



PRESS RELEASE

DIFC COURT ISSUES ITS JUDGMENT IN KHORAFI

The Dubai International Financial Centre Court (“DIFC Court”) announced its judgment today in the case of CFI 026/2009 Rafed Al Khorafi & 2 Ors v Bank Sarasin-Alpen (ME) Ltd & 1 Or. Please click on the link for a copy of the judgment.

The case represents a landmark judgment of the DIFC Court in relation to the mis-selling of financial services products by a financial institution both within and outside the DIFC. The case had earlier established a precedent outlining the jurisdiction of the Court over financial institutions outside the DIFC by operating directly or indirectly or having representative offices in the DIFC.

Following a two-week hearing in May 2013 and a one day hearing on 10 July 2013, the Deputy Chief Justice of the DIFC, Sir John Chadwick has ruled that *“the present [case] is a clear case of mis-selling unsuitable investments to an unsophisticated investor, and to his equally unsophisticated wife and mother. That was carried out by employees of Sarasin-Alpen motivated, at least in the case of Mr Walia, by a personal interest in the fees that would be generated by the exercise – and without regard to the protection that the Regulatory Law was intended to afford Retail Customers (as these Claimants were). Bank Sarasin adopted a business model, which led it to breach the Financial Services Prohibition. It appears to have been content to allow the mis-selling to take place; in that it failed to exercise any adequate supervision over those whom it held out as its own Client Relationship Managers.”*

DK Singh, Managing Partner, commented: *“In a region where the relationship of bankers and their clients is led by trust and confidence, this is a significant and important decision. The Court has recognised this aspect whilst having found for the Claimants on the merits of the case.”*

He further paid tribute to Kaashif Basit (who passed away in June 2013 within few days after the hearings came to a close), *“as being one of the leading barristers of the DIFC Court who had been instrumental in defeating the First Defendant’s strike-out application and the Second Defendant’s jurisdiction challenge that was heard by the DIFC Court of Appeal.”*

KBH Kaanuun acted for the Claimants and instructed Richard Hill QC and Sharif Shivji of 4 Stone Buildings.

Bushra Ahmed, Head of Dispute Resolution at KBH elaborated on the fact that *“this case will be scrutinised and analysed by all practitioners across the common law world from Hong Kong to New York. It will be of significance to High Net Worth individuals, hedge and mutual funds and financial institutions who engage in selling and buying complex structured products to retail investors.”*

KBH Kaanuun is a boutique corporate/commercial law firm based in the Dubai International Financial Centre in the United Arab Emirates and registered by the Dubai Financial Services Authority, with offices in Dubai, Kuwait and Bahrain. As a full-service firm, their expertise spreads across a broad span of business disciplines and major industries, including banking and finance, real estate, M&A restructuring, joint ventures and corporate and commercial matters. It also specialises in commercial dispute resolution, headed up by Bushra Ahmed, covering litigation, mediation and arbitration and advises on UAE, Dubai, DIFC, Kuwaiti, Bahraini and English law.

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