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ROYAL COURT
(Samedi Division)

26th February 2021

Before: Commissioner J A Clyde-Smith and Jurats Ronge and Hughes

Between **Her Majesty's Attorney General**

And **V**

LGL Trustees Limited **Defendant**

The Solicitor General for the Attorney General
Advocate W Grace for the Defendant

JUDGMENT

COMMISSIONER:

1. On Friday 19th February 2021, the Court imposed a fine of £550,000 on the Defendant (together with costs of £50,000) for two breaches of Article 37(4) of the Proceeds of Crime (Jersey) Law 1999 ("the Proceeds of Crime Law") and we now set out our reasons.

2. Article 37(1) of the Proceeds of Crime Law provides that the Chief Minister shall by order prescribe measures to be taken by persons who carry on financial services business for the purposes of preventing and detecting money laundering. Under Article 37(4), if a person carrying on a financial services business contravenes or fails to comply with the requirement that is contained in any order so made the person shall be guilty of an offence. Under Article 37(7), if that person is a body corporate, it shall be liable to a fine unlimited in amount.

3. In this case, the Defendant ("LGL") admitted that it failed to comply with the requirements of Article 11(1)(f) of the Money Laundering (Jersey) Order 2008 ("the Money Laundering Order") (Count 1) and Article 13(1)(a) and (b) of the Money Laundering Order (Count 2).

4. Article 11(1) of the Money Laundering Order is in the following terms:

"11 Policies, procedures and training to prevent and detect money laundering

(1) A relevant person must maintain appropriate and consistent policies and procedures relating to –

(a) **Customer due diligence measures**;

(b) Reporting in accordance with the provisions in the Law and the Terrorism Law mentioned in Article 21(6);

(c) Record-keeping;

(d) Screening of employees;

(e) Internal control;

(f) Risk assessment and management; and

(g) the monitoring and management of compliance with, and the internal communication of, such policies and procedures,

in respect of that person's financial services business carried on in Jersey or elsewhere, or a financial services business carried on in Jersey or elsewhere by a subsidiary of that person, in order to prevent and detect money laundering." (our emphasis)

5. Article 13(1)(a) and (b) of the Money Laundering Order is in these terms:

"13 Application and timing of customer due diligence measures

(1) A relevant person must apply –

(a) Subject to paragraphs (4) to (11), identification measures before the establishment of a business relationship or before carrying out a one-off transaction;

> ***(b) On-going monitoring during a business relationship;***
>
> ***(c) ….”***

6. The identification measures are particularised as those under Article 3(2)(b)(ii) of the Money Laundering Order, which is in these terms:

> ***“(2) Identification measures are measures for –***
>
> ***(a) identifying the customer;***
>
> ***(b) determining whether the customer is acting for a third party, whether directly or indirectly, and if so –***
>
> ***(i) identifying that third party,***
>
> ***(ii) where the third party is a person other than an individual, understanding the ownership and control of that third party and identifying each individual who is that third party’s beneficial owner or controller.”***
>
> ***(iii) ….”***

7. The ongoing monitoring particularised is that under Article 3(3)(b) of the Money Laundering Order which is in these terms:

> ***“(3) On-going monitoring means –***
>
> ***(a) …***
>
> ***(b) ensuring that documents, data or information obtained under identification measures are kept up to date and relevant by undertaking reviews of existing records, including but without prejudice to the generality of the foregoing, reviews where any inconsistency has been***

discovered as a result of the scrutiny described in sub-paragraph (a).”

8. This case concerns a failure by LGL to recognise and respond to the obvious risk that a structure it set up and administered in Jersey might be used to embezzle funds from the public purse of an African country for the benefit of its rulers.

9. At the heart of anti money-laundering regulation is the requirement that financial services businesses must have in place, and must follow, effective procedures to ensure that they avoid being mixed up in money laundering – i.e. assisting a criminal to benefit from their crimes, for example by moving criminal money through corporate structures to hide the link between the money and the criminal. To minimise this risk, the Money Laundering Order requires financial services businesses to identify various things, including:

   (i) the risk that the business might involve money laundering, for example based on the nature of the business or the country it emanates from; such risk must be duly assessed and managed if the business is taken on and while it is maintained;

   (ii) the legitimacy of any assets involved; and

   (iii) the identity of those individuals who beneficially own the assets, and those who control the assets.

10. The Money Laundering Order prescribes a “***risk-based approach*”***,* which requires greater due diligence in cases where the risk of money laundering appears higher, for example, because the country or type of business is known for high levels of corruption.

11. The prosecution’s case on Count 1, the most serious of the two offences, is that, as explained below, there were numerous “red flags “ that the investment scheme might well be a fraudulent scheme to skim funds from Angola’s public treasury and re-route them to the notoriously corrupt Angolan president and/or his relatives and associates of theirs. In the circumstances, the fact that LGL not only took on the Angolan business, but maintained it for several years, despite the warning signs is the basis for the prosecution’s conclusion that LGL did not have appropriate and consistent policies in place to prevent money laundering, a conclusion accepted by LGL by its guilty pleas. If their procedures had been appropriate and consistently applied, then this business would either not have been taken on or at least once taken on would have been terminated shortly thereafter, as the red flags came to light.

