



## QORTI CIVILI PRIM`AWLA

ONOR. IMHALLEF  
JOSEPH ZAMMIT MCKEON

Illum il-Hamis 28 ta` April 2016

Kawza Nru. 9  
Rik. Gur. Nru. 533/13 JZM

HSBC Bank Malta plc (3177)

*kontra*

Standard Chartered plc, bank esteru registrat fir-Renju Unit, bin-numru ufficjali ta` registrazzjoni 00966425, u b`digriet tas-7 ta` Ottubru 2013 l-isem tal-konvenut gie jaqra "Standard Chartered Bank, bank esteru registrat fir-Renju Unit"

Il-Qorti :

### I. Preliminari

Rat ir-rikors guramentat prezentat fl-4 ta` Gunju 2013 li jaqra hekk :-

1. *Illi fl-24 ta` Awissu 2011 fuq struzzjonijiet moghtija minn socjeta` estera bl-isem Ahmed Mansoor AL A Ali Co BSC (C), il-Bank konvenut hareg letter of credit ossia Documentary Credit (DC) Number 682010006026-L a favur tas-socjeta` Emirates Aircrete Industries Co. Corporation Ltd (C 51943) ghall-import ta` US\$ 680,000.00 (+/- 5%), liema strument sussegwentement gie modifikat sabiex jirrifletti import ta` US\$ 866,000.00 (+/- 10%);*

2. *Illi fis- 7 ta` Dicembru 2011, il-Bank konvenut hatar u awtorizza lill-Bank attur sabiex jawtorizza l-izbank tal-import kopert bl-imsemmi letter of credit mill-imsemmi beneficjarju u dan diment li l-istess Bank attur ikollu d-dokumentazzjoni kollha ndikata fl-istess strument, kopja ta` liema qed tigi hawn annessa ;*

3. *Illi l-Bank attur gie anke awtorizzat sabiex jiskonta jew jaccelera l-hlas ;*

4. *Illi wara li l-Bank attur ghamel l-accertamenti kollha necessarji fil-kaz u rrizultalu illi kien hemm ir-requisiti kollha necessarji u sodisfacenti sabiex isir il-hlas a favur tal-imsemmi beneficjarju ;*

5. *Illi in effetti fl-14 ta` Novembru 2011 kienu gew prezentati lill-Bank attur id-dokumenti kollha relattivi li kienu konformi mal-imsemmija letter of credit, liema dokumenti gew mghoddija mill-Bank attur lill-Bank konvenut fit-18 ta` Novembru 2011 u liema dokumenti kienu accertati bhala konformi ma` dak kollu previst fl-imsemmija letter of credit ;*

6. *Illi l-Bank konvenut accetta dawn id-dokumenti fis-7 ta` Dicembru 2011 u kkonferma illi l-pagament da parti tieghu kien ser jigi avvanzat lill-Bank attur fit-30 ta` Jannar 2012 ;*

7. *Illi sadanittant il-Bank attur ircieva talba mill-beneficjarju Emirates Aircrete Industries Co. Corporation Ltd sabiex isir il-pagament dovut lilu taht l-imsemmi strument ta` kreditu u konsegwentement il-Bank attur ipproceda bil-pagament billi ma kien hemm xejn li fil-fehma tieghu u dik tal-Bank konvenut kien ta` ostaklu sabiex isir l-imsemmi pagament; il-Bank attur f'dawn ic-cirkostanzi kellu l-konfort bil-fatt illi l-Bank konvenut kien gja accetta d-dokumenti kollha u relattivi ghall-imsemmija letter of credit u fuq kollox kellu ukoll konferma ta` meta il-Bank konvenut kien mistenni jaghmel l-pagament ossia rimbors a favur il-Bank attur ;*

8. Illi fuq kollox il-Bank attur kien konsapevoli illi a tenur tal-UCP 600 Rules u senjatament l-art. 7 [c] u l-artikolu 12b tal-istess regoli, li japplikaw għall-kaz in ezami, il-Bank konvenut kien u għadu legalment obligat li jhallas il-Bank attur ;

9. Illi fil-25 ta` Jannar 2012 il-Bank attur gie avzat mill-Bank konvenut illi l-imsemmija soċjeta li talbet il-hrug tal-istrument ta` kreditu hawn fuq imsemmi u cioe Ahmed Mansoor ALA Ali Co BSC (C) kienu rregistraw xi thassib tagħhom rigward l-awtenticità ta` whud mid-dokumenti sottomessi mill-beneficjarji ndikati fl-imsemmija letter of credit u li l-istess Bank konvenut kien ukoll qed jissuspetta fl-awtenticità tal-imsemmija dokumenti ;

10. Illi billi kien gja sar il-pagament a favur tal-imsemmi beneficjarju kif hawn fuq spjegat, fis-26 ta` Jannar 2012 il-Bank attur informa lill-Bank konvenut illi r-rimbors da parti tal-Bank konvenut kien f`kull kaz dovut u mistenni entro d-data indikata tat-30 ta` Jannar 2012 ;

11. Illi fis-27 ta` Jannar 2012 il-Bank konvenut avza lill-Bank attur li ma kienx f`qagħda li jirrimborsa l-ammont dovut lill-Bank attur billi kien gie ujetat jagħmel l-imsemmi hlas b`ordni mahruġa mill-Qrati tal-Bahrain fuq talba tal-imsemmija Ahmed Mansour AL Ali BSC ;

12. Illi l-ordni tal-Qorti ta` Bahrain mhijiex ta` xkiel biex il-Bank konvenut jonora l-obbligi tiegħu fil-konfront tal-Bank attur fuq ordni tal-Qrati tal-lok ta` pagament a tenur tal-letter of credit ;

13. Illi l-bank konvenut qatt ma gab ragunijiet ohra għaliex dan il-pagament m`għandux isir ;

Jghid għalhekk il-Bank konvenut għaliex għar-ragunijiet kollha hawn fuq premissi u prevja kull dikjarazzjoni necessarja u opportuna fil-kaz, din l-Onorabbli Qorti m`għandhiex :-

1. Tiddikjara illi l-Bank attur huwa kreditur tal-Bank konvenut u b`hekk intitolat għar-rimbors ta` dawk l-ammonti kollha li huwa hallas lill-imsemmi beneficjarju Emirates Aircrete Industries Co. Corporation Limited (C-51943) a tenur tal-letter of credit ossia Documentary Credit (DC) Number 682010006026-L fit-30 ta` Jannar 2012.

*Bl-ispejjez kontra l-Bank konvenut li jibqa` ngunt ghas-subizzjoni u b`riserva li l-Bank attur jiprocedi ghall-likwidazzjoni u kundanna tal-hlas tal-ammonti u imghaxijiet relattivi talvolta dovuti lilu f`giudizzju separat.*

Rat il-lista tax-xhieda ndikati mill-bank attur u l-elenku ta` dokumenti esebiti mar-rikors guramentat.

Rat ir-risposta guramentata li kienet prezentata fit-23 ta` Settembru 2013 li taqra hekk :-

1. *Preliminarjament illi din il-Qorti m`ghandhiex gurisdizzjoni biex tiehu konjizzjoni tal-kawza stante li si tratta ta` socjeta` li mhiex registrata Malta, mhix prezenti Malta, m`ghandha l`ebda assi Malta li fuqhom f`kaz ta` ezitu favorevoli ghas-socjeta` attrici tkun tista` tesegwixxi fuqhom u ghal ragunijiet ohra imsemmija fl-Artikolu 742 tal-Kodici tal-Organizzazzjoni u Procedura Civili kif jigi spjegat dettaljatament waqt it-trattazzjoni tal-kawza b`dan li s-socjeta` konvenuta ghandha konsegwentement tigi lliberata mill-osservanza tal-gudizzju.*

*Illi inoltre l-Artikolu 2 para 1 tad-Direttiva tal-Unjoni Ewropea numru 44/2001 jistipula illi "**persons should be sued in the member state where they are domiciled**" u ghalhekk ghal din ir-raguni wkoll dejjem ghar-rigward tal-eccezzjoni dwar in-nuqqas ta` gurisdizzjoni ta` din il-Qorti s-socjeta` konvenuta ghandha tigi lliberata mill-osservanza tal-gudizzju la darba kemm Malta kif ukoll ir-Renju Unit huma t-tnejn membri tal-Unjoni Ewropea u firmatarji tal-Konvenzjoni Ewropea*

2. *Minghajr pregudizzju ghall-ewwel eccezzjoni u in via preliminari wkoll illi f`kaz li l-Qorti ma tilqax l-ewwel eccezzjoni s-socjeta` eccipjenti mhix il-legittimu kuntraditur billi kien Standard Chartered Bank Bahrain Branch illi kien hareg il-letter of credit meritu tal-kawza u qatt is-socjeta` eccipjenti u se mai din il-kawza kellha tigi ntavolata kontra Standard Chartered Bank Bahrain u/jew is-socjeta` Maltija, il-Beneficjarja, klijenta tal-Bank attur, jew kontra ohrajn, u qatt kontra s-socjeta` eccipjenti, kollox kif jigi spjegat iktar dettaljatament waqt it-trattazzjoni tal-kawza.*

3. *Minghajr pregudizzju ghall-ewwel zewg eccezzjonijiet u in via preliminari wkoll is-socjeta` esponenti qed titlob is-soprasessjoni ta` din l-Onorabbli Qorti ai termini tal-Artikolu 792 et seq tal-istess Kodici billi bhalissa u qabel ma gew intavolati dawn il-proceduri nb dew proceduri gudizzjarji li ghadhom pendenti quddiem il-Qorti Superjuri tal-Bahrain fuq l-istess meritu u li*

*fihom il-bank attur huwa wkoll parti, kollox kif jigi spjegat dettaljatament waqt it-trattazzjoni tal-kawza.*

4. *Minghajr pregudizzju ghall-ewwel tlett eccezzjonijiet, u in via preliminari wkoll, il-UCP 600 rules li l-bank attur ghamel riferiment ghalihom fil-paragrafu numru 8 tar-rikors guramentat, bl-ebda mod ma japplikaw fil-konfront tas-socjeta eccipjenti u dan kif ser jigi spjegat izjed dettaljatament waqt it-trattazzjoni ta` din il-kawza.*

