DISTRICT COURT OF NICOSIA
BEFORE: J. IOANNIDES, P.D.C.

Application No.: 905/2015

IN RELATION TO THE WORKS ON CREDIT INSTITUTIONS LAWS OF 1997 (No. 8) to 2015, L .66(I)/1997

-and-

IN RELATION TO THE RESOLUTION OF CREDIT AND OTHER INSTITUTIONS LAWS OF 2013-2014, L. 17(I)/2013

-and-

IN RELATION TO THE COMPANIES LAW, CAP.113

-and-

IN RELATION TO FBME BANK LIMITED, WHICH IS REGISTERED IN TANZANIA AND WAS REGISTERED IN CYPRUS AS AN OVERSEAS COMPANY PURSUANT TO SECTION 347 OF COMPANIES LAW, CAP.113

Application dated 22.12.2015 on behalf of the Central Bank of Cyprus and the Resolution Authority for the Issuance of an Order ordering for the Special Liquidation of FBME Bank Ltd and other related Orders

Date: 10 May, 2017.

Appearances.

For the Applicants: Mr. N. Georgiades with Mrs. A. Athanasiadou for Georgiades and Pelides LLC.

For the Respondent FBME Bank Limited and for the Shareholders thereof (Ayoub Farid Michel Saab and Fadi Michel): Mr. G. Z. Georgiou with Mrs. N. Vanezi, Mr. Pashiardis and Mr. Katsamprokki for Marcides, Marcides & Co LLC and for G. Z. Georgiou & Associates LLC.

For the Depositors-Creditors (Airport Management Company Ltd, Alamo Ltd): Dr. K. Chrysostomides with Mr. Al. Taliadoros and Mrs. D. Georgiadou for Dr. K. Chrysostomides & Co LLC.

J U D G M E N T

The Central Bank of Cyprus and the Resolution Authority (that is the Central Bank of Cyprus as Resolution Authority) claim, with the Application in question, for an order of

the Court for the special liquidation of FBME Bank Ltd, which is a Bank incorporated – registered in Tanzania, and for the appointment of a special liquidator thereof. It is noted here that the competent authorities of Tanzania have granted a license to FBME Bank Ltd to carry on, and continues to carry on banking operations in Tanzania. Its registered office is at 7 Samora Avenue, P.O. Box 8298, Dar Es Salaam, Tanzania. FBME Bank Ltd has been registered in Cyprus as an overseas Company pursuant to Companies Law, Cap. 113. The Central Bank of Cyprus granted a license to FBME Bank Ltd to operate a branch in Cyprus.

The legal basis of the Petition is set out verbatim:

> "*This Application is based on the Works on Credit Institutions Laws of 1997 to (NO. 8) L. 66(I)/1997 including sections 2, 2(A), 4, 4(A), 8, 10 (G), 26, 30, 31, 33 BB, 41 (D) and Part XII, on the Resolution of Credit and Other Institutions Laws of 2013 to 2014, L. 17(I)/2013 including sections 2, 3, 4, 5, 6, 7, 9, 14, 15, 16, 18 and 27, on the Central Bank of Cyprus Laws of 2002 to (NO.3) 2014 L. 138(I)/2002 including sections 2, 5 and 6, on the Incorporation and Operation of Deposit Protection Schemes and Resolution of Credit and Other Institutions Law of 2013 L. 16(I)/2013 including sections 1-13, on the Incorporation and Operation of Deposit Protection Schemes and Resolution of Credit and Other Institutions (Amending) Regulations of 2013, on the Companies Law Cap. 113 (as amended) including sections 2, 211, 213, 214, 226, 227, 233, 259, 300, 347, 352 and 362, on the Companies Regulations including Regulations 2, 3, 4 and 8, on the Civil Procedure Regulations O. 48 r. 1-13, O. 64, on the Civil Procedure Law, Cap. 6, sections 4-9, on the Courts of Justice Law 14/60 including sections 29 and 32, on the Companies (Winding Up) Regulations of 1933, Regulation 92, on the English Companies (Winding Up) Rules of 1949 and on the principles of common law, of the general and inherent powers and practice of the Court*."

The Applicants had initially filed two Applications, one Ex Parte and one By Summons. They were claiming for exactly the same relief with both of the Applications. The Court did not issue the requested orders with the Ex Parte Application for the reasons explained in its Interim Judgment dated 29.12.15. This Judgment thereof was the subject matter of an Application on behalf of the Applicants for the issuance of prerogative orders (the Judgment dated 12.1.16, in the **Civil Application 178/15, Application of the Applicants for the issuance of Prerogative Orders,** is relevant). Finally, the Applicants withdrew the Application they filed before the Supreme Court for the issuance of prerogative orders. Subsequently, the Court dismissed one of the two Applications for special liquidation by another Interim Judgment thereof dated 16.3.16. The reasons of the dismissal appear in the Judgment.

The Application is supported by an affidavit of Mr. Yiagkos Demetriou, Deputy Senior Manager in the Central Bank of Cyprus, who states the following in paragraph 1 of his affidavit:

"*I hold the position of the Deputy Senior Manager at the Central Bank of Cyprus and I am duly authorized by the CBC and the Resolution Authority (the "RA") (hereinafter collectively referred to as the "CBC") to swear this affidavit on their behalf. My responsibilities at the CBC include the supervision and regulation of licensed credit institutions ("LCI"), including their licensing. I have personal knowledge of the facts of this case as of my capacity as well as from facts and information maintained in the CBC's relevant files. When I refer to facts, for which I have no knowledge, I disclose the source of my information. Any references made to legal matters are made following relevant advice of the lawyers acting on behalf of the CBC*".

As was stated, the Court did not issue the requested orders with the Ex Parte Application. Oppositions were filed with its directions, both by the Respondent and Creditors thereof. Specifically, the Respondent filed its Opposition on 12.1.16, which is based on the following grounds:

"1. *The Court does not have jurisdiction to adjudicate this application and issue the requested orders, since the Respondent has been incorporated under the Laws of the Republic of Tanzania and has its seat out of the jurisdiction of the Cyprus Courts.*

2. *The requested orders are contrary to the European Legislation, to the rules of international law, the Tanzanian Law and the Constitution of the Republic of Cyprus.*

3. *These proceedings are void or/and irregular or/and improper or/and they cannot lead to any legal results, since they have been initiated in breach of express provisions of legislation.*

4. *The conditions, laid down by the legislation for the issuance of a special liquidation order, are not satisfied.*

5. *The Applicants do not have any locus standi, based on the relevant legislation, to both request at the same time for the issuance of the said orders and/or they do not have any locus standi in filing this application and/or they are not authorized persons and/or the application is not accompanied by a retainer.*

6. *The application is premature or/and the necessary conditions for its filing have not been crystallized, since the Recourse 1658/15, against the decision to revoke the operation license of the Respondent's branch, as well as an application for an interim order staying the said revocation, both of which were filed on 22/12/15 and are set for 22/1/16 before the Administrative Court, are pending.*

7. *The application is not supported by an affidavit or/and the affidavit, which supports the same, is deferred or/and is void.*

8. *The application is not supported by the consent of the proposed special liquidator or/and by any evidence of the qualifications and skills thereof on issues of special liquidation of a LCI.*

9. *The proposed special liquidator does not satisfy the criteria of the law to be appointed or/and does not have the necessary experience and qualifications in order to act as a special liquidator or/and no specific reason is set out for the appointment of Mr. Peter Ioannides constituting him as the proper person to be appointed as a special liquidator.*

10. The application constitutes an abuse or/and an excess of power by the Applicants, since it seeks for the special liquidation of the Respondent in Tanzania while the Respondent's license to carry on banking activities in Tanzania was never revoked or/and the Respondent is not under resolution within the context of Law 17(I)/2013, as has been amended.

11. The Applicants filed this application maliciously and/or based on ulterior motives and/or interests, because they have maliciously and/or based on ulterior motives and/or interests revoked the license granted to the Respondent to carry on banking operations through the branch maintained in Cyprus, since the initial resolution measure, which was published in the Official Gazette of the Republic on 21/07/2014, Appendix Three, Part I, R.A.A. 356/2014 was for the sale of operations of the branch, which remains in force to date.

12. The conditions of section 4A of the Works on Credit Institutions Laws of 1997 (No. 8) to 2015, L. 66(I)/1997 are not met, because the Respondent was always in a position to fulfill its obligations towards its creditors and the liquidity of the credit institution specifically came up to 104% at the time of obtaining the resolution measures.

13. The conditions, of section 7(3) of the Resolution of Credit and Other Institutions Law L. 17(I)/2013, in order to render the recommendation of the revocation of the Respondent's license by Applicants 2 possible, are not met.

14. The Application is malicious and/or abusive and does not serve public interest, as it constitutes a premeditated act of destruction of the Respondent in order to cover up the illegal or/and irregular acts of the Applicants, which constituted the basis of the R.A.A. 356/2014 and continue to date, and tends to anticipate and/or adversely affect earlier judicial and/or arbitration proceedings and which have been raised and/or initiated in other jurisdictions outside the Republic of Cyprus.

15. The Applicants filed this Application in order to confirm and/or ratify their deferred wrong decision to place the Respondent's Branch under resolution pursuant to the R.A.A. 356/2015, before the competent Court, in which the recourse 1024/2014 is pending, decides on this matter.

16. The Applicants have caused damage to the Respondent by their own acts and omissions and created the context, which the Applicants invoke as the basis of their Application.

17. The application is contrary to public interest and specifically the interests of the creditors and only serves the interests of the Applicants, because the Applicants were and are able to pay all the depositors twice the amount, which the depositors will receive in case of issuance of the

requested orders, from the Depositors Protection Scheme and they do not do so in order not to burden the Scheme, a fact which the Applicants skillfully and deliberately conceal.

18. The issuance of the requested orders would only undermine the administration of justice and/or would not be proper and just for such an order to be issued under the circumstances, because they directly affect the interests of third persons, namely the depositors and creditors of the Respondents.

19. The legal basis, upon which the Application is based, is wrong and/or the sections of Companies Law Cap. 113, which are invoked by the Applicants, do not relate to the application in question or/and the necessary jurisdictional basis for the examination of the application pursuant to these articles does not exist.

20. The application is abusive and contrary to the interest of justice.

21. There is material concealment or/and non-disclosure of material facts or/and facts, which do not correspond to reality or/and which are misleading, are referred to in the affidavit, which accompanies the application.

22. An approval of this application will cause irreparable damage to the Respondent and particularly the depositors thereof.

23. It is proper and just that the discretion of the Court is, in this case, exercised in favor of the dismissal of the application.

24. Further grounds appear in the attached Affidavit of Mr. Ayoub Farid Michel Saab.

25. The application is void ab initio, because it is not supported by a legally made decision of a competent body within the context of Laws L.66(I)/97 and/or L.17(I)/2013 and/or 138(I)/2002 by the Applicants, CBC or/and Resolution Authority, in order to place the Respondent under a Special Resolution status.

26. The Application is void ab initio, because the authorization to the Applicants' lawyers for the initiation of the proceedings and filing of the Application was given by an incompetent or/and person, who is not legally entitled based on the relevant legislation to give such instructions and/or sign a retainer or/and was given in excess of power or/and defiance of power."

The Opposition is supported by an affidavit of Mr. Ayoub Farid Michel Saab, who states the following in paragraphs 1 and 2 of his affidavit:

"*1. I am the Chairman and 50% ultimate beneficial owner of FBME BANK LTD (the "Bank") which is a foreign company seated in Tanzania. The Bank carries on and conducts banking activities which includes the provision of financing and other banking facilities to the public, for which purpose it has a branch in Nicosia, Cyprus which is registered with the Cyprus Registrar of Companies and Official Receiver, under*

registration number AE 1830. I am authorised by the Bank and its Statutory Manager Mr. Lawrence Mafuru, to make this affidavit on its behalf.