12. There is no suggestion in this case that the funds provided by Angola were of suspicious origin; they were public funds. Nor is there any suggestion that the investments into which the funds were placed were themselves suspicious; they were high quality property investments. The money laundering risk related to the possibility of corrupt misuse of funds diverted from the Jersey investment structure that LGL was administering.

Factual background

13. Angola is a very poor African country well-known for chronic political corruption. It is in any view a very high-risk jurisdiction in terms of money laundering. Its president in 2010 was Jose Eduardo dos Santos. He left office in 2017, having been in power for forty years, and he and his family were widely rumoured to have profited handsomely from his position of power. It was estimated by the IMF that Angola had lost some US$900 million due to corruption.

14. In April 2010, LGL was approached by a Jersey law firm to establish and administer a Jersey limited partnership for the Angolan State. State funds of up to US$1.6 billion were to be invested in real estate outside Angola in a scheme that was to be a precursor to the establishment of a sovereign wealth fund for Angola.

15. The limited partnership was to be managed by a Swiss based investment business called Quantum Global, which is owned as to 95% by a Swiss/Angolan national called Jean-Claude Bastos de Morais ("Bastos"). Bastos had strong Angolan political connections in that in 2008 he had set up Angola's first private investment bank with the president's son, Jose Filomeno de Sousa dos Santos (known as "Zenu").

16. The following entities were set up in Jersey by LGL in late 2010 early 2011 and thereafter administered by LGL, namely:

    (i) A Jersey limited partnership called the Quantum Plaza Limited Partnership ("the Partnership"), which was at the heart of the Angolan investment structure; in due course beneath it was another limited partnership and various special purpose vehicles holding property investments.

    (ii) A Jersey company which was the limited partner (i.e. investor) in the Partnership called Quantum Plaza Limited Partner Limited ("the Limited Partner"). This was wholly owned by the National Bank of Angola. The Limited Partner in turn owned 98% of the equity in the Partnership.

(iii) A Jersey company to act as general partner (i.e. manager) of the Partnership called Quantum Global Real Estate (Jersey) Limited ("the General Partner"). This was wholly owned by Quantum Global, which in turn was owned as to 95% by Bastos. The General Partner owned 2% of the equity in the Partnership and also received very substantial fees as described below.

17. LGL rated the business as very high risk. It had been told that the source of funds was the Angolan Federal Reserve, which had transferred US$1.6 billion to an account with HSBC in London for real estate investment purposes. LGL required a signed letter from the governor of the National Bank of Angola confirming this, as well as a certified copy of the bank statement demonstrating the source of funds. The former was provided, but not the latter, although LGL did verify that the money held in the HSBC account belonged to the National Bank of Angola. LGL identified the rationale for the structure as being to enable Angola to diversify its holdings to reduce its dependency on oil, its principal natural resource, and collected due diligence information on Quantum Global and its controllers and owners and some of the directors of the National Bank of Angola.

18. Amongst the due diligence collected by LGL was a Reuter's article from June 2010 which referred to President dos Santos tightening his grip on power in Angola by a new law giving the government more control over the National Bank of Angola, which was said to be drafted against a backdrop of US$130 million embezzlement probe into the central bank that had resulted in dozens of arrests among middle and lower tiers of management. The article also referred to a US$1.4 billion loan programme to Angola from the IMF, which had called for greater transparency in Angola's administration. There was no public reference in any of the material LGL had collected to the National Bank of Angola's investment in real estate of US$1.6 billion, but there was a printout, apparently from the Dutch Embassy in Angola, referring to a report from "African Energy Intelligence" saying that Angola had asked Quantum Global to contact western financiers to set up a sovereign wealth fund. The article noted that two of the president's children were said to be connected to Quantum Global.

19. LGL had also downloaded a 2010 report from the Financial Action Task Force ("FATF"), the international body seeking to combat financial crime and money laundering, noting that as at February 2010 Angola had not committed to the Anti Money-Laundering International standards, nor engaged with FATF, and posed a threat to the international financial system. Although it seems that in May 2010 this was rectified by the enactment of a law criminalising money laundering, on any view Angola was at the back of the queue internationally on such matters.

20. LGL were to provide administrative services to each of these entities, including the provision of a registered office and, where applicable, company secretary and directors, save for the board of the General Partner which was provided by Quantum Global.