5. *Bla pregudizzju ghall-ewwel erba` eccezzjonijiet u fil-mertu, il-letter of credit li kien hareg Standard Chartered Bank Bahrain a favur il-beneficjarja s-socjeta` Maltija fuq il-letter of credit, kienet ibbazata fuq dokumenti formanti parti integrali tal-istess letter of credit, bhal ma kienu l-bill of lading, packing list, invoice, certificate of origin u dokumenti ohra li ghalkemm mad-daqqa t`ghajn deheru li kienu awtentici, `il quddiem irrizultaw li setghew jekk mhux probabilmnt ukoll kienu foloz jew iffalsifikati u kien biss meta gie skopert dan l-allegat qerq, cirkostanza dina, li sfortunatament giet skoperta meta l-ammont imsemmi fil-letter of credit, ghalkemm ma kienx ghadu gie trasferit minn SCB Bahrain Branch lil Bank Malti, dan ta` l-ahhar, kien gja trasferixxa dawn il-flejjes lill-kumpannija Maltija Beneficjarja, kumpannija registrata hawn Malta bl-isem ta` Emirates Aircrete Industries Co. Ltd. li kienet il-klijenta tal-bank attur. Kien biss immedjatament wara li gie skopert dan il-qerq illi s-socjeta tal-Bahrain, the applicant, li taht l-awtorizzazzjoni taghha SCB Bahrain Branch harget il-letter of credit, u cioe` Ahmed Mansoor AL A Ali Co BSC (C), il-klijenta tal-istess bank, illi kienet talbet u otteniet l-hrug ta` Mandat ta` Inibizzjoni mill-Qorti Superjuri tal-Bahrain kontra Standard Chartered Bank Bahrain sabiex din tigi inibita milli titrasferixxi l-ammont miftiehem fil-letter of credit li kellu jigi trasferit lis-socjeta` attrici u kienet din, f`dak l-istadju, l-unika raguni ghaliex dan it-trasferiment baqa` ma sehnx, ordni din, illi l-Bank tal-Bahrain ma seta` bl-ebda mod ma joqghodx ghalha.*

*Illi ghalhekk ghandu jirrizulta illi l-letter of credit kienet wisq probabbli affetwata bi frodi imputabbli unikament ghas-socjeta` Maltija, billi din ta` l-ahhar apparentement irnexxielha tidhak b`kulhadd inkluz allura l-bank attur li tieghu kienet klijenta, tant illi minghandha rceviet l-ammont miftiehem fil-letter of credit, filwaqt li l-merkanzija li s-socjeta` Maltija kienet intrabtet li tghaddi lis-socjeta` fil-Bahrain, dejjem skont kif gie miftiehem fil-letter of credit u li a bazi tal-istess ftehim kellha tithallas, baqghet qatt ma ghaddiet il-merkanzija u minflok sparrixxiet u hadd ma jaf fejn jinsabu d-diretturi u/jew is-sidien taghha, raguni ohra ghaliex qatt ma giet notifikata bil-proceduri inizjati gewwa l-Bahrain.*

*Di piu, jidher ukoll illi minbarra li l-persuni kollha interessati jidhru li gew defrodati mis-socjeta` Maltija, u cioe` s-socjeta` applikanti gewwa l-Bahrain,*

*SCB Bahrain, kif ukoll il-bank attur, li lkoll imxew skond dak patwit fil-letter of credit, kienu wkoll it-tlieta li huma kellhom il-kunsens taghhom ivvizjat bi zball billi kieku xi hadd minnhom kien jaf jew seta` ntebah bil-manuvri malinji tal-beneficjarju, certament ma kinux jimxu fuq il-kontenut u l-obbligazzjonijiet miftehma fil-letter of credit, sabiex allura, il-ftehim kontenut fl-istess ma jghoddx kif jigi spjegat izjed dettaljament waqt it-trattazzjoni tal-kawza.*

*In segwitu ghal hrug tal-Mandat ta` Inibizzjoni gewwa l-Qorti tal-Bahrain, is-socjeta` Ahmed Mansoor AL A Ali Co BSC (C) inizjat proceduri legali gewwa l-Bahrain mhux biss kontra s-socjeta` Maltija beneficjarja u SCB Bahrain izda wkoll kontra l-Bank attur liema kawza ghadha pendenti, li sfortuna pero` li kwazi sentejn wara l-ftuh ta` din il-kawza, s-socjeta` Maltija ghadha sal-lum ma tistax tigi notifikata bil-kawza wieqfa minhabba f'hekk.*

*La darba allura, s-socjeta attrici hija wkoll parti ta` dawn il-proceduri, bhala konvenuta flimkien mas-socjeta` Maltija klijenta taghha, kellha kull interess li taghmel l-almu taghha biex tinnotifika lill-klijenti taghha stess hawn Malta billi kienet is-socjeta` Maltija biss li kienet agixxiet bl-akbar mala fede u litteralment serqitilha mal-USD 1,000,000 u n-nuqqas taghha milli almenu tipprova tinnotifikaha, ma tistax ma tigix interpretata bhala negligenza grossolana billi kienet biss is-socjeta` Maltija hatja tal-qerq u hadd iehor. Kien ukoll wisq facil ghal bank attur illi iharrek lil min dahak bih, il-klijent tieghu stess, il-kumpannija registrata Malta bl-ufficju taghha ftit distanza boghod mill-wiehed mill-branches taghha stess u dana m`ghamlitux, qed jigi sottomess, ghall-unika raguni illi kienet taf ben tajjeb illi l-amministraturi u/jew il-beneficjarji ta` l-istess kumpanniji, zewg persuni ta` nazzjonalita` Torka u li dwarhom kellha taghmel due diligence biex tara x`hobz jieklu qabel ma tivversalhom mal-USD1,000,000, kienu ghosfru ; u meta kienu jafu wkoll illi din il-kumpannija ma kellix hlief paid up share capital ta` €1,500 u kienet ilha rregistrata hawn Malta biss ftit xhur qabel ma saret il-letter of credit bir-registered address taghha probabilmment xejn hlief indirizz brass plate.*

*Jigi sottomess illi kienu ghal dawn ir-ragunijiet illi s-socjeta` attrici, konsapevoli ta` dana kollu u minghajr speranza li hi setghet qatt tirkupra dan l-ammont minghandha, li flok mexxiet kontra minn dahak biha u harab, iddecidiet illi tipprova tirrikupra l-ammont minghand min ikun, hlief minghand min kellha u ghalhekk flok harket lill-klijent taghha, harket lis-socjeta` konvenuta. Ma rnexxiliex tidhol mill-bieb u issa qed tipprova tidhol mit-tieqa. Forsi ghalhekk ukoll illi m`ghamlet xejn sabiex tikkoopera fil-proceduri tal-Bahrain, istitwiti wkoll kontra taghha, al menu sabiex il-klijenta taghha tigi notifikata!*

*Minn dana kollu ghandu jirrizulta illi din il-Qorti ghandha tkun moralment konvinta illi dawn ic-cirkostanzi ma jistghux ma jwasslux ghal konvinciment morali illi s-socjeta` Maltija bil-manuvri taghha irnexxielha*

*tapproprja ruhha indebitament u b`mod illegali l-ammont ta` circa €1,000,000 u allura hija s-socjeta` Maltija biss u hadd iehor partikolarment is-socjeta` eccipjenti li ghandha tbat i-konsegwenza ta` dan l-ghemil.*

*Is-socjeta` esponenti ttenni illi l-principju generali tal-ligi Maltija li, fraus omnia corrumpit, la darba ppruvat a sodisfazzjon tal-Qorti, ghandu jwassal illi meta l-fraus huwa ppruvat f`obbligazzjoni bilaterali u letter of credit m`hi xejn hlief ftehim bilaterali, bil-quid pro quo, dan ghandu jwassal lill-Qorti tiddikjara illi l-letter of credit ghandha tigi mhassra/hija nulla jew annullabli, kif jigi spjegat izjed dettaljatament waqt it-trattazzjoni tal-kawza.*

6. *In vista ta` dan kollu u billi t-talbiet attrici huma nfondati fil-fatt u fid-dritt dawn ghandhom jigu michuda bl-ispejjez kontra l-istess socjeta` attrici.*

7. *Is-socjeta` konvenuta minn issa tiriserva d-dritt li tressaq eccezzjonijiet ulterjuri skond il-ligi.*

Rat il-lista tax-xhieda ndikati minnu fir-risposta guramentata.

Rat id-digriet illi tat fl-udjenza tas-7 ta` Ottubru 2013 fejn tat direzzjoni lill-partijiet sabiex iressqu provi u jittrattaw l-ewwel eccezzjoni tal-konvenut. In segwitu, il-partijiet kienu diretti sabiex jittrattaw it-tieni eccezzjoni wkoll.

Rat il-provi kostitwiti minn dokumenti (inkluzi affidavits u stqarrijiet dwar *proof of foreign law*), u semghet lix-xhieda li ddeponew *viva voce*.

Rat in-noti ta` osservazzjonijiet tal-partijiet.

Semghet is-sottomissjonijiet tal-ahhar bil-fomm waqt l-udjenza tat-2 ta` Novembru 2015.

Rat id-digriet illi tat fl-istess udjenza fejn halliet il-kawza ghas-sentenza dwar l-ewwel u t-tieni eccezzjonijiet.

Rat l-atti l-ohra tal-kawza.

## II. Xiehda

**Gaetano Sammut** xehed illi huwa jokkupa l-kariga ta` Head of Trade and Receivables Finance tal-bank attur. Il-kumpannija registrata Malta bl-isem ta` Emirates Aircrete Industries Co. Corporation Ltd (C51943) kienet giet rakkomandata lill-bank minn *third party introducers* ta` fiducja. Wara li sar *due diligence test*, din il-kumpannija fethet kont mal-bank u bdiet tgawdi facilitajiet bankarji. Il-kumpannija talbet li tithallas ghal bejgh ta` azzar permezz ta` *letter of credit* u talbet sabiex din il-*letter of credit* tigi kkonfermata mill-bank attur.

Kompla jghid illi fl-24 ta` Awissu 2011, il-fergha tal-Bahrain ta` Standard Chartered Bank fuq struzzjonijiet ta` Ahmed Mansoor AL-A` ALI CO ( C) BSC (Structural and Mechanical Division) (AMA) harget *documentary letter of credit* bin-numru 682010006026-L ghal US\$ 680,000 (+/- 5%) favur Emirates Aircrete Industries Co. Corporation Limited. Il-*letter of credit* intbaghtet minn Standard Chartered Bank Bahrain Branch tramite Standard Chartered Bank ta` Londra b` *Authenticated Swift Message*.

Stqarr illi d-*documentary letter of credit* giet mibdula mill-*issuing bank* (ossija Standard Chartered Bank Bahrain Branch) billi giet mizjuda ghall-ammont ta` US\$ 866,000 (+/=10%). Fl-20 ta` Ottubru 2011, id-*documentary credit* kien innomina lil HSBC Bank Malta plc fejn il-bank kien awtorizzat li jonora zbank fuq din id-*documentary credit* billi jaccetta kambjala migbuda fuqu u pagabbli hawn Malta.