2. I am the appropriate person to make this sworn affidavit for the purposes of this application. The facts and matters set out in this affidavit are within my own knowledge, due to my direct involvement in this matter, unless stated otherwise, and I believe them to be true. Where I refer to information supplied by others, the source of the information is identified; facts and matters derived from other sources are true to the best of my knowledge and belief."

A Joint Opposition was filed on 29.1.16 by two Creditors Depositors of FBME Bank Ltd. These are Airport Management Company Ltd of the Isle of Man, and Alamo Ltd of Malta. Their Opposition is based on the following grounds:

"*A) The Applicants do not have locus standi in seeking for the issuance and the Court lacks jurisdiction to make the issuance of the orders, which are sought with the ex parte/interim application dated 22.12.2015, for the following reasons:*

1. The Applicants filed two Applications on 22/12/2015, an originating and an ex parte (interim), although the provisions of Section 33BB of L.66(1)/1997, in the case of special liquidation of a Licensed Credit Institution ("LCI"), provide the filing of only one ex parte application, as originating.

2. Since the ex parte application dated 22/12/2015 in question was filed within the context of the Originating Application No. 905/2015, it therefore obtained the same number, the ex parte application in question is unavoidably considered as interim and not as originating.

3. The Court lacks jurisdiction and/or power to make the issuance of a final/perpetual order of liquidation of a company and appointment of a special liquidator, within the context of an interim application, just like the one in question.

4. Exactly the same relief is impermissibly sought with the originating application and the interim application and the said two applications are supported by affidavits of an identical content.

5. In case of issuance of the requested orders on the basis of the ex parte interim application, the dispute between the parties will be definitively resolved, since the Originating Application, the relief of which is identical to the ex parte, will remain without a subject matter, something which is legally and procedurally impermissible.

6. In any case, the interim ex parte application cannot succeed, because it was filed within the context of wrong originating means, that is within the context of an originating application (by summons), while the law and specifically section 33BB of L. 66(1)/1997 stipulates for

the filing of an ex parte originating application for the issuance of a special liquidation order and appointment of a special liquidator.

(B) According to the relevant legislation and specifically based on the provisions of section 27 of L.17(1)/2013 in combination with the provisions of section 33BB of L.66(1)/1997, the two Applicants do not have locus standi in filing the application of special liquidation in question together. Since the Applicants consider that the Respondent is still found under resolution, then according to the provisions of section 27 of L. 17(1)/2013, only the Resolution Authority had locus standi in filing a liquidation Application, while the CBC would have locus standi in filing an application of special liquidation based on the provisions of 33BB of L.66(1)/1997, only if the Respondent was not found under resolution.

(C) The Court lacks jurisdiction to issue an order of special liquidation of the Respondent in accordance with the provisions of section 33BB of L.66(1)/1997, given the fact that the Respondent company is registered in Tanzania and not in Cyprus and was simply registered in Cyprus as an overseas company, following a license of the Central Bank of Cyprus ("CBC") to operate a branch in Cyprus.

(D) The Court lacks jurisdiction to issue the requested orders, since the operation license of the Respondent, which is a company registered in Tanzania and not in Cyprus, was never revoked, and/or the Respondent was never placed under resolution within the context of Law 17(1)/2013.

(E) According to the relevant legislation, the CBC had a right to make a revocation of the license it had granted to the Respondent to carry on banking operations in Cyprus through its branch and not to seek for a special liquidation order of the Respondent, which is registered according to the laws of Tanzania and has its seat in Tanzania.

(F) It is not demonstrated with the application in question and the evidence, which has been adduced before the Court, that all the conditions set by section 33BB of Law 66(1)/1997 for the issuance of a special liquidation order are met and specifically the condition of serving the public interest is not met by the issuance of the requested order.

(G) It is concluded by the evidence, which has been adduced before the Court, both by the Applicants and the Respondent, that all the actions made by the CBC or/and the Resolution Authority, from 18/7/2014, when the CBC decided to place the Respondent's branch in Cyprus under a resolution status, to date, did not serve the public interest (which the Applicants themselves assimilate with the interest of the depositors of FBME), but resulted in the paralysis of the operations and activities of the depositors, in a way so as to be found at the verge of the economic destruction.

(H) The CBC decided to place the branch of FBME in Cyprus under resolution from 18/7/2014 and implement the sale of operations of the branch as resolution measures, without previously carrying out the proper or any search on the ability to implement this measure and/or without ascertaining the obvious in time, namely that this measure was

inappropriate in the present case and by allowing a period of 17 months to elapse until it decided to abandon the said resolution measure, by fully ignoring the rights and recommendations and/or views of the depositors and by preventing the depositors, for such a long period of time (17 months), from having access to their deposits, leading not only to the paralysis of their operations and their economic destruction, as a result, but also the drastic reduction of the possibilities to withdraw their deposits.

(I) The only result brought by the resolution measure, which the CBC decided and sought to implement for 17 months, was to create unnecessary huge expenses and costs, that resulted in a reduction of the depositors' deposits and a waste of the bank's reserves.

(J) Before the CBC placed FBME under its control, the depositors were not facing any problem with the accounts and the deposits they maintained in the said bank, all their operations and activities were carried out normally, contrary to what is going on from 18/7/2014 to date, during a period which the creditors are prevented from having any access and/or use and/or withdrawal of their deposits from the relevant accounts they maintain in the branch of FBME in Cyprus.

(IA) Since the Recourse number 1658/2015, which was filed on 22/12/2015 and by which the Respondent challenges the validity and legality of the decision of the CBC for the revocation of the operation license of the branch in Cyprus, is pending before the Administrative Court, as well as the application for the suspension of the decision for revocation, the condition of the revocation of the operation license, a condition determined in section 33BB in order for the Court to proceed with the issuance of the special liquidation order and the order of appointment of a special liquidator, cannot be considered to be met.

(IB) Further, the filing of the applications in question is premature, abusive and contradicts public interest and/or the interests of the depositors/creditors, given that FinCen itself has undertaken to review its relevant decisions concerning the activities of FBME, upon which the CBC relied in order to place FBME under a resolution status and decisions which are under suspension, following the issuance of a relevant interim order by an American Court.

(IC) The filing of the Applications for special liquidation of the Respondent on behalf of the Applicants contradicts public interest, because it constitutes a circumvention or/and a violation of the Procedural Orders, which were issued by the International Chamber of Commerce ICC ("ICC") and by which the Republic of Cyprus is requested, as a party of the arbitration not to take any measures, which would irretrievably destroy the operations of the Respondent's Branch in Cyprus, while the completion of the Arbitration is pending.

(ID) Since no document is attached to the affidavit accompanying the Application in question proving that the proposed person consents to his appointment as a special liquidator and additionally no evidence is set out proving that the proposed person meets the conditions set by subsection 3(a) of section 33BB of Law 66(I)/1997, the Court lacks

power and/or discretion and/or the ability to examine his competence and make his appointment as a special liquidator.

(IE) The Applicants invoke inabilities of the bank, which were, however, the result of their own inappropriate actions and/or omissions, as the basis to support the application in question."

It is noted here that ground "A" of the Opposition was the subject matter of an examination within the context of an Application filed by FBME Bank Ltd on 12.1.16 to set aside the Applications and/or annul the proceedings. The above ground of Opposition was dismissed by the Court's Interim Judgment dated 16.3.16.

The Opposition is supported by an affidavit of Mrs. Marilena Miltiadous, to the content of which I will refer hereinafter. According to her testimony, the two Companies are private Companies of limited liability by shares, which have been legally incorporated abroad. Both of them lawfully exercise various commercial activities, as they are described in detail in her affidavit. The said companies maintain various interest bearing current credit accounts on their name in the Respondent's branch in Cyprus, which were opened based on relevant written agreements which have been concluded between the said Companies and FBME Bank Ltd, for carrying on their commercial activities in many countries of the world. Specifically, AMC maintains, inter alia, two accounts in which the total amount of the credited balances amounted to €31.898.588,05 approximately plus interest until the day that the affidavit was signed. Alamo maintains, inter alia, three accounts on its name, in which the total amount of the credited balances amounted to €69.814.645,00 approximately plus interest until the day that the affidavit was signed. In paragraph 10 of her affidavit she refers to how important the said accounts are for carrying on the operations of the said Companies. In paragraph 12 of her affidavit she refers to the R.A.A. 356/2014 that concerns the decree of sale of the operations of the branch of FBME Bank Ltd in Cyprus and the consequences that the issuance of the said decree had on the two Companies, since the amounts in the above accounts are frozen from 21.7.14, date when the above R.A.A. was published, and the "special administrators" each time illegally and unjustifiably deny allowing the two Companies to withdraw their deposits or operate their accounts in any way. Reference is also made to the issuance of the Decision of the Central Bank of Cyprus on 21.12.15 to revoke the license granted to the Respondent to operate a branch in Cyprus. Finally, it is her position that the Court lacks jurisdiction to issue the requested order, because the Respondent is registered in Tanzania and not in Cyprus, because the Respondent's license was never revoked, because the Respondent was never placed under resolution within the context of Law 17(I)/2013 and for other reasons, as described in detail in paragraph 18(B) - (IE).

Supplementary affidavits were filed with the Court's leave. Mr. Yiagkos Demetriou filed a Supplementary Affidavit on 31.3.16. He, inter alia, refers therein to facts that took

place after the filing of the Application. He specifically states that FinCEN confirmed the final Ruling on 25.3.16, which it had issued on 29.7.15, to impose the Fifth Special Measure against FBME Bank Ltd by repeating, inter alia, that FBME constitutes an institution of primary money laundering concern. He states the following in paragraph 9 of his said Affidavit:

> "*As I have already stated in my First Affidavit, the actions of the Central Bank of Cyprus were not the decisions of FinCEN as such, but the direct and drastic consequences, which were caused on FBME and its operations as a result of these decisions. I do not therefore consider it necessary to make an extensive reference to the findings of FinCEN, but I will briefly refer to the following findings, since I consider that these negatively affect the international reputation of Cyprus and the confidence in the Cyprus Banking System (as I had also stated in paragraph 6.4 of my First Affidavit) and confirm that the public interest is served from the issuance of the order for special liquidation of the bank and the appointment of a special liquidator. I would like to note and stress the concern of the CBC for the finding of FinCEN, which I set out below that "The continuation of illicit activity at the bank's Tanzanian headquarters even after the BoT appointed a statutory manager on July 24, 2014, bolsters FinCEN's concern. Specifically, in early 2015, an alleged Hezbollah associate and the Tanzanian company he managed owned accounts at FBME". Further, the confirmation of the imposition of the Fifth Special Measure substantially confirms the "death sentence" of FBME, as I explain in para. 18 of my First Affidavit*."

While finishing Mr. Demetriou states that the branch no longer carries on nor can it carry on any operation in Cyprus after the revocation of the operation license. He is once again asking for the issuance of the requested orders "*in order to safeguard public interest, the protection of the depositors, the protection and strengthening of the stability of the Cyprus banking system and to rescue of the good reputation and credibility of Cyprus as an international financial center with appropriate and proper supervision and control by the competent authorities*."