21. Mr Owen Lynch, a director of LGL, together with the compliance officer and an assistant manager met with the Jersey Financial Services Commission ("JFSC") on 2nd September 2010, to discuss what was needed before consent could be given to establish the Jersey structure, given the obvious risks associated with Angola. The JFSC has a duty to preserve and enhance the reputation and integrity of Jersey in financial matters when considering granting consent. It is not the JFSC's task to conduct risk assessments for businesses. Consent does not remove the obligation on the financial services provider to carry out anti money-laundering procedures as required by Law. There is a detailed file note of the discussion that took place. The JFSC noted that there was an interesting connection between the stated ultimate beneficial owner of Quantum Global and the son of the Angolan president. The Commission did not know how reliable this information was, but LGL would have to investigate it further. There was reference in the note to Quantum Global getting a fee and a success fee but the apparent size of the fees was not discussed. Mr Lynch said the legitimacy of the source of funds had been demonstrated and that no Angolans would be managing the assets. He said that LGL and its board were comfortable with the business. It had carefully considered and dealt with the risks associated with it and would continue to do so. It was for Jersey to decide whether it wanted the business or not. Consent was given on 16th September 2010 to incorporate the companies.

22. The fees payable to the General Partner were, using the prosecution's words, "colossal". It was entitled to:

    (i) A non-refundable advisory fee of €50,000;

    (ii) An advance payment of €16.5 million to "*secure fees and expenses of all advisers being paid*."

    (iii) A one-off success fee of 2% of the value of the transaction upon the successful placement of the investment;

    (iv) The 2% equity stake in the Partnership, described as "*sweat equity*" apparently "*to compensate it for its endeavours to reach the objective of the Council of Ministers' resolution to 'indirectly' acquire a substantial stake in a word-class real estate asset manager by introducing world-class bankers to the board of directors of the General*

Partner." This would appear to have been another success fee and a reward for setting the scheme up. The mechanics were that the Limited Partner would sell 2% of the equity in the Partnership to the General Partner with funds lent to the General Partner by the National Bank of Angola.

(v) An annual management fee of 2½% of the value assets under management dropping to 2% after two years. On the basis of US$1.6 billion under management, it would therefore be entitled, even if the performance was zero, to US$40 million per year, falling to US$32 million after two years on the management fee alone.

23. What the prosecution say was not clear was what the General Partner was expected to do to earn these fees as the funds were essentially being invested in real estate which was managed by others further down the chain. A small part of the fees was spent on paying the fees of the professional property managers, which varied between 15 and 20%, but the General Partner kept the rest for itself. This was not an actively managed fund involving the General Partner in buying and selling securities every day. In essence through Quantum Global, Bastos would be receiving these millions for so long as the funds lasted, regardless of performance, and for doing virtually nothing. There was a further 20% performance fee payable on any return exceeding 10% but this was never triggered.

24. The prosecution say it should have been a source of obvious concern that millions of dollars of the public funds of a very poor country were being paid by means of these fee arrangements to a third party connected to the Angolan presidential family for no obvious good reason and given the history of corruption, any such diversion of substantial public funds to a third party connected to its rulers presented an obvious risk of corruption, i.e. money finding its way back to corrupt politicians/officials, who had instigated or approved the transaction. No one at LGL seems to have asked whether Angola really could not have found a means of investing in real estate overseas that did not involve the guaranteed payment of millions a year regardless of performance to a Swiss financier with personal connections to the president. The obvious questions that arose were:

(i) Why were Quantum Global's fees so high, especially given that it was not actively managing the properties.

(ii) Did those in charge of Angolan public funds really sanction this arrangement and

(iii) if so, who were they, and did they do so lawfully?

(iv) What attempts had been made in Angola to see if an arrangement with lower fees and no links to the Angolan president were available?

(v) Was the use of a complex structure involving entities in various offshore jurisdictions with no clear link to Angola explained by a desire to hide the nature of the arrangement from public scrutiny?

(vi) Were funds paid out as fees being passed back as kickbacks to Angolan officials who were involved in or aware of the scheme, including the president and/or his son? How could the risk of that happening be satisfactorily disregarded?

25. If these questions had been considered and satisfactory answers required before proceeding, it is probable that LGL would not have taken on this business at all. There was an obvious and real risk which had not been managed at all.

26. As it transpired, US$500 million came into the limited partnership in January 2012 for investment in real estate, and in the period from 6th July 2012 to 12th November 2014, the General Partner received some US$21.2 million in fees. LGL's records show that some US$29,900,000 was paid out in dividends from the General Partner to an entity called Blue Mountain Holdings, a Bastos vehicle, between November 2012 and September 2016. In other words, some US$7.5 million per year on average left the Jersey structure and was thus potentially available to be diverted back to the dos Santos family members or associates.