Spjega li ai termini tal-Artikolu 12B tal-UCP 600 (*Uniform Customs and Practice for Documentary Credits*), il-bank gie awtorizzat li jhallas qabel ma` timmatura il-kambjala accettata minnu. L-AMA bhala l-applikant ghall-hrug ta` *documentary credit* u Standard Chartered Bank bhala l-*issuing bank* stipulaw li l-kreditu kien jirrikjedi l-prezentazzjoni ta` dawn id-dokumenti : (i) kambjala maghmula fuq HSBC Bank Malta plc ; (ii) *commercial invoices* iffirmati mill-beneficjarju : wahda originali u tlett kopji ; (iii) *packing list* : wahda originali u tlieta kopji ; (iv) sett komplut ta` *combined transport bill of lading* li jispecifikaw li l-merkanzija kellha titghabba qabel il-31 ta` Ottubru 2011 b` certifikat mahrug minn *carrier/master/agent/shipping company* li jikkonferma li l-vapur li kellu jghabbi l-merkanzija kien vapur li jithalla jidhol fil-portijiet ta` Stati Gharab ; (v) *certificate of origin* ; u (vi) *mill test certificate*.

Fisser illi huma bhala bank ma nnotaw xejn stramb fid-*documentary credit* u ghalhekk avzaw lill-beneficjarju. Billi Standard Chartered Bank huwa bank li jgawdi fiducja, huma kkonfermaw il-kreditu skont l-istruzzjonijiet li kellhom. Fl-14 ta` Novembru 2011, il-beneficjarju ossija Emirates Aircrete Industries Co Corporation Limited ipprezenta d-dokumenti rikjesti fil-Business Banking Centre tal-HSBC, Mill Street, Qormi. Saret il-verifika tad-dokumenti u



peress li qablu ma` dak rikjest fil-*letter of credit*, il-kambjala kienet accettata u d-dokumenti kienu mibghuta lil Standard Chartered Bank fit-18 ta` Novembru 2011. Huwa spjega li ma kien hemm xejn li seta` jqajjem suspett u d-dokumenti kienu evidenza li l-merkanzija giet mgħobbija fuq il-vapur fil-Port ta` Izmir fit-Turkija fil-31 ta` Ottubru 2011.

Xehed illi wara li nqalghet il-kwistjoni, huwa kien għamel stharrig ma` agenti tal-vapuri li nfirmawh li bejn il-port ta` Izmir u l-Bahrain fil-United Arab Emirates it-tragitt jiehu bejn sitta u tmint ijiem. Standard Chartered Bank wara li qajjmet punt zghir dwar *Certificate of Origin*, eventwalment accettat id-dokumenti fis-7 ta` Dicembru 2011 u kkonfermat li Standard Chartered Bank kien lest li jhallas lil HSBC Bank Malta plc fit-30 ta` Jannar 2012.

Qal illi l-beneficjarju lokali kien ottjena minghand AMA informazzjoni li dawn accettaw id-dokumenti u kienu taw lil Standard Chartered Bank struzzjonijiet sabiex jaccettaw id-dokumenti. Fl-14 ta` Dicembru 2011, il-kumpanija beneficjarja talbet lill-bank attur biex tiskonta l-kambjala accettata u billi ma kienx hemm sospetti, il-bank attur *in good faith* hallas għax id-dokumenti kienu dawk rikjesti mid-*documentary letters of credit*.

Sostna illi ladarba Standard Chartered Bank kienet accettat id-dokumenti, dak kien ifisser li fid-data tal-maturita` tal-*letter of credit* il-bank kien cert illi Standard Chartered Bank kien se jaqdi l-obbligi tieghu skont il-*letter of credit* li kien hareg. Għalhekk HSBC Malta accetta li jhallas il-kambjala anke qabel id-data tal-maturita` tagħha.

Fisser illi skont l-*International Standard Banking Practice* u skont ir-regoli tal-*Uniform Customs and Practice for Documentary Credits* li jirregolaw *Documentary Letters of Credit* u minhabba l-fatt li d-*Documentary Letter of Credit* hija kuntratt indipendenti mill-kuntratt kummercjali li a bazi tieghu qed isir il-pagament, kien ifisser illi l-*issuing bank* kienet obbligata li taqdi l-impenji tagħha lejn il-bank attur u li thallas l-flus dovuti fuq id-*Documentary Letter of Credit* meta din timmatura.

Qal illi fil-25 ta` Jannar 2012, ossija hamest ijiem qabel ma kellu jimatura l-*letter of credit* u 78 jum wara li l-merkanzija waslet il-Bahrain, HSBC Bank Malta plc ircieva komunikazzjoni elettronika msejha MT999 minghand Standard Chartered Bank Bahrain Branch li kienet tghid : "*Letter of credit applicant Ahmed Mansoor AL-A-ALI Co BSC, has brought to our attention concerns surrounding the genuineness of the underlying shipment and the authenticity of the shipping documents including the bills of lading. Our own initial investigations also bear out these suspicions. The purpose of this swift is to bring this matter to your urgent attention.*"

Stqarr illi fis-26 ta` Jannar 2012, il-bank attur informa lil Standard Chartered Bank li kienu qed jistennew pagament minghandhom fil-jum tal-maturita` tad-*Documentary Letter of Credit* sabiex jirrimborsaw il-pagament li sar *in good faith* bhala l-*confirming bank* taht id-*documentary letter of credit*. Fis-27 ta` Jannar 2012, il-bank attur ircieva *swift transmission* minghand il-fergha tal-Bahrain ta` Standard Chartered Bank, fejn il-bank kien infurmat li l-pagament gie inibit sakemm jircievu struzzjonijiet ohra u li l-bank attur kien gie ndikat bhala *third (3<sup>rd</sup>) respondent* fil-kawza hemm miftuha.

Fisser illi l-ordni tal-Qorti ta` Bahrain kienet intiza sabiex twaqqaf il-pagament lill-beneficjarju izda dan kien gia sar hafna zmien qabel ma tqajjem suspett li kien hemm frodi. Fil-21 ta` Frar 2012, il-bank attur kiseb minghand Standard Chartered Bank kopja tal-kawza pprezentata fil-High Civil Court tal-Bahrain minn Ahmed Mansoor Al A`Ali BSC kontra Standard Chartered Bank, Emirates Aircrete Industries Co, u HSBC Malta. In segwitu l-bank kien notifikat bil-kawza pprezentata fil-Bahrain izda l-bank attur ha l-posizzjoni illi huwa ma kellux x` jaqsam max-xiri u bejgh ta` azzar izda mad-*documentary letter of credit* li kellha tithallas Malta u li ma kellux konnessjoni mal-Bahrain. Qal illi meta l-bank attur ghamel kuntatt mal-beneficjarju tal-*letter of credit*, dan insista li l-merkanzija intbaghtet u li l-bank ma kellux ghalfejn jigri warajh izda kellu dritt li jdur fuq Standard Chartered Bank sabiex jithallas skont il-*letter of credit*.

Xehed illi fl-ebda stadju waqt li kienu qed jamministraw id-*documentary letter of credit* jew waqt il-prezentazzjoni tad-dokumenti ma kien hemm xi suspett ta` frodi. HSBC Bank Malta plc agixxa korrettement u *in bona fide* kull hin u strettament skont l-istruzzjonijiet ta` Standard Chartered Bank u in konformita` mar-regoli tal-UCP 600. Qal illi bejn Jannar 2012 u l-prezentata ta` din il-kawza, saru diversi kuntatti ma` Standard Chartered Bank u dawn qatt ma ressqu xi raguni ghaliex ma kinux hallsu hliet li kellhom ordni mill-Qorti tal-Bahrain sabiex ma jhallsux. Fis-26 ta` Lulju 2012, Standard Chartered Bank infurmaw lill-bank attur bi *swift message* li : “*We do not consider that we are the proper party to challenge the injunction as it was obtained in relation to the underlying dispute between the beneficiary and the applicant. We are therefore not taking any steps to challenge the injunction in the Court proceedings.*”

Ghalaq billi kkonferma illi HSBC Bank Malta plc ghadu ma thallasx dak li hu dovut skont id-*documentary letter of credit*. Il-bank attur hallas lill-beneficjarju wara li accerta ruhu li d-dokumenti kollha rikjesti kienu *in order* kif ukoll gie accertat minn Standard Chartered Bank qabel ma` sar il-pagament Malta. Propju minhabba dan kollu Standard Chartered Bank ghandu obbligu li jirrifondi lill-bank attur kull ammont li hallas lill-beneficjarju skont il-*letter of credit*.

Fil-**kontroezami**, Gaetano Sammut spjega li Emirates Aircrete Industries Co Corporation Limited (il-kumpannija beneficjarja) hija socjeta` registrata Malta u l-bank kellu relazzjoni maghha qabel inqalghet il-vertenza. Qal illi dan kien l-ewwel kaz fejn taw assistenza lil din il-kumpannija, u saret *due diligence* dwar din il-kumpannija. Ikkonferma li l-kumpannija beneficjarja kienet registrata mal-MFSA fit-8 ta` Frar 2011 u l-*letter of credit* bdiet tigi diskussa fis-sajf tal-2011. Qal illi meta din il-kumpannija kienet introdotta lill-bank, kienu prezenti t-*third party introducers` firm* kif ukoll l-*ultimate beneficial owner* tal-kumpannija li kien mit-Turkija. Id-*due diligence* sar ghal darba, darbtejn, u jsir mill-*international banking centre* peress li l-klijent huwa *international client* registrat taht l-International Trading Company Act. Insista illi l-flus inghataw lil beneficjarju peress li kien issarraff strument ta` Standard Chartered Bank.

Stqarr illi l-*letter of credit* inharget mill-*issuing bank* li kien Standard Chartered Bank - Bahrain Branch. Din il-*letter of credit* ghaddiet minghand Standard Chartered Bank – London, ghaliex Standard Chartered Bank Bahrain m`ghandhomx *direct authentication agreement*.

Qal illi Bahrain ghaddew il-*letter of credit* lil Head Office taghhom Londra sabiex dawn jittrasmettuha lil bank attur.

Kompla jghid illi Head Office kellha tawtentikaha illi veru harget mill-*branch* tal-Bahrain u tghaddi ghand il-bank attur.

Stqarr illi l-*advising bank*, li huwa l-bank li jigi mqabbad javza l-*letter of credit* lill-beneficjarju kien l-HSBC Bank Malta plc mentri l-*issuing bank* kien Standard Chartered Bank Bahrain.

Kompla jghid illi l-bank attur tqabbad minn Standard Chartered Bank sabiex javza u jikkonferma l-kreditu, biex ikun il-*confirming bank*, anke sabiex jaccettaw kambjala fuq isimhom migbuda minghand il-beneficjarju.

Ikkonferma li l-klijent li applika biex tinhareg *letter of credit* kienet socjeta` fil-Bahrain li avviciinat lil Standard Chartered Bahrain u ghalhekk, ir-responsabilita` tal-*letter of credit* hija taghha.

Mistoqsi dwar jekk jafx li skont l-Art 2 tal-UCP 600, *branches* ta` bank f` postijiet differenti jitqiesux bhala banek separati, ix-xhud stqarr illi jaf bi klawwsola ta` dik ix-xorta.

Qal illi peress li Standard Chartered Bank Bahrain ma tistax tibghat il-kreditu bis-sistema ta` *swift* lejn HSBC Bank Malta plc ghaliex ma hemmx komunikazzjoni bejniethom, is-*swift transfer* sar tramite bank iehor.

