSC JSCB RUSSOBANK externally in the process of carrying out business activities, which means that it does not have any signs of a person controlling the bank and, as a result, there is no responsibility for the bank's failure to comply with anti-money laundering procedures and responsibility for the consequences of decisions made by the bank's executive bodies that led to the revocation of the banking license."*
>
> *"This conclusion is also confirmed by an analysis of judicial practice in the dispute between Moriel Carmi and the Central Bank of the*

Russian Federation on the issue of protecting business reputation related to the publication by the Central Bank of the Russian Federation of a press release on the revocation of the banking license of JSC JSCB RUSSOBANK. Thus, in particular, the following expression was used in the press release: "a number of circumstances indicated the purposeful involvement of the credit institution in conducting dubious transactions and the absence of its management's intentions to take effective measures aimed at stopping such activities." Meanwhile, the courts indicated that in this case, the description given by the Central Bank of the activities of the management of JSCB RUSSOBANK cannot relate to the personality of Mark Weinstein, since he "while performing the functions of a member of the Board of Directors, that is, a collegial management body, did not have the right to act on behalf of JSC JSCB "RUSSOBANK" externally in the process of carrying out business activities. In connection with this, his argument about the inextricable connection of his business reputation with the reputation of the bank is exclusively presumptive, subjective in nature, and has no legal (regulatory) confirmation." (Resolution of the Ninth Arbitration Court of Appeal No. 09AP-32450/2022 in case No. A40-286513/2021)": pages 48-49 (pages 176-177 of the Bundle)

75. Mr Khorovskiy sets out his qualifications and experience in section 1 of his expert report. That states that he is a practicing Russian lawyer with 28 years' experience in banking and finance including banking regulatory matters. As well as his Russian qualifications, he has an LLM in Banking and Finance Law from University College, London. He is the managing partner of GRATA LLC, the Moscow office of the law firm GRATA International, and was previously a Partner and head of DLA Piper's finance and projects practice in Russia and the CIS, and a consultant in the banking department of Allen & Overy.

76. Mr Khorovskiy was asked to address two questions and to comment on Mr Zalmanov's legal opinion. Section 7 of his report refers to four decisions of the Moscow Arbitrazh Court and one of the Nineth Arbitrazh Court of Appeal dismissing claims against Mr Carmi brought against the

Central Bank of Russia to protect his business reputation.[4] The two questions he was asked to address are:

(1) whether under the Law on Banks and Banking Activities Mr Carmi was prohibited from serving on the Board of Directors of an entity to which business reputation requirements and/or from owning more than 10% of the share capital of a financial organisation because he was the Chairman of the Board of Directors (Supervisory Board) of Russobank in the 12 months preceding the revocation of its licence and appointment of the temporary administration at the Bank, and

(2) Are the responsibilities and role of the Chairman of the Board of Directors and Chairman of the Supervisory Board of a bank in Russia the same?

77. On the first question, Mr Khorovskiy summarised Articles 11.1 and 16.1 of the Law on Banks and Banking Activities 1990 as amended and Cassation ruling of the Administrative Division of the Supreme Court of the Russian Federation No. 5-KA Дд23-5-K2 dated 5 July 2023. Article 11.1 provides that a candidate for appointment to the Board of Directors (Supervisory Board) of a credit institution must comply with certain business reputation requirements and Mr Khorovskiy stated that the Cassation ruling is indicative of how those requirements are interpreted by Russian Courts.

78. At §4.2 of his report, Mr Khorovskiy states that Article 16(1) "*establishes that a candidate to a Board of Directors (Supervisory Board) of [such an institution] will not be considered as complying with the business reputation requirements if, in particular, the candidate has acted as a member of the Board of Directors (Supervisory Board) of a credit institution within 12 months preceding the date of revocation of a licence from a credit institution due to violation of Russian law or the commencement of a temporary administration of credit institution*". At §4.3 he states that *"these provisions for automatic disqualification operate for 10 years from the date of revocation of a licence, unless the candidate has satisfied the Bank of Russia by evidence of his/ her non-participation in the decision making, acts or omissions which caused the licence revocation and appointment of the temporary administration".* He stated that there is a database of individuals who are automatically disqualified. The Cassation ruling is dealt with at §4.7 of the report. It is