By his Affidavit in Reply dated 25.4.16, he dismisses the allegations contained in the Supplementary Affidavit of Mr. Saab. The said Affidavit in Reply of Mr. Demetriou occupies 32 pages, the content of which I have placed before me. At paragraph 51 of the said Affidavit in reply he states the following:

> "*For the reasons referred to above, but also in my previous affidavits, there is no option for this Court, <u>in the opinion of the Applicants with all due respect, other than to issue the requested Orders with an immediate effect</u>. The license of the branch to carry out banking activities was revoked on 21 December 2015, it cannot therefore carry out any operations. The natural consequence is, in such cases, the liquidation of its assets intending for the structured and fair distribution of the revenue, which will arise, to the creditors, according to the priority order and other requirements set out in the applicable legislation. <u>In any other case, we will end up in a situation where a former licensed credit institution</u> will continue to have*

depositors, debtors and other particulars of assets and liabilities in its books, without, however, carrying out any operations and provide banking services, without being able to repay its creditors, among whom are the depositors, and without being able to collect debts from the debtors. We will, thus, be led in a chaotic state with unpredictable consequences on the banking system, since no depositor will want to trust his deposits in a financial system, which cannot apply the corollary of the revocation of a banking license and the only expected relief is the quick and structured liquidation of operations. I, therefore, request on behalf of the CBC, with all due respect, for the issuance of the requested orders as well as any other relief at the discretion of the honorable Court. I respectfully submit that all the requirements for the issuance of the requested orders are fully satisfied and it is urgent that these are issued in order to ensure public interest and maintain the stability of the financial system of the Republic of Cyprus and protect the depositors and creditors of the Branch."

(The underlining is made by the Court).

The Court, having heard all the interested sides with respect to the procedure that would be followed during the hearing of the Application, for all the affiants to be offered for cross-examination (minutes dated 28.3.16 are relevant) as was the position of all sides. Mr. Yiagkos Demetriou, Mr. Ayoub-Farid Michel Saab and Mr. Fadi Michel Saab were finally cross-examined.

I state from now that I have placed the content of the Application, the Oppositions and the Affidavits that support the same before me. The same also applies for the evidentiary material that arose from the cross-examination of the Affiants. Further, I have set before me the long but particularly thorough submissions of all the learned counsel, which, I must say, offered valuable assistance to the Court. It is provided that I will examine the positions and the arguments of each side to the degree required for the needs of the case having always in mind that "*Special reference or dealing with every argument raised does not constitute an inseparable part of the justification of the judicial judgment* (**Nicos Odyssea v. Police** (1999) 2 C.L.R. 490).

Is FBME Bank Ltd a Cyprus or a Tanzanian Bank?

Mr. Yiagkos Demetriou states the following in paragraph 143.1 of his affidavit supporting the Application:

"143.1 *As I state in paragraph 13 above, about the 90% of the Bank's deposits is maintained by the Branch while the Board of Directors meets in Cyprus and the senior management is based in Cyprus. The amount of the deposits of the Branch on 31.12.13 was approximately USD 2.3 billion while that of the Head Offices of the Bank in Tanzania was approximately USD 250 million. We are, therefore, talking about a Bank, which is essentially Cypriot by 90% and Tanzanian by10%".*

(The underling is made by the Court).

The Court considers that a Bank is not rendered local or foreign depending on the amount of the deposits maintained in a branch thereof in a specific country. Besides, this amount can be differentiated at any moment. Accordingly , I do not agree with the position of Mr. Yiagkos Demetriou that FBME Bank Ltd is "*a Cyprus Bank by 90% and Tanzanian by 10%*". It is noted here that the depositors of the Bank in the branch of Cyprus (natural-legal persons) signed a relevant form of application, in which the following provisions, inter alia, existed:

"*40. CORPORATE INFORMATION*

40.1 Head Office

FBME Bank Limited is a company incorporated under the laws of the United Republic of Tanzania and registered by the Tanzanian Registrar of Companies under company number 46276 on 23 June 2003 and has its head office in the United Republic of Tanzania at 7 Samora Avenue, P.O. Box 8298, Dar Es Salaam, Tanzania."

40.2 Cyprus Branch

The Cyprus branch of FBME Bank Limited is registered the Ministry of Commerce, Industry Tourism, the Department of Registrar of Companies and Official Receiver, Nicosia, under Registration number AE 1830 on 17 November 2003 and has established a place of business in the Republic of Cyprus at 90 Archbishop Makarios III Avenue, P. O. Box 25566, 1391, Nicosia, Cyprus."

(The underlining is made by the Court).

Consequently, the clients-depositors of the Bank were aware that they were contracting with FBME Bank Ltd (Tanzanian Bank) and not with its branch in Cyprus, which does not have a legal personality. While being cross-examined by Mr. Georgiou with respect to the above matter, Mr. Demetriou refused that the depositors were contracting with the Bank of the Tanzania, although he stated that he knows that the branch does not have an independent legal personality. It is, of course, another matter if the depositors decided to deposit their money in Cyprus by trusting the banking system of Cyprus within which the Bank operated a branch.

"FinCEN" «Financial Crimes Enforcement Network of the US Department of Treasury»

According to the evidence of Mr. Demetriou, paragraph 15 from his affidavit supporting the Application:

> "*FinCEN is a Unit of the Treasury Department Office of Public Affairs of the United States, the mission of which is according to its website "to safeguard the [U.S.] financial system from illicit use and combat money laundering and promote national security through the collection, analysis, and discrimination of financial intelligence and strategic use of financial authorities". I attach a print out from the said website dated 7 December 2015 as Exhibit 14. FinCEN cooperates with supervisory bodies and law enforcement bodies for the tracing and investigation of criminal activities by obtaining, maintaining and analyzing data of financial transactions. FinCEN operates as a US Financial Intelligence Unit ("FIU") of the United States of America ("USA") and it is responsible, in the said capacity thereof, to receive (and, if it is allowed, to request) analyze and send notifications of financial information to the relevant competent authorities: (a) which concern suspicious income from criminal activities and possible terrorist financing or (b) which are required based on the national legislation and the regulations concerning money laundering and terrorist financing. FinCEN is one of 151 FIUs, where together with the Cyprus FIU ("MOKAS") form the Egmont Group, an unofficial FIU network worldwide*."

In paragraph 5.1 of the said affidavit, Mr. Demetriou states the following:

> "*The Financial Crimes Enforcement Network of the US Department of Treasury ("**FinCEN**") characterized the Bank as a financial institution "of primary money laundering concern" on 17 July 2014*"

Mr. Demetriou stated that the correspondent Banks froze the accounts, on the occasion of the announcement of FinCEN. In a question put to him during the cross-examination if the correspondent Banks stated that they do not want the money, because it is infected, he replied as follows:

> "*I said that this was possibly in their minds, they froze it, because FinCEN made an announcement irrespective that it said that would apply in 60 days. They came and said I do not want to do any transactions gentlemen*."

Of course, if the correspondent Banks have properly acted or not, is something that is not examined within the context of the present Application.

During the hearing of the Application, too much talk was made, unjustifiably I would say, on the evidence which "FinCEN" had before it, on the proceedings that took place with respect to its said Ruling and other similar. It is made clear that there is no finding on behalf of "FinCen", which is not, it should be said, a Court, that FBME Bank Ltd is a Bank, which

does indeed legitimise money through illegal activities. What "FinCEN" decided, based on the evidence before it, is that FBME Bank Ltd is a Bank of "*primary concern for money laundering*". Therefore, the present proceedings are not offered for the Court to make a finding that FBME Bank Ltd is indeed legitimising money through illegal activities or that there are suspicions for something like this. Besides, all the actions of the Central Bank of Cyprus relied on the impact of the findings of "FinCEN". Paragraph 6.4 of the affidavit of Mr. Yiagkos Demetriou is relevant on this matter, where the following are stated:

> "*Although the actions of the CBC relied on the impact of FinCEN's findings, namely that FBME Bank Limited is a bank of primary money laundering concern, and did not rely on this finding itself, the fact remains that, for the purposes of this application, a respectable and credible foreign regulatory authority, such as FinCEN, has reached the above finding....*"

And the following in paragraph 14 of his affidavit:

> "*As it is made clear from what is stated below, the effects, from the measures of FinCEN against the Bank in July of 2014, forced the CBC, the body with the main regulatory and supervisory power over the Branch, to obtain certain measures, including placing the Branch under resolution and appointing a Special Administrator. The Bank of Tanzania simultaneously appointed a Statutory Manager of the Bank of Tanzania.....*"

Similar positions were raised by Mr. Demetriou during his cross-examination. I set out a relevant extract from the minutes dated 1.6.16:

> "*Q. Tell me where you refer in this report that an investigation had to be carried out based on the findings of FinCEN. Was it not relevant for your board?*
>
> *R. No. The measures, which were obtained by the Central Bank, and I think I have repeated it many times, <u>the measures made by the Central Bank did not have anything to do with the findings of FinCEN as such. The actions of the Central Bank were clearly on what followed the announcement of FinCEN, with the banks abroad</u>.*
>
> *Q. Since you care about the public interest and the reputation of Cyprus as a financial center, you would certainly not want, as the Central Bank, for any suspicions to remain, namely that a banking institution, which carries on illegal activities in Cyprus, operates.*
>
> *R. We were certainly interested, Mr. Georgiou, that with the information publicized by FinCEN, which was the only information at our disposal, no further investigation could be made. <u>We tried to obtain more information in order to be able to proceed to investigate and they did not give it to us</u>.*
>
> *Q. Who?*
>
> *R. <u>FinCEN was not willing to give more information. We were trying to find a way to investigate it</u> ...."*

(The underlining is made by the Court).

I note here, for what is worth, that Mr. Georgiades put to the witness, Ayoub Farid Michel Saab, by cross-examining him that:

> "*Q. I put to you, Mr. Saab, that it is a shame, not because the Central Bank did not have either the means or did not disclose your dealings with the Hezbollah drug dealers and various others, but for you and the bank, who are accused that you facilitated or could not even prevent the use of the bank for illegal purposes.*
>
> ……..
>
> *Q. I put to you, Mr. Saab, that it is a shame what you are accused of by FinCEN and by the American Court justifiably*."

For the witness to reply:

> "*R. You are wrong, because there is no accusation, a concern is simply expressed*."

Measures obtained before the Filing of the Application for Liquidation

As was stated, "FinCEN" designated FBME Bank Ltd as a financial institution "of primary money laundering concern" on 17.7.14. The following day the Central Bank of Cyprus procured the supervisory measure of the management of the operations of the Bank's branch according to the provisions of L.66(I)/97 (WCIL).

The following decree was published in the Official Gazette of the Republic on 21.7.14:

> The Resolution of Credit Institutions and Other Institutions Laws of 2013 to 2014 Decree issued by the Resolution Committee pursuant to the powers conferred to it by section 2A

17(1) of 2013 97(1) of 2013 90(1) of 2014.	The Resolution Committee issues the following Decree for the better achievement of the objectives included in paragraphs (a), (b), (c) and (g) of subsection (1) of section 3 of the Law, by exercising the powers conferred to the same by subsection (2) of section 2A of the Resolution of Credit and Other Institutions Laws of 2013 to 2014 (hereinafter called "the Law"), with the consent of the Minister of Finance required pursuant to section 3 of the Law concerning the decision of obtaining resolution measures and section 7 of the Law concerning the implementation of a specific resolution measure, the report of the competent supervisory authority for the current financial state and viability of the affected institution and the resolution plan and having ascertained that the conditions of subsection (1) of section 6 of the Law apply.
Summary Title.	1. The present Decree shall be referred to as the Sale of Operations of the Branch of FBME Bank Ltd in Cyprus Decree of 2014.
Object.	2. The object of the present Decree is the sale of operations of the branch of FBME Bank Ltd in Cyprus.
Sale of Operations.	3. The Resolution Committee applies the measure of the sale of operations of the branch of FBME Bank Ltd in Cyprus pursuant to the present Decree.
Other resolution measures.	4. Any other resolution measures may be applied as provided in Law.
Entry into force.	5. The present Decree in entered into force from the date of its publication in the Official Gazette of the Republic.