Ikkonferma illi l-funzjoni ta` Standard Chartered Bank fl-Ingilterra kienet ta` messaggier ; ghalhekk saret il-konferma ta` l-awtenticita` tal-*letter of credit* li harget Bahrain.

Qal ukoll illi l-*issuing bank* kienet Bahrain Branch u l-flus li kellhom jithallsu lill-beneficjarju kienu tad-ditta tal-Bahrain sabiex il-Bank tal-Bahrain jghaddi lilkom il-flus li ftehmli jhallsu lill-beneficjarju.

Qal illi l-kuntatt bejn il-banek bejn Standard Chartered - Bahrain Branch u HSBC Bank Malta plc.

Stqarr illi l-kawza fil-Bahrain bdiet jumejn qabel ma kien dovut li jithallas il-bank, peress li l-bank attur kellu jithallas fi 30 ta` Jannar 2012.

Qal ukoll illi l-kawza tal-lum saret sentejn wara li sehh dan kollu ghaliex il-bank attur kien qed jigri wara Standard Chartered Bank sabiex jonora l-obbligu tieghu. Dan tal-ahhar kien igib bhala skuza l-pendenza gudizzjarja tal-Bahrain.

**Aravind Kumar Vaidyantathan** xehed illi minn Ottubru 2012 huwa jokkupa l-kariga ta` Head of Trade Finance - Operations fi Standard Chartered Bank Bahrain Branch. Qalli illi l-applikant ghal *letter of credit* kien Ahmed Mansoor Al-A`ali (AMA) li hija kumpannija registrata fil-Bahrain u li ghadha klijenta ta` l-istess bank. L-applikant ghal *letter of credit* ikun solitament importatur/kumpratur ta` beni mentri l-beneficjarju solitament ikun l-esportatur/bejjiegh ta` l-beni. Fil-kaz tal-lum, l-esportatur Emirates Aircrete Industries Corporation Limited ikollu bzonn li ta` *letter of credit* qabel jghabbi l-merkanzija sabiex ikollu sigurta` li ser jithallas tax-xoghol. Standard Chartered Bank Bahrain Branch kien l-*issuing bank* ghal din il-*letter of credit* li saret fit-28 ta` Awissu 2011. L-*issuing bank* huwa l-bank li jiftah il-*letter of credit* u jaghti struzzjonijiet sabiex il-flus ighaddu lill-beneficjarju wara li jigu sottomessi d-dokumenti rikjesti fil-*letter of credit*. L-*issuing bank* jista` jinnomina bank iehor li normalment jkun fl-istess pajjiz tal-beneficjarju sabiex javza lill-beneficjarju li

*l-letter of credit* giet miftuha, liema bank ikun *l-advising bank*. *L-issuing bank* jista` jinnomina lill-*advising bank* sabiex ikun il-bank fejn il-beneficjarju jissottometti d-dokumentazzjoni rikjesta u jircievi l-pagament ; dan jissejjah ukoll in-*nominated bank*. Fil-kaz tal-lum in-*nominated bank* kien HSBC Bank Malta plc.

Qal illi n-*nominated bank* jista`, jekk permissibbli skont il-*letter of credit*, ikun il-*confirming bank*, fis-sens li thallas hi stess lill-beneficjarju wara l-prezentata tad-dokumenti rikjesti. Minn qari tal-*letter of credit* in kwistjoni, jirrizulta li HSBC bank Malta plc kien *is-second advising bank*, in-*nominated bank* u l-*confirming bank*. Qal illi l-kambjala setghet tigi maghmula a favur tal-beneficjarju u skont l-artikolu 12B ta` UCP 600, HSBC Bank Malta plc kienet awtorizzata li thallas tali somma. Billi l-bank attur kien il-*confirming bank* assumma tlett riskji : (a) *Issuing bank risk* fis-sens li l-*issuing bank* seta` spicca *bankrupt* fil-perijodu ta` bejn id-data meta sar il-hlas lill-beneficjarju u d-data ta` maturita` tal-*letter of credit* ; (b) *Issuing bank country risk* fis-sens li l-ligi ta` Bahrain setghet tghaddi ligi li timpedixxi li l-bank jigi rimborzat ; u (c) *documentary risk* fis-sens li jkun hemm vjolazzjoni tat-termini tal-*letter of credit* jew ta` l-UCP 600.

Stqarr illi SWIFT (The Society for Worldwide Interbank Financial Telecommunication) jaghmilha possibbli biex *financial institutions* jibghatu u jircievu messaggi f'ambjent sikur. Spjega li l-*cover letter* li nharget minn Standard Chartered Bank Bahrain Branch lil AMA kienet tispjega li *letter of credit* hija regolata bil-UCP 600 Rules (Uniform Customs and Practices governing the operation of letter of credit). Skont dawn ir-regoli, Standard Chartered Bank Bahrain Branch trid tigi trattata bhala entita` separata. Standard Chartered Bank Bahrain Branch kienet obbligata tirrimborsa l-HSBC Bank Malta plc meta timmatura l-*letter of credit*.

Qal illi Standard Chartered Bank Bahrain Branch ma kellhiex il-facilita` li taghmel il-ftuh tal-kreditu direttament ma` l-HSBC Bank Malta plc peress li hija setghet biss tibghat *unauthenticated SWIFT messages*, ossija dawn maghrufa bhala *MT999 messages*. Spjega li *MT 7999* huma *free authenticated format for a SWIFT message*. Huwa spjega li *letter of credit* dejjem ghandha tigi notifikata lil *nominated bank* tramite *MT 700* li huwa tip ta` *Authenticated SWIFT message*. Kompla jghid li inizjalment Standard Chartered Bank Bahrain Branch baghtet il-*letter of credit* lil HSBC Hong Kong sabiex dawn jittrasmettu l-ftuh ta` *letter of credit* lil HSBC Bank Malta plc, izda dawn spjegaw fid-29 ta` Awissu 2011 via *MT799* illi dan ma setax isir ghax il-beneficjarju ma kienx ` Hong Kong. Fis-6 ta` Settembru 2011, Standard Chartered Bank Bahrain Branch ghamel *routing* ta` din il-*letter of credit* tramite Standard Chartered Bank London sabiex din tghaddiha lil HSBC Bank Malta plc. Ghalhekk Standard Chartered Bank London kienet il-*first advising bank*. Din ghaddiet il-*letter of credit* lil HSBC Bank Malta plc. Huwa kkonferma li dan il-bank ma

kellux *substantive role* fil-*letter of credit* u kien qieghed jagixxi biss bhala messaggier. Standard Chartered Bank London kellu jara l-awtenticita` ta` *letter of credit* trasmessa. L-applikant kien talab li jsiru zewg emendi fit-termini ta` *letter of credit* f` zewg okkazjonijiet diversi u dawn intbaghtu permezz ta` Standard Chartered Bank London.

Fisser illi fit-22 ta` Novembru 2011, Standard Chartered Bank Bahrain Branch irceviet minghand HSBC Bank Malta plc id-dokumenti li kien ipprezenta il-beneficjarju. Dawn kienu ntbaghtu fit-18 ta` novembru 2011 u kien hemm talba biex Standard Chartered Bank Bahrain Branch tirrimborsa lil HSBC Bank Malta plc. Huwa spjega li meta kienu qed jigu vverifikati d-dokumenti, instab li kien hemm diskrepanza zghira fic-*certificate of origin*. Skont ix-xhud, HSBC Bank Malta plc kienet hadet *issuing bank country risk* u *documentary risk*. In vista ta`dan, Standard Chartered Bank Bahrain Branch baghtet *MT999* b` talba li jigi kkunsidrat bhala *MT 734* ai termini ta` l-artikolu 16d ta` l-*UCP 600 Rules*. Fl-1 ta` Dicembru 2011, AMA accettat dan id-dokument li kellu diskrepanza, u l-bank f` Malta kien infurmat tramite *MT999* fl-4 ta` Dicembru 2011. Il-bank Malti kien talab tramite *MT999* sabiex din l-approvazzjoni tintbaghat tramite *MT 799* u ghalhekk kellu jerga` jintuza Standard Chartered Bank London bhala l-messaggier.

Sostna li Standard Chartered Bank Bahrain Branch infurmat lil bank attur dwar irregolaritajiet fil-merkanzija u fit-23 ta` Jannar 2012. Il-bank Malti injora dan u baghat sempliciment *MT999* direttament lil Standard Chartered Bank Bahrain Branch fejn talab li fid-data tal-maturita` kellu jsir il-hlas. AMA ottjena *injunction* mill-Qorti ta` Bahrain sabiex ma jinharigx pagament ai termini ta` l-*letter of credit*. Standard Chartered Bank Bahrain Branch infurmat b`dan lil HSBC Bank Malta plc.

Fil-**kontroezami**, ix-xhud ikkonferma li l-*UCP Rules* ma jittrattawx kwistjonijiet ta` gurdizzjoni. Huwa kkonferma li li kieku ma saritx l-*injunction*, Standard Chartered Bank Bahrain Branch kienet thallas. Anke li kieku kien hemm kawza biss, kienet thallas. Huwa kkonferma li l-pagament kellu jsir Malta. Skont il-ligi tal-Bahrain, ma jistax isir il-hlas in vista ta` l-*injunction*. Din tissupera dak li jistipulaw l-*UCP Rules*.

Fir-**riezami**, ix-xhud qal illi d-dokumenti nghataw mill-beneficjarju lil HSBC Bank Malta plc u dawn ghaddewhom lill-bank fil-Bahrain. Dawn id-dokumenti jigu l-ewwel ivverifikati mill-bank Malta. Ikkonferma li kien hemm diskrepanza zghira fid-dokumenti li giet accettata. Izda mbaghad kien hemm problema ghax il-merkanzija ma waslitx u nstab li l-*bill of lading* kienet ffalsifikata. Meta nfurmaw lil HSBC Bank Malta plc dwar din il-falsifikazzjoni, il-bank ta` Malta ma dahalx fil-kwistjoni izda nsista li jithallas.

Fil-**kontroezami**, ix-xhud spjega li meta d-dokumenti rrizultaw li kienu ffalsifikati, HSBC Bank Malta plc kien gia` hareg il-pagament. Huwa kkonferma li kienu gew skambjati *SWIFT messages* fejn gie kkonfermat illi Standard Chartered Bank Bahrain accettat id-dokumenti. Huwa kkonferma ghalhekk li gimgha qabel ma` nhareg il-pagament minn HSBC Bank Malta plc, id-dokumenti kienu gew approvati kollha.