[4] Mr Carmi, however, succeeded in his claims against the newspaper, "Zavtra" which was the CBR's co-defendant, and against an internet site, https://rucriminal.info.

there stated that one of the principles enunciated in the ruling is that the burden of proof in showing that the business reputation of a member of the Board of a credit institution is compliant with Article 16 and that he or she was not involved in any decision-making that caused the revocation of the credit institution's licence lay on that member. Mr Khorovskiy states that "*it is the responsibility of the member of the Board … or other relevant official of the Bank to prove his or her compliance to the Bank of Russia {CBR] or in court".*

79. After summarising the factual circumstances concerning the revocation of Russobank's licence and Mr Carmi's position in the Bank at that time, Mr Khorovskiy's conclusion is that Mr Carmi is prohibited from being a member of the Board of a credit institution in Russia and from holding more than 10% of its shares for 10 years from the date of the revocation of Russobank's licence, i.e. December 2028.

80. On the second question, Mr Khorovskiy referred to Articles 65 and 67 of the Law on Joint-Stock Companies 1995 and Article 11.1-1 of the Law on Banks and Banking Activities setting out the functions of the Chairman of the Board of Directors (Supervisory Board) and the competencies of the Board. At §§5.4 – 5.5, he stated that Article 11.1-1 provides that the competency of the Supervisory Board of a credit institution is determined by the Law on Joint-Stock Companies and summarised Article 65 of that law and the additional duties imposed on the Supervisory Board of a credit institution by Article 11.1-1. His conclusion at §§5.6 and 5.7 is that the Supervisory Board of a credit institution has the same authorities as the Supervisory Board of an ordinary joint-stock company, but additionally has the additional authorities set out in Article 11.1-1 He stated that, although he had not seen the Charter of Russobank, Mr Carmi's statement that "*the Chairman of the Board of Directors held an honorary position at Russobank that did not provide for a direct management of the credit institution does not appear consistent with the role of a Board of Directors of a credit institution and its chairman under Russian law*".

81. Mr Khorovskiy commented that Mr Zalmanov's legal opinion mainly describes general provisions of Russian law on joint-stock companies and the role of the Central Bank of Russia in regulating and controlling the activities of credit institutions. In relation to the business reputation requirements in Article 16, at §6.2 he stated that Mr Zalmanov's opinion is not complete because it does not describe the effect of non-compliance with those requirements. At §6.3, in relation to the passage from Mr Zalmanov's opinion set out at [74] above, he observes that "*the fact that*

[Mr Carmi] is not a person controlling the bank does not exclude application of the restrictive provisions of Article 16(1) … to [him] as a member of the Board of Directors of Russobank".

82. I stated at [6] above that Mr Carmi objected to the admission of Mr Khorovskiy's Report. He did so on several grounds. He argued that the report did not comply with Article 2(2)(1) of the Russian Federation's Advocacy Law 2002, and Article 9(3)(1) of the 2003 First Russian National College of Advocates' Professional Ethics Code. Essentially, he maintains that these prohibit a Russian lawyer from providing legal services outside the scope of legal practise except for dispute resolution activities, and that Mr Khorovskiy did not confine himself to opining on the legal issues of interpretation and application of Russian law relating to the status of the Chairman of the Board of Directors (Supervisory Board) of a bank in the Russian Federation. Mr Carmi also submitted that it is clear from the text of the report that it contains "*gross errors in quoting legal norms*" and he criticised its treatment of decisions of the Russian courts. He submitted that the Report is not an independent scientific opinion but one which improperly cites sources of law, gives its own subjective interpretation of judicial acts and the merits of the dispute, and was not even drawn up by Mr Khorovskiy himself but by employees from GRATA LLC.