27. There were a number of red flags:

(i) In May 2011, LGL learned that HSBC in London, which held over US$1 billion of funds sent by the National Bank of Angola for overseas investment, was concerned about the involvement of Bastos. It had come across an article in a German Swiss publication, alleging that "*Leading management figures involved in the Quantum structures have a history of corruption and could now be involved in 'skimming' money out of Angola, largely due to Jean-Claude Bastos de Morais being a close friend and business associate of the president's son.*"

(ii) LGL's minuted reaction to this news was:

> *"There is no proof to these allegations and we were well aware of the business relationships of all connected parties when we conducted our own due diligence procedures before agreeing to take on this business. However these articles have given HSBC some concerns of which[sic] we need to consider".*

(iii) The same minute also records that HSBC had an issue with the asset management fee being paid and it noted:

> *"HSBC's concerns are that ultimately Mr Bastos de Morais could withdraw the money from the corporate structure and a portion could then be diverted back to senior figures in Angola.*
>
> *We have no control over this element of the structure however are satisfied that the asset management fee is at a commercial rate and as such any 'leakage' at a higher level would not disadvantage the limited partnership structure."*

The Court noted in particular the somewhat casual reference to the potential for corrupt kickbacks as "*leakage*". HSBC was not comfortable with opening an account for the Partnership and another bank had to be approached instead.

(iv) By August 2011, LGL had not found a Jersey bank to open an account and LGL's compliance officer recommended terminating the relationship, as continuing with it would only increase LGL's profile, which would not be beneficial. That recommendation was overridden by Mr Lynch. In her written statement, the compliance officer said that it seemed that nothing would dissuade the directors from accepting and maintaining this business, despite the negative publicity. In September 2011, Standard Bank in Jersey agreed to provide a bank account to the Partnership.

(v) In June 2011, Mr Lynch went to Switzerland to meet Bastos, and returned saying he had had a satisfactory account of Bastos' relationship with people in the Angolan government, and a denial of the allegations. Bastos had told him that the press articles were in the hands of their lawyers, and some had been removed from the Internet. LGL did not inform the JFSC of the skimming allegations at this time, nor of HSBC's concerns about them, nor did it file a suspicious activity report. It simply carried on with the business, apparently satisfied by Bastos' denials.

(vi) On 19th December 2012, LGL's compliance officer circulated a press article from MAKA, Angola, an anti-corruption website, that referred to Bastos having been convicted in July 2011 of "*repeated qualified criminal mismanagement"* by a court in Zug, Switzerland, proceedings which had apparently been ongoing for nearly ten years, relating back to events in 2003. LGL raised this with Mr Rahel Gimmel, group head of Legal at Quantum Global, who sought to minimise the significance of the conviction, saying that all substantial charges against Bastos had been dismissed. There is no record of LGL questioning why Bastos had not previously disclosed these criminal proceedings. A file note of 9th January 2013 states that Quantum Global had clarified the position regarding these allegations, and this brought closure to LGL's inquiries in this regard. LGL did not inform the JFSC of this conviction or seek to obtain a copy of the judgment to establish the real nature of the offence.

28. In December 2012, it was announced that a Sovereign Wealth Fund for Angola (FSDEA) was to be established to invest US$ 5 billion of Angolan oil revenue. Zenu was FSDEA's chairman and Bastos was again involved. LGL were approached to establish the structures which were discussed with the JFSC in August 2013 and applications filed in October 2013. The JFSC expressed reservations arising from Angola's corrupt government, the involvement of politically exposed persons, the loan from the National Bank of Angola to the General Partner under the existing structure which had not been documented. The Commission wanted to know how Quantum Global had been appointed and whether there had been an open tendering process. LGL defended the General Partner's 2% stake in the Partnership as "*skin in the game"* to encourage the investment managers to perform, but confirmed that no such arrangement would feature in the new proposed structures. Quantum Global's management fees for the proposed new structures, which the JFSC had suggested were high at 2.5%, were defended by LGL.

29. The JFSC became aware of the conviction of Bastos some ten months later. LGL had made no reference to it in the application form submitted for the new limited partnerships. The JFSC asked to see the judgment against Bastos and identified key factors causing it concern as to why the new business should proceed, bearing in mind the owner or controller of the investment adviser had a criminal conviction, was in receipt of a loan from the National Bank of Angola on non-commercial terms and had a close association with the Angolan president. LGL volunteered that Bastos was only one of six people on the board of the General Partner and so did not control it.

30. LGL then obtained a copy of the Swiss judgment, which showed that in an unrelated matter involving him as director, Bastos approved payments from an insolvent company to companies including one in which he had an interest. At a board meeting on 1st November 2013, LGL recognised that it had not been focusing solely on the possible anti money-laundering ramifications in relation to the information relating to Bastos, and that a notification should have

been made to the JFSC. It wrote to the JFSC and separately to the Director General, apologising for not disclosing the conviction, and saying it was a genuine error. However, after careful consideration given to the risks of corruption in Angola, it was its intention to persist with the applications. In the subsequent internal file note, LGL said it derived comfort from the fact that Bastos was only one of 57 people working at Quantum Global, from the corporate governance arrangements for the real estate structure and from the low level of the fine imposed upon him.

31. Following further concerns expressed by the JFSC and the auditors, the undocumented loan from the National Bank of Angola to the General Partner was cancelled and the 2% stake in the Partnership relinquished.

32. In January 2014, the JFSC informed LGL that its board had unanimously decided it was not minded to give consent to the proposed new FSDEA entities, because of the risks associated with Bastos having such a key role, Angola's high level of corruption and its low regulatory standards.