**Zoi Karali** xehdet illi hija tokkupa l-kariga ta` Head of Legal and Compliance ta` Standard Chartered Bank Bahrain Branch. Qalet illi AMA ottjeniet *injunction* li skont pariri legali li kisbu kien ifisser li sakemm tigi risolta l-litigazzjoni pendenti quddiem il-Qrati tal-Bahrain, l-obbligu ta` Standard Chartered Bank Bahrain Branch li tirrimborza lil HSBC Bank Malta plc kien sospiz. Fil-fatt bl-*injunction* kienet iffrizata l-*letter of credit* fis-sens li zzomm lil Standard Chartered Bank Bahrain Branch milli tghaddi pagamenti lil kwalunkwe persuna. Sussegwentement AMA ghamlet kawza kontra Standard Chartered Bank Bahrain Branch bhala l-*issuing bank*, Emirates Aircrete Industries Corporation bhala l-beneficjarja, u HSBC Bank Malta plc bhala *nominated/confirming bank*. Il-mertu tal-kawza huwa l-veracita` tal-merkanzija liema mertu ma jikkoncerna l-ebda bank. Standard Chartered Bank Bahrain Branch ipprezentat id-difiza taghha ghal din il-kawza izda HSBC Bank Malta plc ma ppartecipax. Spjegat li HSBC Bank Malta plc kienet talbet lil Standard Chartered Bank Bahrain Branch biex dan jitlob lill-Qorti sabiex tnehi l-*injunction* izda kien hemm rifjut in vista ta` konflitt ta` interess. Il-beneficjarju gie notifikat billi saret pubblikazzjoni fil-Gazzetta Ufficjali u l-kaz ghadu pendenti. Standard Chartered Bank Bahrain Branch infurmat lil HSBC Bank Malta plc b`li kien qed jigri u dana permezz ta` diversi *SWIFT messages*. Hija rceviet diversi drabi *emails* b`talba sabiex Standard Chartered Bank Bahrain Branch ihallas izda hija dejjem irrispondiet li dan ma setax isir minhabba l-*injunction*. Ikkonferma li l-ufficcju legal ital-bank attur kien ikkomunika maghha u kien konsapevoli li Standard Chartered Bank Bahrain Branch kienet l-*issuing bank*.

Fil-**kontroezami**, ix-xhud spjegat li Standard Chartered Bank Bahrain hija licenzjata mill-Bank Centrali ta` Bahrain bhala *branch overseas company* biex topera bhala bank. Ghalkemm hija *branch* hija entita` legali u separata ai termini tal-ligi ta` Bahrain in vista ta` sentenza li kienet inghatat fl-1992. Il-*branch* ghandha c-certifikat taghha ta` inkorporazzjoni u registrazzjoni. Il-*branch* mhijiex sussidjarja. Ai termini ta` *UCP Rules* din ghandha titqies bhala entita` separata. Il-*branch* ghandha *separate balance sheet* u t-transazzjonijiet li jsiru fiha ma jigux riflessi ghand il-*head office*. Standard Chartered Bank ghandu d-domicilju tieghu fir-Renju Unit. Fil-proceduri li saru fil-Bahrain, Standard Chartered Bank kien imharrek minghajr ma sar accenn jekk hijiex qed issir referenza ghal *branch*. Fir-Renju Unit, hemm biss il-*headquarters* tal-*global operations* tal-bank.

Fir-**riezami**, ix-xhud ikkonfermat illi f'Jannar 2012 huma ircewew l-*injunction*. Qalet li l-ahhar *email* li ntbaghat lil HSBC Bank Malta plc kienet fis-6 ta' Awissu 2013. Spjegat li meta kienu qed jigu skambjati messaggi dwar l-*injunction* u l-kawza, Standard Chartered Bank fir-Renju Unit ma kienx involut. Aktar tard lejn tmiem l-2012 jew fil-bidu ta' 2013, bdew isiru diskussjonijiet ma' CEOs u ufficjali gholjin, izda kollox baqa' li kien.

Fil-**kontroezami**, spjegat illi huma marbuta bil-*UCP rules* u jirrikonoxxu illi hemm l-obbligu li jsir hlas peress li l-allegat frodi huwa irrelevanti ghalihom. L-unika fatt li qed izommhom milli jhallsu lill-bank attur hija l-*injunction*. Taqa' dik, Standard Chartered Bank Bahrain thallas lill-bank attur.

### III. **L-ewwel eccezzjoni** **(Gurisdizzjoni)**

B'din l-eccezzjoni, kien except illi din il-Qorti m'ghandhiex gurisdizzjoni sabiex tiehu konjizzjoni tal-kawza stante li l-konvenuta hija soċjeta' li mhijiex registrata Malta, mhijiex prezenti Malta, m'ghandha l-ebda assi Malta li fuqhom fil-kaz ta' ezitu favorevoli ghas-soċjeta' attrici tkun tista' taghmel ezekuzzjoni fuqhom, kif ukoll ghal ragunijiet ohra ndikati fl-Art 742 tal-Kap 12. Inltre skont l-Art 2(1) ta' UE Council Regulation 44/2001 maghruf bhala **Brussels 1** "*persons should be sued in the member state where they are domiciled.*" Ghalhekk tghid illi ghandha tigi liberata mill-osservanza tal-gudizzju ladarba kemm Malta kif ukoll ir-Renju Unit huma t-tnejn membri tal-UE.

Dwar il-gurisdizzjoni, il-Qorti tosserva li l-UCP 600 ma jsemmi xejn dwar il-kwistjoni ta' gurisdizzjoni.

Ghalhekk il-Qorti trid tqis u tevalwa dak li jistipola l-Brussels 1.

Ghaliex huwa EU Regulation, il-Brussels 1 jaghmel parti mil-ligijiet Maltin b'effett dirett, ghad-differenza ta' Directive.

Skont l-Art 3 tal-Brussels 1 :

1. *Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.*



2. *In particular the rules of national jurisdiction set out in Annex I shall not be applicable as against them.*

L-Annex I tal-istess Regulation igħid illi għal Malta, l-artikoli li mhumiex applikabbli ai termini ta` l-Artikolu 3(1) huma l-Artikoli 742, 743 u 744 tal-Kodici ta` Organizzazzjoni u Procedura Civili (Kap 12 tal-Ligijiet ta` Malta) u l-Artikolu 549 tal-Kodici tal-Kummerċ (Kap 13 tal-Ligijiet ta` Malta).

In vista ta` dan, huma l-artikoli minn 2 sa 7 ta` r-Regulation li huma applikabbli għal dan il-kaz, fejn sa dan l-istadju hemm konvenuta waħda li hija persuna domiciljata fir-Renju Unit, hekk kif irrizulta mix-xieħda ta` Zoi Karali.

Analizi tal-Brussels 1 saret fis-sentenza li tat din il-Qorti (**PA/FS**) fid-9 ta` Jannar 2012 fil-kawza fl-ismijiet “**Av. Dr. Edward DeBono noe v. No Stop Technology Limited (C49765)**”.

Inghad hekk :-

*L-artikolu 2(1) ta` l-EC Regulations 44/2001 jgħid hekk :*

*“1. Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.”*

*Għalhekk, generalment il-gurisdizzjoni tissejjes fuq id-domicilju tal-parti mharrka. Madanakollu, imbagħad l-artikolu 5 jitkellem dwar Special jurisdiction u jgħid hekk :*

*“A person domiciled in a Member State may, in another Member State, be sued :*

*1.*

*(a) in matters relating to a contract, in the courts for the place of performance of the obligation in question ;*

*(b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be :*

*in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered, .*

*in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided,*

...”  
(c) if subparagraph (b) does not apply then subparagraph (a) applies

*Wara jitkellem fuq maintenance, tort, delict or quasi-delict, civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, dispute arising out of the operations of a branch, agency or other establishment.*

*Interessanti huwa dak li jsemmi l-artikolu 23 ta` l-EC Regulation 44 ta` l-2001 li f`Malta kien applikabbli mill-1 ta` Mejju, 2004. Dan l-artikolu jghid hekk*

*“1. If the parties, one or more of whom is domiciled in a Member State, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any Disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. Such an agreement conferring jurisdiction shall be either :*

*(a) in writing or evidenced in writing ; or*

*(b) in a form which accords with practices which the parties have established between themselves ; or*

*(c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned...”*

*... Kif qalet din il-Qorti kif presjeduta, fid-decizjoni taghha tat- 23 ta` Jannar, 2007 fil-kawza fl-ismijiet **Mrbookmaker.com Ltd. (C27649) vs Stichting De Nationale Sporttotalisator, Entita` Estera**, wara ezami tal-Brussels Regulations, persuna b`domicilju fi Stat Membru ghandha tigi infittxija f`dak l-Istat Membru u dan ghall-fini ta` l-artikolu 2 (1). Il-preambolu 11 ta` l-istess regolamenti jghid :*

*“The rules of jurisdiction must be highly predictable and founded on the principle that jurisdiction is generally based on the defendant`s domicile and jurisdiction must always be available on this ground ...The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.”*

*Fil-kawza deciza mill-Qrati Ewropej fl-ismijiet **Kalfelis vs Shroder**, Case 189/1987 (Reports 1988 page 05565) inghad li “all exceptions to the rule that the defendant must be sued in the state of his domicile are to be construed narrowly”. Dan kien bazat fuq il-principju tad-dritt generali tal-konvenut, ossija dak li jigi imharrek fid-domicilju tieghu (Ara f`dan is-sens ukoll is-sentenza tal- European Court of Justice fil-kawza “**Athanasios Kalfelis vs Bankhaus Schroder, Munchmeyer, Hengst and Co.**, deciza mill-Fifth Chamber fis-27 ta` Settembru 1988, Case no 189/87 European Court Reports 5565, u s-sentenza lokali fl-ismijiet **Bell Med Limited C26412 Vs Pari Mutuel Urban** deciza mill-Qorti ta` L-Appell Civil Superjuri fit-18 ta` Settembru 2009.*

Il-Qorti tirreferi għall-kawza deciza fit-30 ta` Gunju, 2011 minn din il-Qorti presjeduta mill-Imhalled Mark Chetcuti fl-ismijiet **Avukat Dr. Edward DeBono nomine vs No Stop Technology Limited** (Citazz. Nru. 1049/10) fejn intqal :

“L-abdikazzjoni għal gurdizzjoni ta` forum skond il-principji normali legali kif enunzati fil-Council Regulation 44/2001 hi eccezzjoni għar-regola u bhala tali trid tirrizulta b`mod car u univoku. Din hi l-interpretazzjoni kostanti kif tirrizulta mill-gurisprudenza Maltija u hi l-istess anki fil-forum Ewropew fejn fis-sentenza deciza mill-**First Chamber tal-European Court of Justice** fit-12 ta` Ottubru 2008 fl-ismijiet **Nicole Hassett vs South Eastern Health Board and Cheryl Doherty vs North Western Health Board** gie stipulat is-segwenti: 18. Moreover, as is stated in the 11th recital in the preamble to Regulation No. 44/2001, jurisdiction based on the defendant`s domicile – in accordance with the general rule – **must always be available, save in a few well defined situations** in which the subject matter of the litigation or the autonomy of the parties warrants a different linking factor. **Such situations must accordingly be interpreted strictly.**”

Jidher għalhekk li l-eccezzjonijiet għal artikolu 2 fuq riferit ta` din l-EC Regulation għandhom jigu interpretati b` mod ristrett.