83. I will deal with Mr Carmi's criticisms of Mr Khorovskiy's treatment of Russian legislation and court decisions to the extent that Russian law is relevant to this appeal in the next section of this judgment. But I reject his objections to the admission of the report. What qualifies as expert evidence in the AIFC Court is governed by AIFC law. The Court's power to admit expert evidence in Article 27.2(c) of the AIFC Court Regulations is broad: to admit such evidence "*on such terms and in such form as it considers appropriate*". It is standard practice in leading jurisdictions for the parties in a case where foreign law is relevant to the determination of an issue to provide the court with a report by a suitably qualified foreign lawyer experienced in the relevant area of law. Absent misconduct by a report writer, it is inconceivable that in a case in which points of foreign law arise, a party to proceedings in the AIFC Court should not be allowed to adduce expert evidence of that law in response to expert evidence adduced by the other party. There is no such misconduct here. Mr Khorovskiy has 28 years' experience in banking law and regulatory matters. He stated in Part 8 of his report that he has complied with his "*overriding duty to the Court*" in Part 19 of the AIFC Court Rules and has no conflict of interest in providing it. He stated at §2.11 that he was assisted by colleagues who conducted research under his instructions, that he reviewed their work to form his own opinion, and that the opinions expressed in the Report are his. To the extent that Russian Law is relevant, it, moreover, appears from the decisions of the

Council of the Russian Federal Bar Association, the Plenum of the Supreme Court and Presidium of the Higher Arbitrazh Court referred to in §§ 2.6 and 2.7 of Mr Khorovskiy's Second Report that a Russian advocate is permitted to prepare an expert report on Russian law at the request of a foreign court.

L DISCUSSION

84. The AFSA's regulatory regime, the factual case on which Mr Carmi relies in this appeal, and my understanding of the grounds of appeal that he has set out in his response to the AFSA's defence and subsequent communications are respectively summarised at [15] – [23] and [59] – [70] above.

85. At the core of Mr Carmi's case is that he sold his shares in Russobank in 2010 and that, since then, his sole position in the bank was as Chairman of its Supervisory Board of Directors which he submitted was an honorary position. He written submissions maintain that this meant that when, in 2019, the CBR revoked Russobank's licences, he had no direct managerial powers in the bank and was unable to exercise significant influence over its activities. He argued that Mr Zalmanov's expert opinion shows that the AFSA's rejection of his application was based on an error by it as to the status of the Supervisory Board of Directors under Russian law. He maintained (see § 11 of his Response to the AFSA's Defence) that the AFSA did not provide any evidence in support of its view that he had direct managerial powers in the bank and that the decision of the Supreme Court of the Russian Federation No. 305-ЭС21-16982 dated 23 September 2021 which I have referred to at §§ [45], [55] and [64] above was "*not true*". This, he argued, was because "*the Law on Banks and Banking Activities expressly prohibits a member of the Supervisory Board from managing a bank*" and, in accordance with that, he played only "*a formal role*" and was only "*indirectly de jure Chairman*" of its Supervisory Board.

86. Although only inferentially, Mr Carmi in effect argued that, having divested himself of his shares and having no direct managerial powers in the bank, and only an honorary position in it, he was not required to disclose in his application to the AFSA the matters concerning Russobank and the other matters not disclosed on which the AFSA relied in its decision: see [68] – [69] above.

87. Mr Carmi also submitted that the AFSA had acted unreasonably in not analysing the real state of affairs in relation to Russobank. He maintained that the CBR's reasons for revoking the bank's

licence were not in reality repeated violation of Russian money laundering and terrorist financing legislation, but the persecution of the bank and of him for refusing to pay a bribe, and because he, like some other bank employees, is Jewish. As I have stated, see [69] above, Mr Carmi also submitted that his answers in the application form were correct because he has never been censured, disciplined, or publicly criticised by any regulatory authority or made aware that he was the subject of an investigation.

88. These submissions must be assessed in the light of the relevant regulatory rules and guidance, and the information required to be given in the application forms completed by Mr Carmi. The pre-application and application forms state that "*it is important that you provide accurate and complete information and disclose all relevant information*". They also state that failure to do so "*will call into question the applicant firm's suitability to be authorised"* and may amount to acting in a deceptive or misleading manner contrary to FSFR, Article 119(e).