33. In March 2014, LGL became aware of further concerns on the part of the JFSC arising over questions as to who had control over the HSBC bank account holding funds used for the investments in the Partnership. HSBC had previously accepted instructions from the General Partner but was no longer prepared to do so, stating that it only recognised the National Bank of Angola as the customer. It appeared that another Quantum Global company, Quantum Global Investment Management, had the ability to remove funds without the General Partners' approval.

34. In January 2016, the JFSC undertook a supervision visit to LGL and studied the Quantum Global relationship in detail. A lack of CDD for members of the board of the National Bank of Angola came to light, which LGL accepted was an error. Shortly afterwards, LGL began to make plans to remove the structure from Jersey.

35. After President dos Santos lost power in 2017, Zenu and Bastos were both arrested on suspicion of a fraudulent skimming operation in relation to FSDEA, in which Quantum Global received similarly large fees. In early 2019, Bastos reached a settlement with the Angolan prosecutors and now lives in Dubai. In August 2020, Zenu was convicted of fraud in relation to a US$500 million transfer from the National Bank of Angola to an account in the United Kingdom and sentenced to five years' imprisonment. A former governor of the National Bank of Angola was also convicted. These were unrelated schemes. It is understood that the National Bank of Angola is disinvesting in the Partnership which is selling off assets and is due to be wound up.

36. This factual background relates in the main to Count I. Count 2 reflects the fact that LGL did not possess the names of all the directors of the National Bank of Angola either at the outset or ongoing. Until 2016, six years after taking the business on, they had the names (and some CDD information), of only the governor and deputy governor. The identities of the directors should have been obtained and their identities verified at the outset, and this did not happen. Failure to remedy this was a failure of ongoing monitoring. In view of the size of the fees the National Bank of Angola had agreed to pay Quantum Global, it was even more important than any normal case to know who its directors were, to see if that shed any light on the arrangements.

Prosecution's conclusions

37. Count 1 was clearly the much more serious offence, and no separate penalty was sought in relation to Count 2. Two authorities were placed before the Court, both involving breaches of the Money Laundering Order. In AG v Caversham Fiduciary Services Limited, Caversham Trustees Limited & Bell [2005] JRC 165, an English solicitor introduced to Caversham a client with a view to establishing a discretionary trust. No identification or due diligence was carried out for the client in question, and indeed, his identity was never verified. That notwithstanding, £850,000 was remitted from the solicitor's account to Caversham's account and a mere two days later, the money was paid away to four unknown entities with no connection with the proposed discretionary trust. This was all done on the instructions of the solicitor, without any identification of the supposed client and with no system in place to ensure that the client would be identified. Indeed, in that case, he may not have existed. A fine of £65,000 was imposed on the Caversham entities and £15,000 upon Mr Bell, the director responsible, together with prosecution costs of £10,000. At paragraph 6, the Court quoted from this extract from guidance given by the Financial Services Authority:

> ***"The principal purpose of the imposition of a financial penalty is to promote high standards of regulatory conduct by deterring firms and approved persons who have breached regulatory requirements from committing further contraventions, helping to deter other firms and approved persons from committing contraventions and demonstrating generally to firms and approved persons the benefits of compliant behaviour."***

38. In the recent case of Attorney General v Abu Dhabi Commercial Bank PJSC Jersey Branch [2020] JRC 059, the Jersey branch of the Bank had failed to monitor transactions on the accounts of two existing customers over some six years. The total amount of cash withdrawn was in excess of US$1.2 million. There was no suggestion that the customers were involved in money laundering, or indeed any financial offending, but the pattern of withdrawals in both cases

changed over a period of time, and at no stage did the bank respond appropriately to those changes by seeking evidence as to the legitimacy of the withdrawals. The Bank had not profited from its failings.

39. The Court had been referred to decisions of the Financial Conduct Authority (the successor to the UK Financial Services Authority) exercising a rather different jurisdiction than the Court, but it derived assistance from the following steps applied by the FCA in arriving at an appropriate level of fine, namely:

    (i) Seeking to deprive the firm being sanctioned of any financial benefit.

    (ii) Identifying a figure that represents the seriousness of the breach.

    (iii) Allowing for any aggravating or mitigating factors.

    (iv) Making an adjustment to reflect the importance of deterrence.

40. In the <u>Abu Dhabi</u> case, the prosecution had taken a starting point related to the total sum withdrawn in cash by the two customers over the period concerned, namely £900,000, from which it applied a one-third discount for a guilty plea and moved for a financial penalty of £600,000. The Court said this at paragraph 35:

> ***"35. …. In our judgment, although a significant financial penalty needs to be imposed, the Crown's starting point, which appears to be somewhat arbitrarily tied to the general level of financial activity (though we do not say that this cannot in appropriate cases provide a useful reference point in considering the penalty) seems to us to be a little too high. We think that the appropriate figure is one of £800,000. From that sum we deduct a full third which leaves £533,333. We make a further deduction to allow for the other items of mitigation identified above resulting in the Court's penalty in the sum of £475,000."***

The Court also ordered costs in the sum of £25,000, making a total amount payable of £500,000.