It is apparent that the specific resolution measure concerned the sale of the operations of the branch in Cyprus and not the sale of the operations of the Bank. Mr. Dinos Christofides was appointed as a Special Administrator of the branch on 21.7.14, who was subsequently replaced by Mr. Andreas Andronikou, who was appointed on 28.4.15. On 24.7.14 the Central Bank of Tanzania appointed Mr. Lawrence Mafuru as a "Statutory Manager" of the Bank according to the Laws of Tanzania. Approximately, one year after, in July of 2015, the Central Bank of Tanzania issued an announcement (Exhibit 13 in the Application), in which, it, inter alia, states the following: "*We would like to inform the General Public that at the moment FBME will continue with normal banking operations until such time the Bank of Tanzania will determine its future and the General Public will be informed accordingly*.". The Resolution Authority decided to suspend the implementation of the resolution measure that concerned the sale of the operations of the branch in Cyprus, on 15.10.15, and recommend the revocation of the license given to FBME Bank Ltd to operate a

branch in Cyprus. The said license was revoked on 21.12.15. The Application in question was filed the next day.

Nature of the Application

It is an Application that concerns a special liquidation of a Bank and an appointment of a special liquidator. As it is known, the liquidation of a Company can affect huge interests. Consequently, liquidation constitutes the most serious measure that can be obtained against a legal person, since it affects its existence and its entity (see case of **Nicolaou v. Total Properties Ltd a.o** (2011) 1 (B) C.L.R. 1358). Indeed, in the case of Banks, liquidation is possible to result to more general effects, since the Banks play a particularly important role in the social and private economy.

The liquidation is the last stage in the life of a legal person. The liquidation is similar to the administration of the estate of a deceased. As it is characteristically stated in the textbook of Dr. Andreas P. Pietis "**The Liquidation of Companies**", 2nd Edition, page 8:

> "*I. The liquidation of the company looks very much like the administration of the estate of a deceased. Both in the one case, and in the other, the actions made by the liquidator or the administrator, respectively, intend to collect the dues, the payment of the debts and the receipt of any remaining assets by the beneficiaries-shareholders or heirs depending on the case...*".

Legal Base of the Application – Legal Base upon which the Application was advanced

As was stated, the Application is also based, among other provisions, on Section 33BB of the "*Works of Credit Institutions Laws of 1997 to (No. 8) of 2015*", L.66(I)/1997, which provides the following:

> "*33BB. (1) Notwithstanding section 33B, the Central Bank files an application to the Court for the issuance of an order of special liquidation and appointment of a special liquidator of a bank or a LCI respectively as per subsection (2) in cases where -*
>
> *(a) an operation license of a LCI has been revoked pursuant to section 30(1A) or pursuant to section 4A or an operation license of a LCI has been surrendered pursuant to section 4(6); and*
>
> *(b) the said LCI maintains deposits covered by the Deposit Protection Fund in case that this is a bank and in case that the is a CCI by the Deposit Protection Fund of CCI as provided by the Establishment and Operation of the Deposit Protection Scheme and Resolution of Credit and Other Institutions Law, as this is amended or replaced each time; and*
>
> *(c) the special liquidation of the bank serves public interest....*

[……]

(2)(a) The Court issues the order stipulated in subsection (1), if it is satisfied that the conditions set out in the said subsection are met and appoints a special liquidator, and the Court appoints a special liquidator other than Official Receiver upon the recommendation of the Central Bank and after hearing its views, notwithstanding the provisions of section 229 of Companies Law.

(b)(i) The said order is issued by the Court following an ex parte application by applying, mutatis mutandis, section 9 of the Civil Procedure Law and the Civil Procedure Rules.

(ii) For the purposes of filing an opposition or demonstrating a reason on behalf of the LCI in order to cease the issued order remaining in force, the relevant time limit that may be set by the relevant Court, is determined at a period not exceeding three (3) days."

(The underlining is made by the Court).

Both FBME Bank Ltd and the two depositors thereof state in their Oppositions that the conditions of the above section are not satisfied. It is concluded from the said section, that it is the Courts of Cyprus that will decide if a credit institution will be placed under liquidation. The Courts of Cyprus are those that will interpret the Law and will examine if the conditions set by section 33BB are fulfilled. Consequently, the position of Mr. Demetriou in his affidavit dated 25.4.16 that "*there is no other option for this Court from the issuance of the requested orders with an immediate effect*" is unfortunate. Things in Greece appear to be somewhat different. A Bank there is placed under liquidation by the Bank of Greece, which exercises the supervision over the institutions from their incorporation until their dissolution. As it is characteristically stated in the textbook of "**Law of Liquidation of Banks"** of Mr. Demetrios K. Roussi, Ed. 2014:

"*The exclusive decisive competence on the position of the legal person in liquidation is reserved for the BoG in exercising the full supervision over the institutions throughout the stage from the incorporation until their dissolution and their termination. For the above reason the initiation of the liquidation process of the institution continues as a compulsory legal consequence, which follows the revocation of the operation license of the credit institutions by the BoG. The dictum of the law is clear: since the BoG revokes the operation license due to the contribution of the circumstances of section 19 § 1 and 2 of the New Banking Law, it is subsequently ex lege obliged to also give another individual executory administrative act on the position of the legal person in a special resolution status*."

I should, at this point, state that the Applicants' learned counsel supported at the stage of the submissions that section 362 of Companies Law, Cap. 113, expressly provides to the

Court "*the power to wind up an overseas company*". The said section, as has been translated from the English to the Greek language, stipulates the following:

> *"Winding up of overseas companies*
>
> 362. *Where a company incorporated outside the Republic or which has been carrying on business in the Republic, ceases to carry on business in the Republic, it may be wound up by the Court under the provisions of this Law, notwithstanding that it has been dissolved or otherwise ceases to exist as a company under or by virtue of the Laws of the country under which it was incorporated*."

They also referred to the case of **In Relation to the Overseas Company Beogradska Banka D.D.**, Application 270/00 of the District Court of Nicosia, Judgment dated 25.8.14, of the then P.D.C. Mr. T. Economou. It should be initially stated that it is expressly stated in the said Judgment that the liquidation of the specific legal person took place long before the issuance of the judgment, and specifically on 7.6.2002. The conditions of liquidation of a Company pursuant to section 362 of Companies Law, Cap. 113 were not consequently examined in the said Judgment. The subject matter of the said Judgment was, among others, whether the liquidators of the Company should have included the Applicant in the creditors' list thereof. Reference is also made in the said Judgment to the case of **Russian & English Bank (In Liquidation) and Another v. Baring Brothers & Co Ltd** (1936) 1 AII E.R. 505, where the Bank there had been incorporated in Russia (foreign bank) pursuant to the Legislation there. A few years after, it opened a branch in London complying with the provisions of section 274 (of the Companies (Consolidation) Act, 1908). Subsequently, the Bank was dissolved in Russia pursuant to the Legislation there and ceased to exist in extent. An Application followed in the United Kingdom on behalf of three persons, who were alleging to be Creditors. They were asking with the Application for an order for compulsory liquidation of the Company pursuant to a specific Law. The order was issued. As it is stated in page 524 of the Judgment by Lord Macmillan:

> "*The order was made after hearing the Attorney-General, who appeared in the proceedings on behalf of His Majesty to assist the court and receive αη award of costs out of the assets. The validity of this order is not in question. It was made in pursuance of the powers conferred by the Companies Act, 1929, s. 338 (1), which authorises the compulsory winding up of αn unregistered company in certain enumerated circumstances, of which the first is the company is dissolved." The Russian and English Bank complied with these requirements; it was an unregistered company within the statutory meaning and it had been dissolved*."

(The underlining is made by the Court).

In other words, the Russian Bank was considered as a non-registered Company in the United Kingdom, since its winding up had preceded in Russia. As it was stated here, FBME Bank Ltd continues to exist and operate as a Bank in Tanzania where it has been incorporated. In any case, the essential is that the Applicants did not pursue the liquidation of the Respondent Bank pursuant to the above section of Cap. 113, although section 362 also exists in the Legal base of their Application. On the contrary, they, pursued for the liquidation of the Respondent by invoking section 33BB (above) and indeed with an Ex Parte Application. As Mr. Yiagkos Demetriou characteristically states in paragraph 14 of his affidavit that supports the Application:

> "*.... I note on behalf of the CBC that this application is filed because all the conditions of article 33BB of WCIL are satisfied and it is especially in the public interest that an order of special liquidation is issued*."

There is therefore no issue of applying section 362 of Cap. 113 nor of any other Law in the present Application.

Allegations on behalf of FBME Bank Ltd that there was a mismanagement of its money and its depositors on behalf of the Central Bank of Cyprus

In the Affidavit of Mr. Fadi Michel Saab, dated 15.4.16, which consists of 125 paragraphs, the following are stated in paragraph 11:

> "11. *On 18 January 2016 the Head of Legal Desk of the Cyprus branch of the Bank sent an email to the Special Administrator with a draft letter addressed to the Applicants attached together with the Schedule of Expenses (Exhibit 7). On the Schedule of Expenses the amounts for legal fees and staff benefits in case of terminations were left blank because there was no exact figure at the time*."

The letter dated 18 December 2015 is part of Exhibit 7, which is signed by the Central Bank of Cyprus to Mr. Andrew Andronikou (Special Administrator), where the following are recorded:

> "*In light of the aforegoing, I wish to inform you that the Central Bank of Cyprus decided to charge the account of the Branch of FBME Bank Ltd in its books with the following professional fees and expenses (incl VAT):*

Specia/ Administrator's fees and other expenses	*486,500/00*
Georgiades & Pe/ides LLC	*132.762,35*
DLA Piper ΔIK LLP	*1.588.988,73*
Kro/l Associates I-)K Ltd	*1.073.940 31*

€3.282.191,39"

On the occasion of the above, and not solely these, Mr. Georgiou while cross-examining Mr. Demetriou, put to him that "*a party of mismanagement has been set up at the back of my clients, at the back of FBME Bank and a waste of the money of the bank and of the depositors*", something which Mr. Demetriou denied. He also put to him that these millions, to which reference is made in Exhibit 7, could have been avoided. The following questions and replies followed:

"*Q. Good, explain to me then "DLA PIPER 1 million and 600 thousand", 1 million 588 thousand 998 from April, from May until December. 18 December of 2015.*
R. Yes?
Q. Six months and something, six and a half months what was this money of the depositors spent on?
R. What do you mean? It was spent on the services, which were offered by the legal consultants.
Q. Do you control these services as Central Bank, do you control the invoicing?
R. I do not personally, but definitely.
Q. A, certainly.
R. E, certainly, there are procedures, before the Central Bank approves a payment.
Q. Who negotiated the fee of the legal consultants of 1,6 million for six months' work?
R. They were decisions of the Management Board.
Q. And I put to you that you did not exercise any control over the special administrators you appointed, I am talking about the Central Bank of Cyprus and the Resolution Authority, and a huge, huge reckless waste of money of the depositors, you are now saying you want to protect.
R. I reject it Mr. Georgiou."

Mr. Taliadoros also put questions with respect to the remuneration of the administrators and with respect to other expenses, which FBME Bank Ltd and the depositors thereof essentially bear. Although I find that the Bank is entitled to be aware if mismanagement or a waste is made, since the remuneration of the administrators, the salaries of the employees and other related are made from money found deposited in its accounts, such issues cannot be, however, examined and be decided within the context of the Application in question.