89. The regulatory rules (summarised in section E of this judgment) provide guidance as to what information an applicant should provide in its application. For present purposes it suffices to state that Core Principles 1 and 11 of the AIFC General Rules require Authorised Persons to observe high standards of integrity, to deal with the AFSA in an open and co-operative manner, and to keep the AFSA "*promptly informed of recent events or anything else relating to the Authorised Person of which the AFSA would reasonably expect to be notified*". §§5.9 and 5.10 of the AIFC's Regulatory Guidance (see [22] above) reflect these core principles in the context of applications. § 5.9 states that in making an assessment "*the burden is on the applicant sponsoring the application to satisfy the AFSA that the person is fit and proper to perform the function"* and §5.10 that "*applicants and persons are expected to provide complete and truthful information*". The importance of such disclosure and the fact that the failure to disclose can amount to acting without integrity is seen from the decision of the UK's Upper Tribunal's Tax and Chancery Chamber in *Page* discussed at [24] – [25] above. Their importance is also seen because the dangers of impropriety, money-laundering and fraud involving cryptocurrency are well known, as exemplified by the recent trial in which convictions were obtained in respect of a fraud against customers of the now bankrupt FTX cryptocurrency exchange.

90. I first deal with Mr Carmi's submission that the AFSA's decision was unreasonable because it was made without taking account of objective arguments and a proper analysis of the real state of affairs but was guided solely by prejudices and a subjective assessment of him.

91. The AFSA's assessment of Mr Carmi's fitness and propriety to hold a licence to operate in its FinTech lab was based on information discovered during its internal investigation which had not been disclosed in Mr Carmi's application which it put to him, and on his responses. I note that as well as its preliminary risk analysis in December 2022, the AFSA wrote to Mr Carmi on 9 March 2023 about his shareholding in Russobank and position in SIA New Solutions, and on 27 March 2023 for further information within 15 working days about Russobank and the allegations in the article in Kommersant. I also note that his application did not state that he had changed his name or that he was or had been a Russian citizen although these were matters of which the AFSA could reasonably expect notice in order to conduct its regulatory checks. Not having that information made it harder for the AFSA to investigate Mr Carmi's former activities. It was only in Mr Carmi's letter dated 15 March 2023, some three months after his application, that he gave information about his change of name, and only in his (apparently out of time) response dated 2 May 2023 to the AFSA's request dated 27 March 2023 for further information did he give information about the sales of his shares, the register of shareholders and his comments on the Kommersant article and its allegations concerning Colonel Cherkalin.

92. Another aspect of the AFSA's investigation into Mr Carmi's application was that in April 2023 it had requested further information from the CBR about Mr Carmi's role in Russobank's management structure. The CBR's reply, dated 4 May 2023, stated that Mr Carmi had been Chairman of the Board of Directors of Russobank during the 12 months preceding the CBR's revocation of its licence and was barred from being on the Board or holding more than 10% of the shares of a Russian credit institution for 10 years and a non-credit financial institution for 5 years: see [41] above. I have observed that the CBR's reply may not have reached Mr Mukhambekov before he submitted his report dated 10 May 2023 recommending that the AFSA Committee on Authorisation reject Mr Carmi's application and thus it may not have been taken into account in the Committee's decision. But see [45] above, Mr Mukhambekov's report does refer to the decision of the Supreme Court dated 23 September 2021 which determined that "*at the time of licence revocation Vainstein MM [i.e. Mr Carmi] was the Chairman of the Board of Directors of the bank – the head of its executive body of the legal entity*" and not, as §11 of Mr Carmi's Response stated that he was "*allegedly*" the head of the bank.

93. Mr Carmi's submission (see [64] above), that the AFSA did not provide evidence that he had managerial powers in Russobank at the time that its licence was revoked is misconceived for two

reasons. First, the decision of the Supreme Court dated 23 September 2021, in Mr Carmi's Cassation appeal, constitutes such evidence. Secondly, § 5.9 of the Regulatory Guidance makes it clear that the burden of satisfying the AFSA that a person is "fit and proper", including that he had no managerial powers in a Bank that had its licence revoked, lies on the authorised person or applicant sponsoring the application. Mr Carmi simply asserted that the decision was "not true" because of the express provisions of the Law on Banks and Banking Activities. But until the decision of a court with jurisdiction over a matter is overruled by a subsequent decision or legislation, it is valid even if it is incorrect. Mr Carmi relies on assertions by him and a press account suggesting anti-semitism. It may be that underlying Mr Carmi's position is a submission that the judicial process was subverted in that case. But he has brought no material to show this.