Sentenza oħra rilevanti hija dik illi tat din il-Qorti (**PA/SM**) fl-4 ta` Dicembru 2014 fil-kawza “**Alpha Briggs Mediterranean Limited (C38859) v. Briggs Environmental Services Limited**”.

Inghad hekk :-

10.2 Ir-regolament tal-Unjoni Ewropea 44/2001 :

10.2.1. Illi dan ir-Regolament għandu forza ta` Ligi f`Malta u hu applikabbli b`mod dirett ;

10.2.2. Illi dan ir-Regolament japplika għal kaz odjern billi dan hu kwistjoni ta` natura civili u mhux eskluż mill-operat tal-istess Regolament ;

10.2.3. Illi dan ir-Regolament japplika wkoll a bazi tal-artiklu 742 (6) tal-Kap 12 tal-Ligi ta` Malta ;

10.2.4. Illi l-artiklu 2 tal-imsemmi Regolament jistabilixxi li :

“persons domiciled in a Member State shall, whatever their nationality, be sued in the Courts of that Member State”;

10.2.5. Illi dan gie ribadit mill-First Chamber tal-Qorti Ewropea tal-Gustizzja fil-kaz “Nicole Hassett vs South Eastern Health Board u Cheryl Doherty

*vs North Western Health Board tat-2 t'Ottubru, 2008, citati mill-istess socjeta` intimata, (ara foll 80) ;*

*10.2.6. Illi kif komplet tirribadixxi l-istess qorti indikata fil-paragrafu precedenti fil-kawza numru C - 281/02 minnha wkoll citata fl-istess nota: (ara foll 80) ;*

*“It must be observed, first, that Article 2 of the Brussels Convention is mandatory in nature and that, according to its terms, there can be no derogation from the principle it lays down except in the cases provided for by the Convention” ;*

*10.2.7. Illi ghalhekk ghandu jkun pacifiku li kemm ir- Regolamenti in dizamina u l-kazistika Ewropea li tinforzha, jirrikjedu li wiehed ghandu jigi mharrek fl-istat Membru fejn l-istess intimat ikun domiciljat ;*

*10.2.8. Illi jirrizulta li s-socjeta` intimata :*

*10.2.8.i. Hi registrata l-Iskozja, (ara fol 52) ;*

*10.2.8.ii. Topera wkoll l-Iskozja, (ara fol 50) ;*

*10.2.9. Illi l-ftehim tal-1 t`April, 2008, pattwit bejn il-partijiet ma jistabilixxi l-ebda klawsola rigwardanti l-gurisdizzjoni bejn il-kontendenti f`kaz ta` dizgwid ;*

*10.2.10. Illi l-oggett tal-istess ftehim kellu jigi ezercitat fl- Oman ;*

*Ikkunsidrat :*

*11.0. Illi minn ezami tal-fatti kif fuq sintetikament esposti jirrizulta segwenti :*

*11.1. Illi l-ftehim pattwit fuq riferit gie konkluz f`Malta ;*

*11.2. Illi s-socjeta` rikorrenti hi registrata u topera f`Malta ;*

*11.3. Illi s-socjeta` intimata hi registrata fl-Iskozja ;*

*11.4. Illi l-oggett meritu tal-ftehim hekk pattwit kellu jigi ezegwit l-Oman, (ara foll 77) ;*

*Ikkunsidrat :*

*12. Illi tenut kont tas-suespost ghandu jkun pacifiku li l-anqas l-artiklu 5 tar-Regolament Ewropei Numru 44/2001, ma` japplikaw ghall-vertenza odjerna”.*

*L-eccezzjoni ghal Reg 2(1) tal-Brussels 1 tinsab raffigurata fl-Art 5 :-*

*“A person domiciled in a Member State may, in another Member State, be sued :*

*1. (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question ;*

*(b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be :*

*- in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,*

*- in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided,*

*(c) if subparagraph (b) does not apply then subparagraph (a) applies ;*

*2. in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties ;*

*3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur ;*

*4. as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings ;*

*5. as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated ;*

*6. as settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the Member State in which the trust is domiciled ;*

*7. as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question :*

*(a) has been arrested to secure such payment, or*

*(b) could have been so arrested, but bail or other security has been given;*

*provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage.”*

Din il-Qorti qieset l-Art 5 sabiex tevalwa jekk il-kaz tal-lum jidholx fil-parametri ta` d-disposizzjoni u b`hekk ikun hemm eccezzjoni ghar-regola generali li persuni b`domicilju fi Stat membru tal-Unjoni ghandhom, independement minn nazzjonalita` taghhom, jigu mharrka fl-Istat Membru fejn huma domiciljati.

Ta` rilevanza dwar jekk fil-kaz ta` *letters of credit* tapplikax xi wahda mill-istanzi stipulati fl-Art 5 hija l-konsiderazzjoni ta` decizjoni li nghatat ftit xhur qabel ma` dahlu fis-sehh l-emendi ghall-Brussels Convention 1968 bil-Brussels 1. Il-Qorti qed tirreferi ghas-sentenza moghija mis-Supreme Court of Judicature Cour of Appeal (Civil Division) on Appeal from the High Court of Justice Queens Bench Division (Commercial Court) fit-28 ta` Jannar 2000 fil-kawza bejn **“Credit Agricole Indosuez (appellant)”** u **“Chailease Finance Corporation”** (respondent).

Il-punti in disputa kienu :

(1) *whether England was "the place of performance of the obligation in question" for the purpose of Article 5(1) of the Brussels Convention and*

(2) *whether the bill of sale and acceptance of sale required to be presented by Chailease to CAI under an irrevocable stand-by letter of credit were non-conforming documents by reason of the fact that the date of delivery stated therein was 21 August 1998 when the credit stated that it was in respect of the sale agreement of a vessel for delivery during 17-20 August 1998.*

Il-fatti ta` dan il-kaz kienu :-

CAI kienet bank Franciz bi *branch* go Geneva. Din il-*branch* irrilaxxjat *letter of credit* a favur il-beneficjarju Chailease. Meta l-beneficjarju pprezenta d-dokumenti Geneva f`zewg okkazonijiet separati, dawn gew rifjutati. Fit-tielet okkazoni, regghu gew ipprezentati d-dokumenti necessarji flimkien ma` struzzjonijiet li l-pagament kellu jsir *by transmission to Chailease`s account at the Midland Bank in London*. Id-dokumenti kienu regghu gew rifjutati u saret kawza. It-termini tal-*letter of credit* kienu jawtorizzaw lill-beneficjarju li jaghzel fejn kellu jsehh il-pagament.

Dwar l-ewwel punt li jista` jassisti lil din il-Qorti fil-kwistjoni li ghandha quddiemha nghad hekk :-

## **“THE FIRST ISSUE**

7. It was and is the plaintiff's contention that its claim is based upon the failure of CAI to pay money and that, for the purposes of Article 5(1) of the Brussels Convention, the place of performance of the obligation in question was London in accordance with the instructions given to CAI upon the third presentation.

8. So far as material, the Convention provides :  
"Article 2.

Subject to the provisions of this Convention persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State.

*Special Jurisdiction.*

*Article 5*

A person domiciled in a Contracting State may, in another Contracting State be sued :-

1. matters relating to a contract in the Courts for the place of performance of the obligation in question .."

9. Thus, whereas, Article 2 prima facie required that the defendant, as a legal person domiciled in France, should be sued in that country, it was open to Chalease to establish the special jurisdiction of the English court under Article 5 on the basis that England was the place of performance of the obligation in question.

### **What was the obligation in question ?**

10. The European Court of Justice has held that, in order to identify the obligation in question, one must identify the obligation "which corresponds to the contractual right on which the plaintiff's action is based" see **Custom Made Commercial Limited -v- Stawa Metallbau** [1994] **ECR I-2913** and 2957 (para 23), affirming **de Bloos -v- Bouver** [1976] **ECR** 1947 at p.1508 (paras 11,14); and see generally **Kleinwort Benson -v- Glasgow City Council** [1997] per Lord Goff of Chieveley at 163H-164G.

11. The judge held that the relevant obligation was the obligation of CAI to pay the plaintiff in London pursuant to its instruction on the occasion of the third presentation. He said :

"It is true that that obligation does not arise unless and until conforming documents are presented to the bank, and that on the facts of this case that presentation had to take place in Geneva. But, provided that conforming

documents have been presented to the bank in Geneva, the contractual right on which the beneficiaries' action is thereafter based is the right to receive payment in London. No doubt the bank has a separate obligation to examine documents presented and to take up only conforming documents, although I should have thought that is likely to be a duty which is owed to the applicant for the credit, rather than to the beneficiaries. The beneficiary has no need to rely upon such a separate obligation. If conforming documents are presented, the bank owes an autonomous duty to the beneficiary to make payment to it at the place designated for payment. The beneficiary's entitlement is contingent not upon examination of the documents but upon their objective conformity. If the documents are, objectively judged, conforming, then the bank is obliged to pay the beneficiary at the designated place of payment. In the event that it does not do so, then the contractual obligation whose performance is sought in the ensuing judicial proceedings (employing the language used in **Shenavai -v- Kreischer** [1987] ECR 239 at para 18 on pages 255-6) is the obligation to pay the beneficiary at the designated place of payment."

12. For CAI, Mr Males QC has attacked those conclusions of the judge on the following basis. He submits that on the true construction of the letter of credit contract, and in accordance with the principles on which Article 5(1) is based, the 'obligation in question' was the bank's obligation to examine and take up conforming documents, which obligation was to be performed in Switzerland (at our counters in Geneva). He submits that the bank's obligation following receipt of conforming documents in Geneva, to pay 'as per your instructions' was dependent on and no more than secondary to that principal obligation. That being so, he relies upon the judgment of the European Court of Justice in **Shenavai v. Kreischer**, para 19 :-

"... in a particular case of a dispute concerned with a number of obligations arising under the same contract and forming the basis of the proceedings commenced by the plaintiff ... it will be the principal obligation which will determine ... (the Court's) jurisdiction"

He cites also the approach of the House of Lords in **Union Transport -v- Continental Lines** [1992] 1 WLR 15 and the references in the judgment of Lord Goff of Chievely to the "more fundamental obligation" and "the real ground of complaint".

13. Mr Males also submits that such a conclusion gives proper weight and effect to UCP 500 and the various articles within it which condition the bank's obligation to pay upon the proviso that the stipulated documents are presented, as well as emphasising the need for examination of such documents to ascertain whether they comply with the credit.