41. LGL had received fees totalling just over £900,000 between 2010 and 2016 in administering this structure, representing 4% of its turnover. The profit element as recorded in its audited financial statements was 16.65% or £150,000. If salaries paid to shareholder directors and all remuneration to shareholders is included within the profit, then the profit figure rises to 35% or to approximately £320,000.

42. The prosecution regarded this as a very serious breach of the Money Laundering Order and referred to these paragraphs of the judgment of the Bailiff in the Abu Dhabi case:

> ***"27. We accept that this is, as said by the defence, a 'policies and procedures' offence. That does not in our view mean that it is not serious. The importance of having effective consistent policies and procedures to combat money-laundering cannot be overstated. It should be obvious that if a financial institution does not have those procedures, the fact that it is not as a direct result assisting the laundering of money is a matter more of luck than judgment. The absence of such effective procedures means that money can and inevitably at some point will, be laundered through the financial system. That will be injurious to this Island's reputation as a finance centre with proper and effective standards of financial conduct and probity and would injuriously affect the finance industry, and hence the Island as a whole.***
>
> ***28. We are conscious of the fact that understanding in connection with anti money-launderring is developing and emphasis is being placed not only on the existence of processes and procedures to combat it but their effective employment and, where absent, appropriate remedial action and if necessary a prosecution and penalty. We accept in this case that there were policies and procedures in place and they did from time to time in connection with customer A and customer B give rise to queries. That they were inadequate and inconsistently applied and therefore to a substantial effect ineffective, is equally clear and indeed is implicit in the Bank's guilty plea."***

43. Whilst LGL had anti money-laundering policies in place and did make inquiries and thus seek to minimise the risk of money-laundering, by its guilty plea it acknowledged that in this case, its approach was misguided and ineffective. Although the charges relate to only one business relationship, it was a very significant relationship that continued for many years and involved very

large amounts of money being invested through Jersey, and very large amounts being paid out in fees to Quantum Global.

44. LGL's failures meant it took the risk of being involved in the diversion of tens of millions of dollars of public funds of one of the poorest countries in the world to its corrupt rulers, and their relatives and associates, something which is at the upper end of the range of seriousness as far as money-laundering is concerned. The negative impact on Jersey's reputation of involvement in African corruption was obvious.

45. The prosecution regards the failure to inform the JFSC of the conviction of Bastos was a serious aggravating feature, although it accepted that this failure arose through poor judgment rather than dishonesty.

46. LGL's financial statement for 2020 disclosed a profit after tax and after allowing for directors' remuneration of £750,000, which the prosecution took into account, but in its view, the underlying conduct here was far more serious than that in the Abu Dhabi case, and it considered the appropriate fine in the absence of a guilty plea would be £1.2 million. Applying a one-third discount for the guilty plea at the first opportunity, the appropriate fine would be £800,000, from which a further deduction should be allowed to reflect the full cooperation of LGL and the impact of a fine of this level upon the defendant, given its financial position. The prosecution therefore moved for a fine of £650,000 together with a contribution to costs of £50,000, giving rise to a total amount payable of £700,000.

Defence submissions

47. Advocate Grace, for LGL, accepted that this was a more serious case than that of Abu Dhabi and that LGL was constrained, therefore, by the level of fine imposed in that case. However, he argued that the fine should not be any higher than the £500,000 (including costs) imposed in that case.

48. He made a number of points in mitigation, which we would summarise as follows:

(i) To provide context, he said there were basically three tiers of money-laundering offences. Firstly, there are the substantive money-laundering offences under Articles 30 and 31 of the Proceeds of Crime Law, which attract a maximum sentence of imprisonment of 14 years or a fine or both. Secondly, there are the offences of failing to disclose knowledge or suspicion of money-laundering (Article 34A) and tipping off (Article 35) which attract a

maximum sentence of 5 years' imprisonment or a fine or both. Finally, there is the third tier of offences under Article 37 of the Proceeds of Crime Law for breaches of the Money Laundering Order, which attract a maximum sentence for an individual of 2 years' imprisonment or a fine or both. We were concerned here, he said, with the lowest tier, and therefore the least serious of the money-laundering offences.

(ii) LGL was a successful trust company employing 70 people with some nine directors/shareholders, all of whom are Jersey resident. This work was taken on in 2010 and so some ten years had elapsed. It was now some four years from when LGL decided to exit the structure in 2016. None of the current directors/shareholders (bar two, who are in the process of exiting) were directors/shareholders in 2010.

(iii) LGL was not an industry outlier in that it aims to comply with and signs up to all of the standards that Jersey has, and subscribes to best practice.

(iv) Whilst accepting the seriousness of the offences, and in particular the Count 1 offence, this is not a case where:

(a) the failings were systemic;

(b) the offences were repeated. A mistake was made in 2010 which essentially was carried forward. This is not six years of persistent offending.