Is the Liquidation of FBME Bank Ltd (overseas Bank) or the branch thereof in Cyprus sought with the Application in question?

If one examines the Application filed, one can easily ascertain that what is sought is the Special Liquidation of the foreign Bank and not the Special Liquidation of the Branch

thereof in Cyprus. While being cross-examined by Mr. Taliadoros, Mr. Demetriou was being asked whether the acts and actions of the Central Bank of Cyprus and the Resolution Authority exclusively concerned the branch of the Bank or the foreign Bank itself. Mr. Demetriou admitted the self-evident, that they concerned the branch. The following interesting questions and replies followed, which I set out verbatim from the minutes:

> "Q. *And my question Mr. Demetriou, is why do not you seek, with the application filed on 22.12.2015, for an order for the liquidation of the branch of FBMA in Cyprus to be issued and you seek for the bank itself in Tanzania to be liquidated?*
>
> *R. I have already answered this Mr. Taliadoros, this is what the legislation provided, the legal advice, which the Central Bank had, is that the legislation imposes the liquidation of the institution or the branch and I have repeatedly explained and I have recorded it in my affidavits, that the intention of the Central Bank was certainly never to liquidate the bank in Tanzania, it is clear that the intention of the Central Bank was to cooperate with the Tanzanian Authorities in order to be able to liquidate the branch.*
>
> *Q. So the legal advice you had, was that the application of special liquidation could not turn against the branch of FBME in Cyprus?*
>
> *R. Yes.*
>
> *Q. So you are saying that the Cyprus legislation, our law, the Cyprus law does not allow the Central Bank nor the Resolution Authority to do any acts or actions that would directly cause an impact?*
>
> *R. They would cause wounds to FBME in Tanzania.*
>
> *Q. But you are at the same time saying that the same legislation allows the Central Bank its death, to kill it, to dissolve it, to liquidate it.*
>
> *R. I did not understand the first part of your question.*
>
> *Q. The branch of FBME was placed under management on 18.7, and the branch of FBME was placed under resolution on 21.7?*
>
> *R. No, it was confirmed that no one was interested in purchasing the operations of the branch of FBME in Cyprus on 9.2. The suspension of the resolution measure of the branch was decided on 15.10.2015, the revocation of the license of the branch was decided on 21.12, FBME Bank Ltd is not affected until now in any way, only the branch.*
>
> *Q. So you are saying that the legislation did not allow the Central Bank, the Resolution Authority to do any act or action that would harm FBME, but you then tell us that it is entitled to request for its liquidation by a Cyprus Court to dissolve the same, so proportionately with a natural person, to execute a death penalty.*
>
> *R. Do you want me to interpret the provisions of the legislation, is that what you are asking?*
>
> *Q. I am telling you if this conclusion is reasonable, from what you told us;*
>
> ***Mr. Georgiades:*** *What conclusion, I did not understand the conclusion, Your Honor, he has been talking for ten minutes, he has raised many issues, death, things and miracles.*

Mr. Taliadoros: *The company will disappear as a natural person, the witness has understood.*

Court (to witness): *He is saying in a few words that everything has to do with the branch. You, however, want to liquidate, not the branch, but the company itself, which is registered in Tanzania, Mr. Taliadoros is saying that it is a bit weird.*

Witness: *I understood it very well, if I will have to interpret the laws.*

Court: *Are you saying that the law allows it?*

Witness: *The Works of Credit Institutions Law imposes the liquidation of the institution.*

Court: *It is a matter of law, this is what the law says, and we were following the law, this is what the witness is saying.*

Witness: *And for this reason we obtained a commitment that yes, since the law says so we will have to do it, but we will not disturb you sirs.*

Mr. Taliadoros continues:

Q. I am telling you that the Cyprus legislation is not so unreasonable, the interpretation given to you is unreasonable, the Cyprus legislation cannot and is not so unreasonable, the interpretation given to you on this Cyprus legislation, is unreasonable.
R. You are essentially saying that the legal consultants of the Central Bank are unreasonable.
Q. I do not know who gave you the legal advice or if it is a legal advice, I consider this opinion as unreasonable.
R. It is a legal advice."

(The underlining is made by the Court).

Of course, the Application does not seek for the liquidation of the branch but of the foreign Bank. Mr. Demetriou, however, stated that the intention of the Central Bank is not to place the foreign Bank under liquidation, but to cooperate with the Tanzanian Authorities in order to be able to liquidate the branch. Things become even more perplexed if someone also sees paragraph 170 from the initial Affidavit of Mr. Demetriou, where the latter states that part of the funds held by the correspondent Banks (and which the Central Bank will seek to repatriate if the requested order will be issued) relate to deposits made by clients of the Bank in Tanzania and that the Central Bank of Cyprus does not intend "*to usurp or restrict the exercise of the regulatory and supervisory operations of the Bank of Tanzania*".

If the Central Bank of Cyprus wanted for an order that only concerns the liquidation of the branch, it ought to have claimed for such a relief (whether it would secure it or not is another matter). It did not do so and consequently what the Court will examine is what it claims, that is whether the conditions of issuance of a liquidation order, not of the branch but of the foreign Bank, are met.

Particularity of the Application

Undisputedly, I would say, the particularity of the Application in question, lies on the fact that the liquidation of a Bank, which has been incorporated-registered abroad and continues to operate thereat pursuant to a license, granted not by the authorities of the Republic of Cyprus but the authorities of Tanzania, is sought. As it was stated, it operates a branch in Cyprus pursuant to a license granted by the Central Bank of Cyprus. Indeed, it appears that it carries the biggest part of its operations with the said branch, something which the Central Bank of Cyprus, of course, permitted for a number of year. As Mr. Yiagkos Demetriou characteristically stated during his cross-examination, "….***because we are talking here about a unique, maybe worldwide, case; where we have a bank operating with a branch, a branch which essentially carries on almost the total of the operations of the bank, there is nowhere else."***. It is not, of course, examined within the context of the present proceedings if the Central Bank of Cyprus correctly permitted or according to Mr. Demetriou "*tolerated*" this unique "*worldwide case*" to exist in small Cyprus for a number of years.

Revocation of the License for FBME Bank Ltd to operate a Branch in Cyprus

The license granted to FBME Bank Ltd to operate a branch in Cyprus was, as it was stated, revoked by the Central Bank of Cyprus on 21.12.15. Paragraph 114 from the affidavit of Mr. Yiagkos Demetriou is relevant to the above matter, who states the following:

> "*Following careful examination of the explanations, comments and opinions of the Bank's Manager and the Saabs, the CBC considered these explanations, comments and opinions as insufficient and decided to revoke the license granted to the Bank for the operation of the branch in Cyprus on 21 December 2015. It should be noted that the CBC considered imposing other measures provided for in the WCIL, like imposing restrictions on the Operation License, it, however, decided after careful consideration that these would not fix the situation of the Branch. A copy of the decision setting out the reasons of the revocation is attached as Exhibit 67 (the "Revocation Decision").*"

This Decision has been contested in the Competent Administrative Courts of the Republic of Cyprus with the filing of a recourse, which still continues to be pending. Mr. Demetriou correctly states in his affidavit that the District Court of Nicosia cannot examine if the license for FBME Bank Ltd to operate a branch in the Republic of Cyprus has been correctly revoked or not. In the case of **Antenna v. Cyprus Radio Television Authority** (2010) 1(B) C.L.R. 1079, the Court of Appeal dismissed the Appellants' submission that the first instance Court had a duty to examine the legality of the Decision and the constitutionality of the Law based on which the administrative fine was imposed. Further, the following were stated in pages 1089-1090:

> "*Despite the fact that no reference was made by the two-learned counsel, we had the chance to study the case of Sigma Radio T.V. Public Ltd. v. Cyprus Radio Television Authority (2009) 1 C.L.R. 140. The Court of Appeal found that to the extent that the judgment concerns the legality of the decision of the Authority, the appeal has no basis. However, the Court of Appeal held that the first instance court did not examine all the grounds of opposition and specifically whether there was a good defence. Therefore, the appeal succeeded partially and the Appellants were given leave to only defend as to the opposition which had not been examined by the first instance court. In concluding, the Court of Appeal stated that:-*
>
> > "*Irrespective of what the legal outcome will ultimately be on the issue raised, it is reasonable and wise not to file an action for the collection of such a fine as a civil debt before the elapse of the deadline to file a recourse without filing of a recourse, or the recourse filed against the legality of the decision, by which the fine was imposed, to be finally judged. No reason for any haste exists, on the contrary, as the appeal before us shows, the waiting, which common-sense dictates, includes a delay and complication of the situations, which may be finally reversed, as well as unnecessary burden of costs."*
> >
> > *The above comments of the Court of Appeal do not constitute part of the ground of appeal, but incidentally constitute observations (obiter) with which, with all due respect to the opposite view, we cannot agree. In our judgment, unless there were particular circumstances, only after securing an order for the suspension of the execution of the decision of the Authority within the context of a recourse (Regulation 13 of the Supreme Constitutional Court Regulations of 1962), could the procedure followed to be differentiated*."

Therefore, the Court does not intend to examine the accuracy of the said Decision. It is also noted that FBME Bank Ltd sought with its Application dated 22.12.15 within the context of Recourse 1658/15, which it filed, for an interim order staying the application and the implementation of the Decision dated 21.12.15. The Administrative Court dismissed the Application on 19.5.16 (Judgment of Mrs. A. Efstathiou-Nikoletopoulou). It is noted that, as

is correctly admitted by the Central Bank of Cyprus, the revocation of the license did not affect the operation license of FBME Bank Ltd in Tanzania in any way.

Was the Central Bank of Cyprus compelled to file the Application in question after the revocation of the license granted to FBME Bank Ltd to operate a branch in Cyprus or not

The Applicants consider that from the moment that they had revoked the above license "*there was then no other option than the special liquidation of the Bank according to the provisions of the Law*". While Mr. Demetriou was being cross-examined by Mr. Georgiou, he stated that the Central Bank of Cyprus was compelled to file the Application of Special Liquidation. He specifically stated on 25.5.16 that ***"It was considered to be a fact based on the legal opinions and based on the provision of the legislation, that from the moment that a decision was made for the revocation of the license, then the Law imposes the special liquidation".*** Mr. Georgiou justifiably asked the witness for clarifications. I consider it necessary to set out the relevant part of his evidence from the minutes dated 30.5.16:

"*Q.* *The other thing I would like to tell you is that you talk about the public interest. Is the fact that the public interest, as you at least interpret it, and I say you meaning the Central Bank of Cyprus and Resolution Authority, is served with the filing of this application, been discussed at the Management Board and the Resolution Authority?*

R. *What do you mean discussed? If there was a decision as to what public interest means?*

Q. *And that it was served with the filing of this application.*

R. *No, there are no minutes, if this is what you are looking for. Yes, there is no recorded decision that the public interest is served. There is a decision concerning the revocation of the license, where the Management Board accepts the report of the supervisory in that the public interest is served with the revocation of the license and we proceed with the liquidation as a result of the provision of the Law. There is no other relief, Mr. Georgiou. There is no other relief, from the moment that the license of the banking operations is revoked, there is no other relief.*

……

A. *I think I have replied this repeatedly, that from the moment that you revoke the license, this is what the Law says.*"

(The underlining is made by the Court).