14. Mr Males referred us to the decision in **Bank of Baroda -v- Vysya Bank** [1994] 1 Lloyd's Rep 87 in which, for the purposes of Article 4 of the Rome Convention on governing law, Mance J held that the performance which is



characteristic of the contract of a letter of credit is the acceptance of conforming documents at the place of presentation, observing in that context that the place of payment under the credit is generally insignificant. Whilst acknowledging that the decision in that case was concerned with a different test, Mr Males relies upon it (a) as recognising the importance to banks and beneficiaries of a simple and clear test, a consideration which he submits is also applicable to 5(1) of the Brussels Convention, (b) as demonstrating that the principal matter with which such a contract is concerned is the presentation and acceptance of documents and (c) as demonstrating that to hold that the relevant obligation for the purposes of Article 5(1) is that of payment would mean that in many letter of credit cases there would be no substantial connecting factor between the dispute and the forum of the court called upon to hear it, contrary to the broad principle underlying Article 5(1) that a close connecting factor should be present to establish the special jurisdiction provided for: see **Shenavai -v- Kreischer** at para 18 and **Martin Peters Bauunternehmung GmbH -v- Zuid Nederlandse Aannemers Vereniging** [1993] ECR 987 at paras 9-11. 15. Forceful as Mr Males' submissions have been, I do not consider that they can succeed. In the **Kleinwort Benson** case at p.164E-G Lord Goff stated: "(4) It follows that, in order to identify the relevant court, it is necessary first to identify the obligation in question. This was made plain in **Ets. A. de Bloos s.p.r.l. -v- Societe en Commandite Par Actions Bouyer ...** in which the European Court of Justice held, at p.1508, para. 11, that the word "obligation" in article 5(1) refers to "the contractual obligation forming the basis of the legal proceedings."

16. The Court of Justice subsequently affirmed that "the obligation" "cannot be interpreted as referring to any obligation whatsoever arising under the contract in question, but is rather that which corresponds to the contractual right on which the plaintiff's action is based." See **Custom Made Commercial Limited -v- Stawa Metallbau G.m.b.H.** (Case C288/92) [1994] ECR 1-2913 2957 (para 23)." See also the observation of Lord Clyde at p.181C: "Moreover the reference is to 'the obligation in question'. That is a reference not to the contract but the obligation which is at the heart of the dispute."

17. The claim in this case is based on the contractual right of Chailease to be paid, conditional on presentation of conforming documents prior to expiry of the credit. Where a claim is based upon failure to pay money, the obligation in question is the obligation to pay the money, and the place of payment is the place of performance for the purposes of Article 5(1): see the **Custom Made Commercial** case referred to by Lord Goff at paras 23 and 29; see also **Briggs: Civil Jurisdiction and Judgments**(2nd ed) 1997 paras 2.136-137.

18. It seems to me that the attempt of Mr Males to characterise the obligation of CAI to accept the conforming documents as the principal obligation, with payment merely dependent upon (and therefore secondary to) it, must fail. It certainly does not seem to me that he can derive assistance from the **Bank of Baroda -v Vysya..** The test for ascertaining the jurisdiction with which the

contract has the closest connection for the purposes of the Rome Convention, which was at issue in that case, is a different test for a different purpose from that under Article 5(1) of the Brussels Convention. In the **Custom Made Commercial** case, the European Court of Justice considered, and expressly rejected, the argument that Article 5(1) does not apply to the place of performance of a payment obligation because so to apply it would confer jurisdiction on a court which otherwise had no connection with the dispute.

19. So far as the obligation of CAI to examine and take up documents is concerned, Chailease do not sue or otherwise base their cause of action upon an allegation of breach of that obligation; they base it simply upon the refusal to pay. As Mr Page put it in argument, provided CAI pays under the letter of credit, it is a matter of complete indifference to Chailease whether it takes up or examines the documents. It is the failure to pay which is 'the real ground', if not the only ground, of Chailease's complaint.

20. In **Shenavai -v- Kreischer** the European Court of Justice was concerned with contracts of employment, which it was acknowledged (at para 16 of the judgment) differ from other contracts by virtue of 'certain particularities', on account of which the court best suited to resolve disputes under such contracts is the court of 'the place in which the characteristic obligation of such contract is to be performed'. However, the Court stated

"17. When no such particularities exist, it is neither necessary nor appropriate to identify the obligation which characterizes the contract and to centralize at the place of performance thereof jurisdiction, based on place of performance, over disputes concerning all the obligations under the contract. The variety and multiplicity of contracts as a whole are such that the above criterion might in those other cases create uncertainty as to jurisdiction, whereas it is precisely such uncertainty which the Convention is designed to reduce.

18. On the other hand, no such uncertainty exists in most cases if regard is had solely to the contractual obligation whose performance is sought in the judicial proceedings. The place in which that obligation is to be performed usually constitutes the closest connecting factor between the dispute and the court having jurisdiction over it; it is this connecting factor which explains why, in contractual matters, it is the court of the place of performance of the obligation which has jurisdiction." (emphasis added)

I have emphasised the word 'usually' because it seems to me clear that the Court was there explaining the broad rationale for the special jurisdiction rule in Article 5(1), rather than indicating that it is necessary in all cases that the obligation sued on should be demonstrably the closest connecting factor. Thus, it also seems clear to me that, following the decision in **Shenavai -v- Kreischer**, in contract cases other than those concerning contracts of employment it is neither necessary nor appropriate to identify the obligation which characterises the contract, but rather to identify the contractual obligation of which performance is sought (in this case payment).....Accordingly, it seems clear to me that the

*obligation in question in these proceedings is the obligation to make payment under the credit.”*

Imbagħad il-Qorti kompliet telabora dwar fejn kien il-*place of performance* ta` l-obbligazzjoni, ossija l-*place of payment*.

**Jidher illi l-kaz kien sottolineat illi huma l-qrati tal-post tat-twettiq ta` l-obbligazzjoni tal-pagament, li għandhom gurdizzjoni jisimghu u jiddeciedu kaz dwar *letter of credit*.**

Issa minn ezami tal-Art 5 jidher ukoll illi ladarba *letter of credit* ma tinkwadrax ruhha taht *bejgh ta` oggetti* jew *provvista ta` servizzi* kif ikkontemplati fis-subinciz (b) tal-Art 5, għandu japplika bhal fil-kawza fuq riferita dak stipulat fis- subinciz (a) tal-Art 5(1) ossija illi l-qorti tal-post tat-twettiq ta` l-obbligazzjoni għandha gurdizzjoni. L-obbligu kien li l-bank attur jwettaq l-obbligu tieghu bil-pagament li sar Malta. Għalhekk din il-Qorti għandha gurdizzjoni sabiex tisma` u tiddeciedi din il-kawza fid-dawl ta` l-eccezzjoni għar-regola generali stabbilita` fl-Art 2(1) tar-Regulation.

Din il-Qorti mhijiex sejra tidhol fil-kwistjoni ta` l-applikabbilita` o meno ta` l-Art 5(5) tar-Regulation li jipprovdi li jista` jkun hemm gurdizzjoni f` dak li għandu x` jaqsam ma` kwistjoni li torigina mill-operazzjonijiet ta` fergħa, agenzija jew stabbiliment iehor, fil-qrati tal-post li fih jkunu jinstabu l-fergħa, l-agenzija jew l-istabbiliment, peress illi l-konvenut huwa Standard Chartered Bank registrat r-Renju Unit, u Standard Chartered Bank Bahrain mhuwiex parti fil-kawza. L-Art 2(1) tar-Regulation mhuwiex applikabbli.

#### **L-ewwel eccezzjoni qegħda tkun respinta.**

#### **IV. It-tieni eccezzjoni (Legittimu kontradittur)**

Bit-tieni eccezzjoni, il-bank konvenut qieghed jeccepixxi li kien Standard Chartered Bank Bahrain Branch li hareg il-*letter of credit* meriu tal-kawza mhux il-bank konvenut ; għalhekk il-kawza kellha tkun intavolata kontra Standard Chartered Bank Bahrain Branch u/jew is-socjeta` Maltija beneficcjarja, klijenta tal-bank attur jew kontra haddiehor.

Hemm qbil bejn il-kontendenti li Standard Chartered Bank Bahrain Branch kien l-*issuing bank*. Anke abbazi tad-dokumenti esebiti, il-kuntatti li

saru kienu bejn HSBC Bank Malta plc u Standard Chartered Bank Bahrain Branch. Irrizulta wkoll illi kieku kellha titnehha l-*injunction* imposta mill-Qorti ta` Bahrain, Standard Chartered Bank Bahrain Branch kien lest jipprocedi bil-hlas lill-bank attur. Bhala fatt qed jistenna l-ezitu tal-pendenza gudizzjarja pendenti fil-Bahrain.

Ghandu jinghad li sal-lum il-provi kienu kkoncentrati dwar jekk Standard Chartered Bank Bahrain Branch hijiex entita` separata u distinta mill-bank konvenut ghall-fini ta` din il-kawza.

Il-bank konvenut isostni illi skont ir-regoli ta` l-UCP 600, huwa espressament dikjarat illi branch ta` bank ghandha titqies bhala entita` separata mill-*Head office*.

Madanakollu l-bank attur laqa` ghal dan billi sostna li dawk ir-regoli japplikaw ghal *letter of credit rules* u ghandhom jigu wzati ghall-iskop ta` l-istess regoli biss.

Kienet citata sentenza tal-High Court ta` New Delhi fil-kawza “**Tata Motors Ltd v. Jsc Vtb Bank**”, fejn inghad illi l-Art 3 tal-UCP 600 “*has to be limited for the purpose of documentary credits and not to make branches of a bank separate entitites in all respects.*”

Din il-Qorti hija tal-fehma li l-Art 3 tal-UCP 600 ghandu jigi ezaminat fil-kuntest tieghu, u mhux jigi estiz ghal materji ohra, fosthom id-determinazzjoni ta` jekk *branch* ghandux ikun meqjus b`personalita` guridika separata mill-*head office*.

Din il-Qorti qieset dak li qalu l-esperti legali esteri tal-partijiet dwar jekk skont il-ligi tal-Bahrain, *branch* ta` bank titqiesx bhala entita` separata.

Il-Qorti tghid mill-ewwel li l-opinjoni espressi mill-konsulenti ghall-fini ta` *proof of foreign law* kienu konkliggenti u jaslu ghal konkluzjonijiet opposti.