(c) there was an intentional disregard of the money-laundering requirements with no preventative steps being taken at all.

(d) the breaches of the Money Laundering Order enabled actual money-laundering to take place. It was not known what had happened to the fees paid up to Quantum Global. Advocate Grace accepted, however, that by its conduct, LGL had effectively opened the gateway to possible money-laundering.

(v) Advocate Grace said that the preventative measures taken fell short of what the Money Laundering Order required. In essence there were two sticks: the first stick was to have in place appropriate policies and procedures to prevent and detect money-laundering. The second stick is what LGL did. It did have such policies and procedures and it did take steps to prevent money-laundering. It tried to think things through but did not do enough. The

steps it did take included ascertaining that the funds coming in were clean, making sure that it was working with respected professionals, ensuring that monies were invested in clean assets, focusing on ensuring that control was not in the hands of corrupt rulers and focusing on the "end game", namely ensuring that assets would go back to the Angolan State. The process was audited and there was full accountability to the National Bank of Angola. However, in all of this, LGL was distracted from the risk of corrupt diversion through Quantum Global and so the length of the second stick fell short of the length of the first stick.

(vi) Advocate Grace did not accept that the failure to inform the JFSC of Mr Bastos' conviction was a serious aggravating feature. This was unintentional, and there had been no attempt to mislead. It was a mistake, and LGL had made its peace with JFSC over these issues. The conviction resulted in a modest fine on Bastos, but LGL had relied on Quantum's inhouse counsel, and mistakenly assessed the conviction as not relevant.

(vii) The fees payable to the General Partner were as per the market standard and had been agreed by the National Bank of Angola and the JFSC had become aware of them.

(viii) HSBC's decision to decline the business was not, in his view, a red flag. Another bank had been found to take on the business.

(ix) The recommendation of the money-laundering officer to exit the business was not based on concerns about the involvement of Mr Bastos, but with the higher risk profile LGL would have if it continued with the business.

49. Turning to the case law, Advocate Grace submitted that the conduct in the Caversham case was more serious. In that case, there had been a complete failure to apply CDD and clear underlying criminal conduct.

50. The Abu Dhabi case was more relevant, and as previously stated, he accepted that LGL's conduct was more serious than that of the Bank, but it was a much smaller company. The Bank had an annual income of £1 billion as against LGL's profit of £750,000. A starting point of £1.2 million was 50% higher than the starting point in the Abu Dhabi case and that was unjustified and disproportionate. He submitted that the starting point should be £1 million, which, with the guilty plea discount and other mitigation should reduce the fine to a total of £500,000 including any costs order.

51. Advocate Grace submitted that the benefit to LGL had been modest and less than suggested. These offences came within the third tier of money-laundering offences and there were no very serious aggravating features but considerable mitigation. As for deterrence, the prosecution of itself was enough, because of the damage done to LGL's reputation. Events here pre-dated the Abu Dhabi judgment, so this was not a case of LGL ignoring the warning given by the Abu Dhabi case.

52. In conclusion LGL had no previous convictions and had cooperated fully and beyond the norm. It would suffer reputational damage as a consequence of the conviction and this matter had been hanging over the company and its development for some years. It welcomed the chance to conclude the matter. It was truly contrite.

53. In terms of Count 2, Advocate Grace pointed out the complexity and challenges in dealing with sovereign wealth funds and trying to determine just who is in the circle for whom CDD was required. Much had been done by LGL in this respect over time, but LGL accepted there were gaps.

Decision

54. The Court accepted that the failings here were not systemic but did not accept that this could be regarded as a one-off mistake in 2010 that has effectively been carried forward. Due diligence is an ongoing process, so the Court was concerned here with failings, admittedly relating to this one structure, that were ongoing over a period of some six years. Over that period, LGL earned just over £900,000 in fees, and a profit of some £320,000, on the more realistic basis we determine of all remuneration to shareholders being included within profit.

55. The Court accepts the prosecution's submission that having taken on this work, there were a series of red flags which LGL failed to take heed of. In the words of the compliance officer, the directors seem determined to continue with the business and indeed, were hopeful of increasing it.

56. The Money Laundering Order's risk-based approach requires greater due diligence where the risks of money-laundering appear higher. In this case, the risk was known to be high. This was not a case in which Quantum Global had been appointed following an open tendering process. The business came to LGL with the involvement of Quantum Global pre-mandated. Mr Lynch accepted in his interview that LGL had been aware from the start of the connection between Bastos, who owned 95% of Quantum Global, and the president's son, Zenu. The risk of corrupt

diversion should have been clear and needed to be addressed. It was not. In its reaction to HSBC's concern over the management fees being earned by Quantum Global, LGL referred to the possibility of corrupt payments as mere "*leakage*", which would not disadvantage the limited partnership structure, language that comes close to an acceptance as to what might occur with these very substantial fees after they were paid.