Mr. Demetriou also repeated the same positions during his cross-examination by Mr. Taladioros. Indeed, he stated that if the Applicants did not file the Application in question they would be acting illegally. I set out the relevant extract from the cross-examination of Mr. Demetriou by Mr. Taliadoros on 13.6.16:

> "*Q.* *During your cross examination by Mr. Georgiou, you repeatedly said many times that from the moment that the Central Bank of Cyprus revoked the license, it had granted in 2003 for FBME to operate a branch in Cyprus, on 21.12.2015, the Central Bank had no other option, you said, since the law imposed the obligation on the same to file an application for the issuance of an order, for the special liquidation of the Tanzanian Bank. Is this what you told us?*
> *R.* *Yes.*
> *Q.* *So can I assume, can I consider that if you did not file this application, which is before the Court, would the Central Bank to today acting illegally?*
> *R.* *I suppose so.*
>
> ……
>
> *Q.* *In order to understand Mr. Demetriou, does the illegality depend on the percentage of the transactions at the branch for an illegality of the bank, if it will file an application or not?*
> *R.* *You insist on talking about an illegality on the matter of the revocation of the license. The illegality on the liquidation, the illegality is from the moment that you revoke the license, you make a decision for revocation, you are essentially then obliged to proceed with the filing of a claim, for the special liquidation of the institution.*
> *Q.* *I am not telling you if the revocation was illegal or legal, I am telling you that from the moment that you again revoked the license 21.12, but the transactions of the branch were 10% in Cyprus and 90% in Tanzania, would you consider again that you were doing an illegality if you did not file the application?*
> *R.* *Yes, from the moment that I revoked the license.*"

(The underlining is made by the Court).

When Mr. Demetriou was asked by Mr. Taliadoros what was the penalty, the latter replied that he is not aware what the Law provides. It has not been indicated, nor has the Court traced any provision rendering the non-filing of an Application of Liquidation on behalf of the Central Bank of Cyprus, in case the latter has revoked a license it granted to a Bank, a criminal or a disciplinary offence.

With all due respect to Mr. Demetriou, who is not a Lawyer, the Law does not state this. The Central Bank had the authority (if it was properly exercised or not is not examined here) to revoke the license it had granted, if it considered that reasons for something like this existed. In other words, it could revoke it if it considered that the public interest was served with the revocation. However, for a special liquidation order of a Bank to be issued pursuant to section 33BB of L66(I)/1997, it is not sufficient to revoke the operation license, reference to which is made in the Law, even if the revocation was made for reasons of public interest. What constitutes an operation license will be examined hereinafter. The liquidation of the specific Bank itself should (apart from the second condition referred to in section 33BB(b)) serve public interest, since this is expressly provided in the above section (third condition). The Central Bank was not, consequently, obliged to file the Application in question, because it revoked the license granted to FBME Bank Ltd to maintain a branch in Cyprus for reasons of public interest, as Mr. Demetriou stated. The revocation of the license for reasons of public interest by itself does not fulfill the third condition of section 33BB, as it was left to be implied. In other words, because the license was revoked for reasons of public interest, it does not mean that the special liquidation of the Bank also serves the public interest.

In order to show that the above approach of the Central Bank is not correct, I will set out the following hypothetical example. A Bank has been incorporated in England and carries on banking operations pursuant to a license granted to it by the competent Authorities there. It carries on 99% of its operations in England. It carries on the other 1% in Cyprus through a branch pursuant to a license secured by the Central Bank of Cyprus. The latter decides to revoke and revokes the license granted to the overseas Bank to operate a branch in Cyprus for reasons of public interest, because (always hypothetically), the clients of the Bank transacting through the branch in Cyprus are terrorists, permanent residents in Cyprus, and the money they deposit in Cyprus is a product of criminal activities. Such a problem does not exist with the clients-depositors of the Bank in England. An adoption of the arguments of the Central Bank would mean that as soon as the license of the Bank to operate a branch in Cyprus is revoked, the Central Bank of Cyprus is legitimised (or is even obliged) to immediately file (provided that the second condition of section 33BB is also satisfied) an Application (and indeed Ex Parte) for liquidation of the foreign Bank, since it considers it to be a fact that the third condition of section 33BB is also satisfied with the revocation of the licence for reasons of public interest, namely that public interest is served with the liquidation of the foreign Bank. Indeed, the liquidation order, not only of the branch but also of the foreign Bank, is possible to be issued with an Ex Parte Application, according to the provisions of the Cyprus legislation.

The Central Bank of Cyprus can tell a foreign Bank that it no longer wishes to carry on banking operations in Cyprus for specific reasons and as result revoke the granted license for reasons of public interest or for other reasons. This is one matter. (This decision thereof is possible to be contested through the legal route). Whether, however, the liquidation of the specific foreign or even local Bank serves public interest is another matter.

I do not of course ignore that Mr. Demetriou was re-examined on 14.6.16 (it is noted that the cross-examination of Mr. Demetriou by Mr. Taliadoros was completed on 13.6.16). When he was asked during the re-examination to clarify the position "*that he adopted yesterday because it was not understood"*, he dramatically changed his previous positions and stated that:

> "*Mr. Taliadoros had put very hypothetical scenarios and I tried to give hypothetical answers to each scenario. I think that the answer was clear. The Legislation is, as I realize it and as it has been explained to me by the Bank's lawyers, clear, that from the moment that the license of an institution is revoked, then if the public interest is satisfied or the public interest is served, the application for the issuance of an order for the liquidation of the institution is submitted. The matter is therefore clear. There are three requirements here. The two are not disputed. We are here for the third one, which is the public interest, which is the matter we are discussing and the hypothetical reply I had given is if the public interest is served we will go to Court if the public interest is not served we will not go*."
>
> (The underlining is made by the Court).

The responses of Mr. Demetriou during his cross-examination with respect to the above matter were clear, they were not, however, those which he gave during his re-examination. While being cross-examined, he repeatedly stated that from the moment that the license is revoked, the Central Bank has an obligation to file an Application for the special liquidation of the institution. I cannot, thereby, accept, for what is worth, his revised testimony in his re-examination, that this is what the Applicants and him had in mind at the time of filing the Application in question.

POWERS OF THE CENTRAL BANK OF CYPRUS WITH RESPECT TO FBME BANK- WITH RESPECT TO THE BRANCH THEREOF IN CYPRUS

While Mr. Demetriou was being cross-examined by Mr. Taliadoros, he admitted that the Law did not allow the Central Bank of Cyprus to take over the management of the

operations of FBME Bank Ltd in Tanzania. For the truth of the matter, I set out the relevant extract from the minutes of the hearing proceedings:

> "*Q. You state in your initial affidavit, that on the next day sir, 18.7, which was a Friday, that the Central Bank based on the powers granted to it by the relevant legislation, took over the management of the operations of the branch, in FBME Bank in Cyprus, correct;*
> *R. Yes.*
> *Q. Can you tell us, why did the Central Bank take over the management only of the operations of the branch that day and not all the operations of the bank of FBME Bank Ltd?*
> *R. I think that these have been replied many times, the branch or the bank rather, was licensed by the Central Bank of Cyprus to operate a branch in Cyprus. The powers and the functions of the Central Bank as a Supervisory Authority was over the branch, which it essentially licensed.*
> *Q. So you allege that the law did not allow you to take over the management of the operations of FBME Bank Ltd in Tanzania.*
> *R. We licensed the bank of Tanzania to carry on operations through a branch in Cyprus, a branch in Cyprus which is subject to the supervision of the Central Bank of Cyprus.*
> *Q. We understood this Mr. Demetriou what I am asking is something else, did the law not allow you or did it allow you to take over the management of the operations in Tanzania.*
> *R. How can a law provide this? No*".

(The underlining is made by the Court).

It is rendered clear from the above that the Central Bank of Cyprus does not have any authority over the Bank of Tanzania. Indeed, in the amendments of the granted license (a letter of the Central Bank of Cyprus dated 1.1.08 - Exhibit 8 in the affidavit of Mr. Yiagkos Demetriou), reference is made to liabilities not of the Bank but of the branch (FBME's branch in Cyprus). Its following obligations are, among others, referred to:

> " *3. **FBME's branch In Cyprus shall comply** with the provisions of the Banking Law (Law 66(1) of 1997), as subsequently amended, and with any general or specific-directives that may have been issued thereunder as well as with the provisions of the Central Bank of Cyprus Law (Law 138(1) of 2002), as subsequently amended, and with any regulations made thereunder.*
>
> 6. *In carrying out its supervisory and inspection duties, the Central Bank of Cyprus may wish to appoint a professional firm of accountants/auditors, other than the external auditors of **FBME's branch in Cyprus**, to carry out an Investigation into the affairs of the branch in Cyprus and report directly to the Central Bank of Cyprus. In such an event, FBME shall agree to the appointment shall offer every possible assistance to the firm*

of accountants/auditors so appointed and shall bear any expense relating to this appointment.

7. ***FBME's branch in Cyprus shall ask*** *its external auditors, if called upon to do so by the Central Bank of Cyprus, to audit any returns and/or other information required by the Central Bank of Cyprus under section 25 of the Banking Law (Law 66(1) of 1997).*

8. ***FBME's branch in Cyprus may engage*** *in advertising through the Cyprus media (press, radio, television and the internet) but shall notify in writing the Central Bank of Cyprus, prior to entering into any advertising commitments, by making available to it all proposed advertising texts, and/or material.* ***FBME's branch in Cyprus shall also notify*** *in writing the Central Bank of Cyprus of its intention to set up its own website or to amend the content of its existing website and shall make available to the Central Bank of Cyprus any proposed texts and/or material to be included on any internet website regarding its services. The Central Bank of Cyprus retains the right to request* ***FBME's branch in Cyprus to amend*** *the content of any proposed advertisement and/or text and/or material to be included on any web site*."

INTERPRETATION OF THE LAW – SECTION 33BB (above)

The content of the above section, upon which the Application is based, has already been recorded in the Judgment. Both Mr. Taliadoros and Mr. Georgiou supported that the first condition of the above section is not satisfied. Mr. Taliadoros wondered whether the Central Bank of Cyprus can revoke the operation license of FBME given by the Competent Authorities of Tanzania and replied negatively. As he stated, this was also admitted by Mr. Yiagkos Demetriou in his testimony. He stated, that here, the license given to a foreign licensed credit institution to operate a branch in Cyprus was revoked. The revocation of the operation license, reference to which is made in section 33BB, concerns a license granted to an institution to operate as a credit institution. Such a revocation has not been made. The Legislator, he stated, did not want to also include the case where a license to a LCI to operate a branch is revoked.

Addressing on this matter, Mr. Georgiades supported, with reference to the provisions of the Law, that the first condition of section 33BB is satisfied. In support of his position and not only, he referred to section 2 of the Law, where the following are stated under the title "Interpretation":

"2. (1) *In this Law, unless the context otherwise stipulates-*

"license" [Deleted]'

"a licensed financial institution" or "LCI" means a credit institution to which a license was granted pursuant to this Law, the Cooperative Central Bank and the Housing Financing Organization"

He also referred to section 4(1)(b)(i) of the Law where it is stated that a credit institution should obtain an operation license from the Central Bank of Cyprus before commencing its activities in the Republic of Cyprus. He also referred to the definition of the word "Bank" from the same Law, where it is stated that:

" '*Bank' means a LCI incorporated -*

(a) pursuant to Companies Law, as this may be amended or replaced each time or

(b) pursuant to the corresponding legislation of a third country and maintains a branch in the Republic".

The Court is then called to interpret section 33BB and especially the first condition, reference to which is made by the section. As it was stated, the first condition concerns "*a revocation of the operation license of a LCI pursuant to section 30(1A) or pursuant to section 4A or an operation license of a LCI has been surrendered pursuant to section 4(6)*". It is specifically called to examine if the operation license, reference to which is made in section 33BB, also refers to a license granted by the Central Bank of Cyprus to a foreign Bank to operate a branch in the Republic of Cyprus. Indeed, this foreign Bank has already obtained an operation license from the country where it has been incorporated and continues to be valid.