Il-Qorti rat xi siti elettronici fosthom, dak amministrat mill-*Bahrain Economic Development Board* fejn jinghad illi *a foreign company branch* (bhalma rrizulta li hija registrata *Standard Chartered Bank Bahrain*) giet definita bhala :

*“A branch of a foreign company which is incorporated and registered outside the Kingdom of Bahrain may be registered as an operational office, a representative office, or a regional office.*

### **8.1 Main features of a Foreign Company Branch :**

- *The parent company shall bear all liability of its branch in Bahrain*
- *Business operations are allowed only for an operational offices*
- *Representative and regional offices are only permitted to undertake marketing and promotion*
- *Banking, insurance and investment activities are allowed (operational offices only)*
- *Local office presence is required*
- *Minimum share capital is not applicable*
- *Branch manager is required*
- *A local sponsor is required only for an operational office, with the exception of branches licensed by Central Bank of Bahrain (CBB) or the Committee For Organizing Engineering Professional Practice (COEPP)”.*

Mis-sit tal-Ministry of Industry and Commerce ta` The Kingdom of Bahrain irrizulta wkoll illi :

*“Foreign Company Branch -A branch of a foreign company which is incorporated and registered outside the Kingdom of Bahrain, may be established as an operational office or as a representative office. The limits of liability are the same as the parent company. Local operations are allowed only for an operational office. A representative office is only permitted to undertake marketing and promotion. A branch of a foreign company requires a registered branch manager. A local sponsor is required only for an operational office. “*

Anke f`siti elettronici privati li jassistu lil persuni interessati jaghmlu negozju fil-Bahrain, fosthom MoIC Centrs – Bahrain Investors Center jaghtu l-istess definizzjoni ta` *Foreign Company Branch* :

*A branch of a foreign company which is incorporated and registered outside the Kingdom of Bahrain, may be established as an operational office, a representative office, or a regional office.*

### **Main features of this company type are :**

- *Limits of liability same as the parent company*
- *Local operations are allowed only for an operational office*
- *Representative and regional Office are only permitted to undertake marketing and promotion*
- *Banking and insurance activities are allowed (operational offices only)*
- *Local office presence is required*

- *Minimum share capital is not applicable*
- *Branch manager is required*
- *A local sponsor is required only for an operational office*

Fl-istess sens huwa l-artikolu ta' *Info-Prod Research (Middle East) Ltd* li dwar id-diversi *business forms and structures* f'Bahrain spjega li bhala *legal structures for non-Bahrainis* jezistu xi eccezzjonijiet ghar-regolazzjoni rigida ezistenti dwar *foreign participation* fosthom l-eccezzjoni tal-branch of foreign company :

*The Law of Commercial Companies provides that companies established outside Bahrain may open branches or offices in Bahrain provided that the approval of the Minister of Commerce and Agriculture is obtained and a local sponsor is appointed. The Minister will not grant approval unless he is satisfied that the parent company is financially sound and will assume full responsibility for liabilities of the branch. The sponsor must be a Bahraini merchant, either a company or an individual. The Companies Law exempts branch offices of foreign companies from having a Bahraini sponsor if these offices use Bahrain as a regional center or as a representative office for their business activities.* (ara wkoll is-sit <http://www.albawaba.com/business/bahrain-legal-bank-trade-systems>)

Fil-Pag 88 tal-ktieb **Middle East and Arabic Countries : Company Laws and Regulations Handbook Vol I. Strategic Information and Basic Laws (International Business Publishing USA 2013 Edition updated)** a branch of foreign companies fil-Bahrian hija deskritta:

*“The law of commercial companies provides that companies established outside Bahrain may open branches or offices in Bahrain provided that the approval of the Minister of Commerce and Agriculture is obtained and a local sponsor is appointed. The Minister will not grant approval unless he is satisfied that the parent company is financially sound and will assume full responsibility for liabilities of the branch. The sponsor must be a Bahraini merchant, either a company or an individual. The Company Law exempts branch offices of foreign companies from having a Bahraini sponsor if these offices uses Bahrain as a regional center or a registration office for their business activities.”*

Referenza qed issir ukoll ghad-decizjonijiet ikkwotati mill-bank konvenut, precizament dawk rapportati fil-pagna 3 sa 6 tad-dokument imhejji mill-espert legali tal-bank konvenut.

Minn qari ta` dak li kien deciz fil-Cassation case number 189/1995 u fil-Cassation case number 9/2007, jidher li dak li gie sottolinjat kien illi *branch* ta` bank fil-Bahrain ghandha tigi kkunsidrata bhala *“financial institution with its own balance sheet in which it records all its operations, profits, losses, rights and*

*obligations, ...and that the financial institution is not empowered to transfer its profits abroad except within specified limits.*” Minn dawn is-sentenzi li rrizulta kien li *“the existence of separate accounts in this manner invalidates the contention that the accounts of the Bahrain branch are unified with those of its head office or any of its other branches.”* Jidher ghalhekk li l-Qrati fil-kawzi citati ma ddikjarawx illi l-Bahraini Branch ghandha personalita` legali u guridika li hija distinta minn dik tal-Main Office ta` l-istess Bank izda li *per se*, il-branch topera b` mod separat u distint mill-operazzjonijiet tal-Main Office.

Il-Qorti rat ukoll il-kummenti tal-espert legali tal-bank attur li ddikjara li dawn is-sentenzi inghataw qabel ma sehew emendi sostantivi fis-sistema legali relevanti ghal dan il-mertu u ghalhekk dawn ma jistghux jitqiesu li ghadhom applikabli.

Fl-isfond ta' dan kollu, din il-Qorti taghmel referenza ghal decizjoni **“Smith, Stone and Knight Limited v. Birmingham”** ([1939] 4 All ER 116.

Hemm kienet qed tigi trattata l-kwistjoni dwar jekk kellhiex tigi applikata r-regola *to protect the fact of separate corporate identities*, li fil-kawza giet *circumvented because the subsidiary was the agent, employee or tool of the parent.*

Li huwa nteressanti minn din il-kawza, ghalkemm il-punt in kwistjoni ma jikkoincidix ma` dak in ezami, huma sitt kwesiti li gew avvanzati minn Atkinson J sabiex jassistu lil Qorti dwar jekk kumpanija kinitx biss agent jew *nominee ta` parent company*. Dawn huma :-

- “(a) Were the profits treated as profits of the parent?*
- (b) Were the persons conducting the business appointed by the parent?*
- (c) Was the parent the head and brain of the trading venture?*
- (d) Did the parent govern the venture, decide what should be done and what capital should be embarked on the venture?*
- (e) Did the parent make the profits by its skill and direction?*
- (f) Was the parent in effectual and constant control?”*

Fil-kaz taht ezami, fuq l-iskorta tal-provi, jidher li risposti ghal dawn il-kweziti jistghu jinghataw biss ghad-domandi bl-ittri c, d, e, u f. Ir-risposta ghalihom hija li kien il-bank tal-Bahrain li kien involut fl-operazzjoni bankarja, ha hsiebha mill-bidu nett u li l-*head office* kienet qeghda allegatament tagixxi ta` messaggier meta kien hemm bzonn sabiex jigu osservati r-regoli ta` kif tintbaghat *letter of credit* tramite *authenticated SWIFT messages*.

Din il-Qorti hija tal-fehma li ghalkemm mhijiex fil-kompetenza taghha li tiddeciedi jekk skont il-ligi ta` Bahrain, *branch* ghandhiex personalita` guridika separata u distinta minn dik tal-*Main Office*, jirrizulta li *branch* hija ufficcju fejn, tramite l-istess, kumpannija barranija tkun tista` topera negozju fil-Bahrain.

Irrizulta wkoll illi l-*branch* tigi trattata bhala separata mill-*main office* fi kwistjonijiet bhalma huma, fost ohrajn, taxxi, licenzji u anke transazzjonijiet partikolari li jigu effettwati fl-istess *branch*.

Irrizulta li r-registrazzjoni u l-licenzja ta` l-*branch* hija kompletament separata u distinta minn dik tal-*head office*.

Irrizulta li jinzammu *records* separati u distinti minn dawk tal-*head office*.

Madanakollu rrizulta wkoll li l-*main office* tinzamm responsabbli ghal-*liabilities* ta` l-*branch* sabiex ir-registrazzjoni ta` l-*branch* tkun wahda valida.

Jidher li *branch as such* ma tistax tibdel il-*policies* tal-*main office* jew tagixxi b` mod kuntrarju ghal dak li tordna l-*main office*.

Jirrizulta wkoll illi fil-Bahrain *branch office* tista` topera f` isimha u tista` tharrek jew tigi mharrka hi stess.

Din il-Qorti tifhem illi fil-proceduri li saru Bahrain kienet il-*branch* li giet notifikata bl-atti ghalkemm in-nomenklatura utilizzata fl-*occhio* kienet dik ta` Standard Chartered plc. Jidher li sar hekk ghaliex l-operazzjoni bankarja in kwistjoni saret permezz tal-*branch* kif ukoll ghaliex il-*branch* tal-Bahrain setghet tigi mharrka hemm.

Minkejja li bhala l-*issuing bank*, l-iStandard Chartered Bank Bahrain Branch kienet involuta fil-kwistjoni taht ezami ma jfissirx illi l-bank konvenut registrat fir-Renju Unit ma kellux ikun konvenut fil-kawza tal-lum.

Dan qed jinghad ghaliex peress li l-bank konvenut kien involut fl-operazzjoni anke jekk allegatament agixxa bhala messaggier bejn il-bank Malti u l-*branch* tal-Bahrain huwa imperattiv li l-bank konvenut ikun parti fil-procediment tal-lum sabiex iwiegeb ghall-istanza attrici.



Tajjeb jinghad illi fl-istadju attwali tal-kawza l-Qorti qeghda tillimita ruhha illi tiddeciedi l-ecezzjonijiet preliminari. Ghadha ma bdietx tqis il-mertu tal-kwistjoni. Ghadhom ma tressqux provi sabiex jistabilixxu fuq bilanc ta` probabilitajiet l-involviment tal-bank konvenut vis-à-vis il-bank attur. Tirrileva biss illi meta bdew isiru diskussjonijiet dwar il-kwistjoni *at higher levels* dahlu fix-xena direttament ufficjali gholja tal-bank attur ukoll. Lanqas ma tressqu provi konklussivi fl-istadju attwali tal-kawza dwar ir-relazzjoni ta` bejn il-bank attur u Standard Chartered Bank Bahrain Branch sabiex jigi stabbilit jekk fil-kaz illi Standard Chartered Bank Bahrain Branch ikun inadempjenti in linea generali u in partikolari fil-konfront tal-bank attur, jidholx fix-xena l-bank konvenut. Dawn huma provi li jolqtu direttament il-mertu u li l-Qorti ghadha ma semghetx. Aktar milli kif topera Standard Chartered Bank Bahrain Branch skont il-ligi tal-Bahrain, tkun trid issir il-prova ta` kif skont il-ligijiet bankarji hija regolata r-relazzjoni bejn il-bank attur u dak konvenut dan tal-ahhar kemm de proprio kif ukoll vis-à-vis il-fergha tieghu fil-Bahrain. Ghalhekk il-bank konvenut huwa legittimu kontraddittur tal-bank attur.

**Il-Qorti qeghda tichad it-tieni eccezzjoni wkoll.**

### **Decide**

**Ghar-ragunijiet kollha premessi, il-Qorti qeghda taqta` u tiddeciedi billi tichad l-ewwel u t-tieni eccezzjonijiet tal-bank konvenut.**

**L-ispejjez tas-sentenza tal-lum jibqghu riservati ghal gudizzju finali.**

**Onor. Joseph Zammit McKeon  
Imhalled**

**Amanda Cassar  
Deputat Registratur**