94. Moreover, the media material Mr Carmi relied on in support of his submission (see [65] above) that the reasons for the CBR revoking Russobank's licences were not violations of money-laundering and terrorism legislation but purposeful persecution by ultra-right nationalist media and because he and others involved in the bank are Jewish do not show that those were the purposes of the CBR itself or that it took such considerations into account. Accordingly, the suggestion that the regulatory and the judicial processes were subverted have not been established. The AFSA, a regulatory body in Kazakhstan, was entitled to take the decisions of the CBR and the Russian Supreme Court into account in determining Mr Carmi's position in Russobank at the time its licence was revoked and the consequences for him of that revocation.

95. Finally, in relation to his submission that the information about him is in the public domain but the financial regulatory authorities in the United Kingdom and Estonia have granted him licences, again, § 5.9 of the Regulatory Guidance is relevant. Mr Carmi has not provided the AFSA or this court with evidence that the FCA and the FIU were aware of the revocation of Russobank's licence, Mr Carmi's change of name, or the allegations of involvement with officials who sought corrupt payments either when they authorised him or subsequently.

96. For these reasons, I reject the submission that the AFSA's decision was made without taking account of objective arguments and a proper analysis of the real state of affairs. Determining Mr Carmi's application as the controller of Banxe Asia Ltd. undoubtedly involved questions of judgment. I accept the submission on behalf of the AFSA that, in exercising that judgment, it undertook a careful analysis of his fitness and propriety, put its points of concern to him and

received his responses, which were put before the Committee that made the decision on his application.

97. I turn to whether Mr Carmi failed to give an accurate or complete account of the information relevant to his application. I have referred at [91] above to his failure to state in his application that he had changed his name or that he was or had been a Russian citizen or his contacts with Colonel Cherkalin during the CBR's investigation into Russobank. I also observe (see [28] above) that in his applications, he describes his country of origin as Israel rather than Russia or the USSR. I now consider his argument that he was not required to disclose that Russobank had lost its banking licences and the other undisclosed matters relating to Russobank relied on by the AFSA and his submission that the AFSA's decision rejecting his application was based on an error as to the status of the Supervisory Board of Directors under Russian law.

98. Whether or not Mr Carmi's arguments about the responsibility of Bank Directors and members of Supervisory Boards under Russian law are correct, Mr Carmi's failure to disclose the position and explain his understanding of it was a serious failure by him to deal with the AFSA in an open and co-operative way. It is clear from Core Principle 11 of the AIFC General Rules and the UK case of *Page v Financial Conduct Authority* [2022] UKUT 124 discussed at [24] – [25] above a failure to disclose any information of which the AFSA would reasonably expect notice may amount to acting without integrity. § 5.16(g) of the Regulatory Guidance (set out at [23] above) states that the matters the AFSA will consider in relation to integrity and reputation are whether the applicant has been "involved" with an organisation which has had its licence to carry out a business or profession revoked. It is unarguable that Mr Carmi, as chair of Russobank's supervisory board when the bank's licence was revoked, was clearly "involved" with the bank, even if he did not control it or have managerial powers or significant influence over its activities.

99. It is therefore not necessary to determine the precise position under Russian law. However, as I observed at [93] above, the AFSA was entitled to take into account the decision of the Supreme Court dated 23 September 2021 referred to at [45] and [55] above. The position has now been confirmed by the CBR in its reply to the AFSA dated 4 May 2023 which (see [41] above) stated that Mr Carmi is barred from being on the Board of a Russian credit institution or holding more than 10% of its shares for 10 years from 2018.

100. If guidance is to be obtained from the experts' reports, I observe that Mr Khorovskiy's is more structured and focussed on the issues before this Court than Mr Zalamnov's. Mr Zalamnov hardly

deals with Article 16 of the Law on Banks and Banking and does not address the consequences of a person's non-compliance with its business reputation requirements. Nor does he consider the decision of the Supreme Court dated 23 September 2021. Those matters, as well as the fact that the version of the Law on Banks and Banking filed by or on behalf of Mr Carmi was the out-of-date 2008 text which does not set out those consequences and the periods of sanction in the way that the up-to-date version does, meant that an incomplete picture was given to the court. As to the reference by Mr Zalmanov to the decision of the Ninth Arbitration Court of Appeal, which is set out at [74] above there is considerable force in Mr Khorovskiy's observation set out at [81] above that the fact that [Mr Carmi] did not control the bank at the material time *"does not exclude application of the restrictive provisions of Article 16(1) … to [him] as a member of the Board of Directors*".