As Mr. Taliadoros rightly pointed out no section 30(1A) exists. Section 4(A) of the Law stipulates the following:

"*4A. (1) The Central Bank may revoke the license only if the LCI -*

(a) does not make use of the license operation within the year, it expressly waives from this or has ceased to carry on its activity for a period of more than six (6) months, unless the Central Bank has set a condition that the license ceases to be valid in such cases,

(b) has obtained the license through false statements or any other irregular means,

(c) no longer meets the conditions under which the license was granted,

(d) no longer complies with the requirements of prudential supervision stipulated in the Third, Fourth and Sixth Part of Regulation (EU) No.

575/2013 or imposed pursuant to section 26I and subsections (1) and (4) of section 30 of this Law or no longer provides the guarantee that it can fulfill its obligations towards its creditors, and in particular no longer provides security of the funds entrusted by the depositors,

(e) is subject to any other case of revocation of an operation license stipulated by the Cyprus legislation, such as subsections (2) and (3) of section 7 of the Resolution of Credit and Other Institutions Law,

(f) commits one of the breaches referred to in subsection (1) of section 41D.

(2) *The revocation of the operation license should be justified and the reasons communicated by the Central Bank to interested parties.*

(3) *The Central Bank shall notify EBA of any revocation of the operation license together with the reasons of the relevant revocation."*

Section 4(6) of the Law, which refers to section 33BB, stipulates the following:

"*(6)(a) A credit institution, which was granted an operation license, may surrender its operation license by written notice to the Central Bank.*

(b) The surrender applies from the date of the notification, or if a subsequent date is determined therein that date applies, and where a subsequent date is determined in the notice, the credit institution may, by a new written notice to the Central Bank, determine an earlier surrender date, which cannot be earlier than the date of its original notice.

(c) The surrender of the operation license is irrevocable, unless it is expressly determined that it will apply on a subsequent date, and the Central Bank returns its revocation by its written notice to the credit institution before that date."

(The underlining is made by the Court).

The Cyprus Jurisprudence with respect to the interpretation of Laws, is rich. I will refer to some Judgments of the Supreme Court of Cyprus. In the case of **L.S.A. Packers & Forwarders Ltd v. Theodosia Fragkou a.o.** (1999) 1 C.L.R. 392, the following are stated:

"*The matter raised from the relevant ground of appeal depends on the interpretation to be given to the phrase "conducting the procedure" in the above paragraph 11(a) of the Regulations.*

The term "procedure" is interpreted as follows in the "Pioneer Dictionary of the New Greek Language", page 723: "Procedure (leg.) the course of the trial

from the introduction thereof until its adjudication as well as the rules regulating the same. (co-adjudic.) the conducting of some action pursuant to certain types and rules: "procedure of the issuance - the promotion of militaries etc."

In the "New Dictionary of Spelling and Interpretation of the entire Greek Language", page 367 we read: "Procedure, conducting a trial for the settlement of disputes ... all of the procedural formalities during the conducting of some trial".

The interpretation of a law aims at the discovery of the intention of the Legislator. This intention should be concluded from the wording which has been used. When the wording is simple and only subject to one interpretation, an issue of interpretation can be hardly raised, because this same wording expresses the intention of the legislator (see Income Tax Commissioners v. Pemsel [1891] A.C. 531, 543, Copper v. Baldwin [1965] 2 Q.B. 53, 61, Siman (No. 2) v, Municipality of Famagusta (1972) 3 C.L.R. 329, Cyprus Cement Co. Ltd v, Republic (1974) 3 C.L.R, 514).

It constitutes an interpretative norm that the Law should be read in its entirety for interpretation purposes. The interpretation should be reasonable and such that makes the law operational. The court does not interpret the law in a way that leads to irrational results. Words or phrases in the same law are considered to have, unless otherwise arises from the text, the same meaning (See Limassol Municipality v. Cyprus Telecommunications Authority (1994) 1 C.L.R, 311, 317, Georghiades v. Republic (1969) 3 C.L.R. 396, Kyriakides v. Improvement Board of Eylenja (1977) 3 C.L.R. 198, (1979) 3 C.L.R. 86, Myrianthis v. Republic (1978) 3 C.L.R. 254, Murray v. Commissioners of lnland Revenue [1918] A,C. 541, 553, Whitney v. Commissioners of ln/and Revenue [1926] A.C. 37, 52, Maxwell on Interpretation of Statutes, 12th edition, page 199 and Odgers Construction of Statutes, 5th edition, page 263).

We have the view that the term "conducting the procedure", in paragr. 11 (a) of the Regulations, is too wide. It cannot only be restricted to the conducting of the trial, as it was the relevant conclusion of the first instance court. If the Legislator had such an intention, he would use the term "trial" and not the term "procedure", which is wider than the term "trial". In our judgment, the term "conducting the procedure" includes every measure or step stipulated by the rules and which is obtained from the filing of the action or application until its adjudication. Raising a counterclaim constitutes such a measure or step, because it is stipulated by the rules."

In **Southfields Industries Ltd v. Nicosia Municipality** (1995) 3 C.L.R. 59, we read the following:

"*The purpose of the interpretation of the law is finding the intention of the legislator. Where the wording of the provision is clear, the Court interprets it based on the natural and ordinary meaning of the words. The words in a statute are generally interpreted with their ordinary meaning, but also based the context, having in mind the subject matter and the object of the law. (See Republic v. Mathaion, Review Appeal 832, dated 12.7.1990. See also*

Halsbury's Laws of England, Fourth Edition, Volume 44, paragr. 863 - 873). The interpretation should be such so as not to lead to irrational results but also to the functionality of the laws. (See Republic v Antoniou and Others)."

In **D. Galatakis Ltd v. Republic** (2008) 3 C.L.R. 78, the interpretation of a specific section in Law was examined. The Court of Appeal, in agreeing with the First Instance Court, stated the following in pages 80 and 81:

"The basic rule of interpretation of statutes is the grammatical interpretation, that is the simple grammatical and literal meaning of the words (see Georgiades & Sons v. Republic (1991) 4 C.L.R. 142). Where the grammatical interpretation is not clear, the legislator's intention is taken into account and the entire relevant part of the Law or and the entire Law is, in such a case, examined, as well as the necessity or the wrong that it intended to remedy, depending on the case. As the first instance Court correctly points out, tax and criminal laws should be strictly interpreted and where there is a doubt the interpretation that should be given is that in favor of the citizen. Finally, the principle should be taken into account that provisions that concern a tax discharge should be strictly interpreted.

We have concluded that the interpretation given by the first instance Court was the correct one. We agree that this is also consistent with the fact that reference is made to a monetary facility in this section, which if it was not included in the right of the Registrar to impose a tax on a notional interest, its inclusion would be inexplicable and unnecessary. Apparently, the object was to equate any monetary facility with the loan."

(The underlining is made by the Court).

The following were stated in the Review Appeals 96/12 and 97/12, **Republic of Cyprus v. Andrea Soteriou a.o.**, Judgment dated 20.11.15:

"Ascertaining the object of a law, is surely not permitted to be made within the discussions, which are carried out in the House of Representatives and precede its enactment, (see Eurofreight Logistics Ltd v. Georgiou (2006) 2 C.L.R. 29, page 34) let alone to ascertain its object, in an even earlier stage, through the negotiations, which are carried out, in this respect, between the sides involved, as it happened in the present case. When a matter of interpretation of a law is raised, the meaning of its specific provisions is ascertained, mainly, through "the simple grammatical and literal meaning of the words" used, (see D. Galatakis Ltd v. Republic (2008) 3 C.L.R. 78, pages 80 to 81). Sometimes, however, in order to strengthen this task, the judge seeks, as the authentic interpreter of the law, the meaning of its provisions through its object, as a whole, and where this is appropriate, through the object of its provisions in question, (see Raftis v Republic a.o. (2002) 3 C.L.R. 345, page 357 and Komodromos v. White Knight Holdings Ltd (2010) 1 C.L.R. 1903).

……

The above interpretation is strengthened even further by the respective provision in subsection (40), above, which refers to exactly the same sixty new positions, which subsection (30) previously refers to, with the explanation that these provisions "are renamed and are transferred", as clarified. The drastic words, "are renamed" and "are transferred", each one separately have the meaning given to them in the colloquial, without the need to be submitted to a further interpretation.

……

The conclusion, which reasonably arises from the interpretation, above, of the above referred to provisions of the Law, is that no sixty new positions of an Officer of Value Added Tax are established by them. On the contrary, the provisions refer to already existing positions of Assistant Officers of Value Added Tax, the holders of which held the university qualification provided in the service plan, on 7.12.2006, which were renamed, as referred to above, and were transferred in subsection (30), above."

(The underlining is made by the Court).

Mr. Taliadoros referred to the case of **Lordos & Anastassiades Ltd a.o. v the District Officer of Limassol and Another** (1976) 2 CLR 145 and supported that even if the Court finds that section 33BB is susceptible to two interpretations it should choose the logical interpretation, which is not the one given by the Applicants. It was examined in the said case whether a permit to construct a building, which had been issued on the name of the previous owner of the property pursuant to Cap. 96, would continue to be valid after the change of ownership of the property. In allowing the appeal the Court of Appeal found, by referring to foreign Jurisprudence, that the new owners could construct a building pursuant to the permit, which had been issued on the name of the previous owner and which permit continued to be valid at the time of construction. Consequently, the Accused were acquitted, since the Court of Appeal found that they were not committing an offence. We read the following in page 153, on the interpretation of the Laws and specifically which interpretation should be chosen in case where a Law is susceptible to two interpretations:

"*Even assuming—though this is not so—that the wording of the relevant provisions of Cap. 96, and of the Regulations made thereunder, was, in any respect, ambiguous as regards the nature of a building permit, then such provisions should have been construed having in mind the consequences, respectively, of the possible alternative interpretations involved, and there should have been avoided that view which would have led to manifest public mischief, great inconvenience, grave hardship, unreasonableness, absurdity or injustice; though, of course, I do not lose sight of the fact that this is an approach to statutory interpretation which should be used with due care (see Halsbury's Laws of England, 3rd ed., vol. 36, p. 408, para. 617).*

In Arthur Hill v. The East and West India Dock Company, [1884] 9 A.C. 448, 456 it was said by Earl Cairns:-

'It appears to me that both of those constructions to which I have referred, the construction contended for by the appellant and the construction placed upon the section by James L.J., are possible constructions; and where there are two constructions, the one of which will do, as it seems to me, great and unnecessary injustice, and the other of which will avoid that injustice, and will keep exactly within the purpose for which the statute was passed, it is the bounden duty of the Court to adopt the second and not to adopt the first of those constructions'.

In Simms and others, v. The Registrar of Probates, [1900] A.C. 323, 335, it was stated by Lord Hobhouse that:-

"It is quite true, as Bundey J. intimates when he is pointing out the severity of the law, that Courts must nevertheless construe it according to its true meaning. But where there are two meanings each adequately satisfying the language, and great harshness is produced by one of them, that has legitimate influence in inclining the mind to the other".

In Shannon Realties, Limited v. Ville De St. Michel, [1924] A.C. 185, 192, 193, Lord Shaw of Dunfermline said:-

'Where the words of a statute are clear they must, of course, be followed; but, in their Lordships' opinion, where alternative constructions are equally open, that alternative is to be chosen which wi// be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be reiected which will introduce uncertainty, friction or confusion into the working of the system'.