57. Both the prosecution and the defence accept that the facts here are more serious than those in the Abu Dhabi case, and that case, therefore, provides a baseline for ascertaining the appropriate level of fine. An increase in the starting point of 50% to £1.2 million is not, in our view, disproportionate in that it properly reflects the seriousness of the conduct in this case, deprives LGL of its profit, allows for the aggravating features and reflects the importance of deterrence.

58. We do not think it appropriate to take into account the differing means of LGL as compared to the Abu Dhabi Bank. The Court in the Abu Dhabi case focused on the conduct of the Abu Dhabi Bank as opposed to its means. This is consistent with the approach of the Court in health and safety cases. As the Court held in Attorney General v Petroleum Distribution (Jersey) Limited [2018] (2) JLR Note 10, a health and safety case:

> ***"In Jersey, the proper approach was to fine a defendant based on its conduct, not on the size of the company. A defendant's financial circumstances might be relevant to reduce what would otherwise be a proper fine if a defendant company could not afford to pay it, but it was not the case that a wealthy defendant should receive a higher fine for the same conduct than another defendant which could equally afford to pay the fine but was less wealthy."***

59. In that case the Court distanced itself from new English Sentencing Guidelines for sentencing in health and safety cases that focused on the turnover of a defendant when fixing the starting point, a distinct departure from the previous policy of the English court. In doing so we do not think the Court was intending to detract from the well-established policy of this Court in health and safety cases, following Howe v Howe & Sons [1999] 2 Cr. App. R.(S) 37, that the fine must be large enough to bring home the message, the need to achieve a safe working environment, where the defendant is a company not only to the managers but also to the shareholders.

60. In the context of the case before us there is no question that the level of fine, whether at the level accepted by the defence or that proposed by the prosecution is large enough to bring home the importance of complying with the requirements of the Money Laundering Order both to the directors and the shareholders of LGL. The starting point therefore has to be set to reflect the

conduct of LGL irrespective of its means, but its means are relevant to the fine that is ultimately imposed.

61. From the starting point of £1.2 million, a full one-third discount is justified because the plea was of value, which brings the fine down to £800,000. We accept that there should be a further reduction to reflect LGL's clean record and its cooperation. The prosecution accept that the level of cooperation here has been complete. That brings the fine down to £650,000.

62. There are two further factors which we determined justified a further reduction in the penalty to be imposed:

    (i) LGL is a relatively small company. Its turnover for 2020 was £7.2 million and its profit after taxation £750,000. It has available cash of £440,000. It has a limited number of directors/shareholders, none of whom, (bar two, who are currently exiting) were shareholders in 2010. Advocate Grace informed us that there were no arrangements in place to share the burden of the penalty imposed by the Court between past and present shareholders, and the ultimate burden, therefore, of the penalties that the Court will impose and the reputational damage the conviction has brought to LGL will be borne substantially by the current directors/shareholders, who were not directors/shareholders in 2010 and for much of the period concerned. Nor have the great majority of the current directors/shareholders benefited from the fees that were charged between 2010 and 2016. Although LGL has been the same legal entity throughout, in the context of a relatively small company of this kind, we feel that there is an element of injustice in the current directors/shareholders having to bear the full ultimate burden of the actions of the past directors/shareholders.

    (ii) Financial services businesses have to maintain a certain Adjusted Net Liquid Asset (ANLA) ratio to its expenditure requirements. Advocate Grace informed the Court that LGL currently has a ratio of ANLA to its expenditure requirement of 154%. If that ratio falls below 130%, it must inform the JFSC, and there is a minimum ratio permitted of 110%. If the prosecution's conclusions are granted, the ratio would fall close to 110%. If the defendant's conclusions were granted, it would fall to 130%. The position would be eased if LGL was given time to pay. This is a business in which the directors have responsibility for some 70 staff, and we consider a further reduction in the total penalty imposed is justified to reflect LGL's financial position and the impact of the total penalty upon it, which we think the prosecution has not taken sufficiently into account.

63. In terms of costs, the Solicitor General informed us that the Attorney General had engaged the services of Jersey counsel (Advocate Redgrave) on this matter at a cost of £60,000 and that the Law Officers' Department had incurred costs of some £200,000. The prosecution therefore sought a contribution to its costs of £50,000.

64. A defendant is concerned with the total amount payable and whilst in principle it is appropriate in a case of this kind to order a contribution to the prosecution's costs, the Court must ensure that the total amount payable does not thereby become disproportionate. In this case, we are satisfied that a total amount payable of £600,000 was not disproportionate.

Conclusion

65. In conclusion:

(i) Under Count 1, we fined LGL £550,000.

(ii) Under Count 2, we imposed no penalty.

(iii) We ordered LGL to make a contribution to the costs of the prosecution of £50,000.

66. The total amount payable was, therefore, £600,000 and we gave LGL three months in which to pay.

67. Finally, this judgment refers to various third parties who were not before the Court. We emphasise that we make no findings against such third parties