101. What of Mr Carmi's criticisms of Mr Khorovskiy's treatment of Russian legislation and the decisions of the Russian courts? In relation to legislation, I observe only that I do not consider that the submission that the Report cites Article 16(1) of the Federal Law on Banks and Banking Activity "*not as published by the authority and as stated in the Banking Law*" undermines Mr Khorovskiy's conclusion. Mr Carmi's primary example of this is that the Report relies on provisions for automatic disqualification which he states are not to be found in that law, and without stating the exceptions to the grounds for refusal to register and issue a licence to a credit organisation. He argues that contrary to the opening words of §4.3 of Mr Khorovskiy's Report, disqualification is not automatic because it is open to the Board member or other person who must comply with certain business reputation requirements to satisfy the CBR with evidence of non-participation in decisions of the credit institution that had had its licence revoked. That argument may have some semantic force, but, reading the sentence as a whole, it is clear that the Report is stating that disqualification will follow *unless* the person has satisfied the CBR "*by evidence".* It is thus setting out a default position and, reflecting § 5.9 of the Regulatory Guidance, putting the burden on the person who must comply with the business reputation requirements and does not give a misleading impression.

102. Mr Carmi's assertion that Mr Khorovskiy's treatment of decisions of the Russian courts ignored the conclusion of the Ninth Arbitration Court of Appeal in case A40-286513/2021 referred to by Mr Zalamnov in the part of his opinion set out at [74] above is simply incorrect. Mr Khorovskiy commented on what Mr Zalmanov stated about that decision and his comment is set out at [81] above. I reject the submission that Mr Khorovskiy's report contains "*gross errors in quoting legal*

norms". Its summaries of the key legislative provisions relied on, and of the decisions of the courts are based on their actual language. Its conclusions are consistent with the decision of the Supreme Court dated 23 September 2021 and the position of the CBR set out in its reply to the AFSA dated 4 May 2023, on which see [41] and [99] above.

103. Accordingly, Mr Carmi's answers to the "Fit and Proper Questionnaire" in the FinTech application form were, as Mr Jaffey submitted, "*at best", "misleading by omission*": see written submissions, §19. The proactive disclosure of relevant information of which the AFSA would reasonably expect notice by individuals and companies is an important component of the requirements of integrity, and openness and co-operation in Core Principals 1 and 11 of the AIFC General Rules. In assessing fitness and propriety for a licence, the AFSA is also required to consider whether any matter may harm or may have harmed its integrity or reputation or the integrity or reputation of the AIFC: AIFC General Rules, Rule 1.1.5(c), (d), and (i), summarised at [20] above.

104. I accept Mr Jaffey's submission at §29 of his written submissions that the most important matter not disclosed by Mr Carmi was that he was prohibited under Russian law from acting as a director or owning a substantial shareholding in a Bank because he had served on Russobank's Board of Directors (Supervisory Board) during the 12 months prior to the CBR's revocation of its licence. Mr Carmi had litigated about the decision in Russia, failed to overturn the decision, but then concealed it from the AFSA. The AFSA was entitled to view this as a serious matter which went directly to his fitness and propriety. As stated in the final paragraph of the section on "failure to demonstrate integrity" in the reasons for its decision set out at [56] above, the AFSA was entitled to conclude that Mr Carmi's ability to adhere to the principles of integrity in his relationship with the AFSA cannot be assured. It was also entitled to conclude that his handling of regulatory issues with state officials raises questions about his integrity and that he had not demonstrated that he was a fit and proper person to be the Controller of an authorised Firm.

M CONCLUSION AND ORDER

105. For the reasons given in section L of this judgment, I hereby order that the appeal by Mr Moriel Carmi pursuant to section 11(1) of the AIFC Financial Services Framework Regulations No 18 of 2017 against the decision of the Astana Financial Services Authority dated 23 May 2023 to reject his application for a licence to operate a crypto currency trading and custody facility in the FinTech Lab in the Astana International Financial Centre is dismissed.

By Order of the Court,

The Rt. Hon. Sir Jack Beatson FBA

Justice, AIFC Court

Representation:

The Claimant/Appellant was represented by himself.

The Defendant/Respondent was represented by Mr Ben Jaffey KC and Mr Ishaq Burney, the AFSA's Chief Legal Officer.