In Holmes v. Bradfield Rural District Council, [1949] 1 Al/ E.R. 381, 384, Finnemore, J. said the following:-

'The mere fact that the results of a statute may be unjust or absurd does not entitle this Court to refuse to give it effect, but, if there are two different interpretations of the words in an Act, the Court will adopt that which is just, reasonable and sensible rather than that which is none of those things'."

(The underling is made by the Court).

As it was correctly stated by Messrs. Taliadoros and Georgiou, section 33BB does not state that in case a license, granted to a foreign bank to maintain a branch in Cyprus, is revoked, the Bank (legal person) is subject to liquidation. As it was stated, section 4(1)(a) of the Law stipulates that it is required that a Credit Institution obtains an operation license from the Central Bank "*before the beginning of its operations in the Republic ....".* In other words, no one can carry on Banking operations in the Republic of Cyprus without a license from the Central Bank of Cyprus. Section 4(1)(b) of the Law determines the persons to whom such a license can be granted. With respect to a foreign credit institution the Law has a specific provision:

"***(b)(i) Subject to the provisions of Part IV, an operation license is issued by the Central Bank only to a legal person incorporated in the Republic pursuant to Companies Act or the Cooperative Societies Law, as amended or replaced each time, or a credit institution incorporated and having obtained an operation license in a third country pursuant to a relevant law of that country."***

(The underlining is made by the Court).

In other words, the Central Bank of Cyprus cannot grant an operation license to a foreign Credit Institution (in our case a license to FBME Bank Ltd to operate a branch in Cyprus), if this has not secured an operation license that was granted to it by the said foreign country. This means that the operation license granted by the foreign country has its significance, since it is recognised and is respected by the Central Bank of Cyprus. Without this, the Central Bank of Cyprus cannot issue an operation license and hence allow the carrying on of banking operations in the Republic of Cyprus. The Central Bank is not, in extent, legally entitled to revoke the said operation license granted by the third country, something which Mr. Demetriou correctly accepted.

FBME Bank Ltd here was at all material time operating pursuant to a license granted by the competent authorities of Tanzania. An adoption of the Applicants' positions would mean that each time a license of a foreign Bank to operate a branch in Cyprus is revoked, this is substantially assimilated to a revocation of the license granted to it in the country where it has been registered to carry on and carries on banking activities. It has been already stated, that the Central Bank of Cyprus cannot revoke the operation license granted to FBME Bank Ltd by the competent authorities of Tanzania. Further, the first condition of section 33BB (above) includes the surrender of an operation license of a LCI. If the interpretation given to the Applicants is correct, this means that the first condition, for the initiation of the liquidation procedure, also includes the case where a foreign Bank, against which there is nothing reprehensible, no longer wishes to carry on Banking operations through a branch in the Republic of Cyprus and surrenders the license granted to it by the Central Bank of Cyprus to operate its branch. The following question hence arises. When the Legislator was enacting the extremely drastic section 33BB, did he have this in mind and is this what he conveyed in the relevant text of the section? Indeed, according to the provisions of the Law, the drastic liquidation order is possible to be issued by an Ex Parte Application.

Given the fact that there is no specific reference made in this section to a revocation of the operation license of a branch and given that the Central Bank acknowledges, pursuant to the Law, the operation license granted to a foreign Bank by the competent authorities

there, I find that the operation license, to which reference is made in the above section, does not concern an operation license of a branch granted to a foreign Bank, but to a license for the same to carry on banking operations. As it was stated, FBME Bank Ltd here had at all material time a license to carry on banking operations abroad. The position of Mr. Demetriou in his affidavit dated 25.4.16 that FBME Bank Ltd is a former licensed credit institution is, in my humble opinion, wrong. What the licensed FBME Bank Ltd does not today have is a license to operate a branch in Cyprus, which branch indeed and not the Bank, has specific liabilities and I again refer to the letter of the Central Bank dated 1.1.08 to this end (Exhibit 8 in the affidavit of Mr. Yiagkos Demetriou). What someone can allege is that FBME Bank Ltd is a former licensed credit institution by the Central Bank of Cyprus to maintain-operate a branch in Cyprus. I, thereby, find that the first condition of section 33BB is not satisfied.

Public interest

Although with my above finding the Application should be unavoidably dismissed, I will, however, examine whether the condition of public interest has been satisfied with the adduced evidence, and this is, for the Supreme Court to have before it the positions of the First Instance Court in the event that the case is led to appeal proceedings.

Mr. Demetriou clarified that the only thing that concerns the Central Bank of Cyprus is the public interest in Cyprus. As he characteristically stated: "***We are acting based on our own legislation and I proceeded for this reason to clarify in my affidavit and specify that yes, the Law provides this, but surely, I repeat, we will not get on a plane, go to Tanzania and start liquidating***". As to what will happen with the depositors in Tanzania in case the requested order is issued, he stated the following. I set out the relevant questions and replies:

"*Q.* *Did you also obtain legal advice from Tanzania as well, that the order is not executed, that it does not have consequences to the bank of Tanzania etc.? Have you checked these things?*

R. *But why should I obtain a legal advice from Tanzania? I am interested, as Supervisory Authority, for the public interest in Cyprus. As we have stated, we will surely take any steps, this is why we are waiting for the Governor, when he will have the chance to contact us, to tell us, is there a problem in Tanzania or not? Obviously, there is not. If there is a problem in Tanzania, we will surely see it.*

Q. *After the order will be issued?*

R. *And even now, if he comes back and tells us "you know, if the order is issued, these millions of depositors will cause a problem, this 1% of the total deposits in Tanzania, will cause a problem of stability in the country", we will then see it with him, but it does not apparently exist*."

Our own Law does not stipulate what constitutes public interest. It leaves this matter to the independent Courts of the Republic of Cyprus, which are called to decide if the Special Liquidation of a specific credit institution serves the public interest. This does not, of course, mean that the Central Bank of Cyprus is legitimised to file Applications for a Special Liquidation of Banks immediately after the revocation of the license, without having previously examined if this serves public interest. In other words, the Central Bank of Cyprus will file such an Application only if it considers that the public interest is served by the Special Liquidation of a credit institution. The concept of public interest is wider than the goals of the special liquidation. As it is aptly stated in the interest Diplomatic Work of the lawyer Mrs. Olga Aloupi "***The Directive 2017/59 for the Liquidation and Resolution of Credit Institutions***":

> "*Consequently, in the case where a goal is met, such as the avoidance of significant effects on the financial stability, but others are harmed, just like the protection of the depositors or the ensuring of the assets and funds of the clients, the judge should then make the necessary weighting. Besides, public interest is summing up all of the private interests in a legal order*."

Consequently, the Court, which will place the evidentiary material and the special circumstances of each case, has the final word and it will decide if public interest is served by the liquidation. In other words, the judgment of the Court will be *in concreto*.

The Applicants sought with the Ex Parte Application the special liquidation of FBME Bank Ltd alleging that in case of issuance of a special liquidation order of the Bank "*the depositors in the branch in Cyprus will be entitled to submit a request to the Deposit Protection Fund*". Mr. Demetriou had specifically stated the following in paragraph 6.3.2 of his initial affidavit:

> "*6.3.2 In case of issuance of the requested order for special liquidation, more than 6.000 secured depositors of the Branch will be compensated up to the amount of €100,000 within 20 business days, as it is provided in paragraph 13 of the Regulations referred to in paragraph 6.2 above, from the Deposit Protection Fund, in circumstances where they would not otherwise expect to be paid for an uncertain and undefined period of time, while the Bank's alleged shareholders, Messrs. Ayoub-Faid Michel Saab and Fadi Michel Saab (the "**Saabs**") challenge FinCEN's procedure and the Branch's correspondent banks (the "**Correspondent Banks**") continue to deny the repatriation of the deposits and of other funds. The wider category of creditors will to this end benefit, instead of having an officer as the Special Liquidator, who will have the legal right and authorization to pursue the repatriation of the deposits and of other funds, which are held by the Correspondent Banks. Under circumstances, where the success of the Resolution Measure was not rendered possible, where no other resolution measure is appropriate*

and where the Operation License has been revoked, the only option is the special liquidation. Since the resolution measures, which intended to rescue the business and, the depositors of a bank, primarily, failed, and the reasons for which the bank was considered as non viable have not been lifted, there is no other option rather than to revoke the Operation License and its special liquidation according to the provisions of the WCIL. In addition, the CBC believes that the special liquidation will strengthen confidence in the Cyprus banking system."

Finally, the Fund was activated without the issuance of the requested special liquidation order. I will not, in the present Judgment, examine how section 12(1)(a) of Law 16(I)/13 in force at the time is interpreted (the Establishment and Operation of the Deposit Protection Scheme and Resolution of Credit and Other Institutions Law of 2013), in which the following are stated:

"*12.- (1) The Commission may use the available funds of the Deposit Protection Fund to serve the purpose of paragraph (a) of subsection (1) of section 4, as follows:*

(a) for the payment of compensation to the depositors of covered institutions, which make contributions to the Deposit Protection Fund, if a deposit becomes unavailable:

It is provided that a deposit becomes unavailable when any of the following conditions exists:

(i) The Central Bank has ascertained and has informed the Committee that a covered institution is unable to repay its deposits for reasons related to its economic state or/and considers that it will not be able to do so in the near future.

(ii) an order has been issued by a court of the Republic for special liquidation of the covered or affected institution, pursuant to Banking Business Law or the Cooperative Companies Law or in case of a covered institution whose seat is other than the Republic, a corresponding order has been issued by a judicial authority of the country which constitutes its seat:

Justifiably, however, Mr. Georgiou made questions to Mr. Demetriou with respect to his above allegations. I consider it necessary to set out the relevant questions and answers:

"*Q. My question Mr. Demetriou, and I would like to ask you, is that in your initial affidavit on 22.12.15, as well as in your supplementary dated 31.03.16, if I am not mistaken, you are making express references to various points, we can see them if you like one by one, where you say*

that it is necessary, one of the reasons that it is necessary for the requested order to be urgently issued is for the DGS to be activated and to pay the around 7 thousand depositors, which are below 100 thousand. Is that correct?

R. For all the depositors to be paid up to the amount of 100 thousand. Yes, it is correct.

Q. Can you please explain to the Court, how was this position of yours differentiated and the fund was activated, while you say that it could not be activated without the special liquidation?

R. Although I believe that I explain it with sufficient detail both in my affidavit as well as in the affidavit in reply, I believe that I have set it out what the differentiation is in every detail. The differentiation is that the conditions, which existed at the given time then on 22 December, were such ... I should probably go a little further back to say that the issuance of the order essentially activates the fund. The Central Bank does not need to make any determination or anything else. This is what the legislation says, that from the moment that an order is issued, the fund is then automatically activated and exactly with the same facts, at the time, and the circumstances, which prevailed at the time, the position of the legal consultants of the bank was again that the activation with 12(1)(a)(i), which requires some determinations by the Central Bank --"

The following questions followed by Mr. Georgiou, which I set out:

"Q. Do you now agree with me that it would be more proper, since you went to the Court ex parte and you wanted, as you said before, to make full disclosure to say that... it is not exactly as I say so. That is the DGS could be activated if a determination was made, the order was not necessary.

R. I do not analyze the Law in my affidavit, it is not my job, I am not a lawyer. It is a legislation of the Republic of Cyprus. I will not tell the Court what the Law says.

Q. Because you say so about II, I am saying why do you not say so about I?

R. I am saying so about II, because it was the target.

Q. So your position, if I understood correctly, is that the conditions of I were not met until 22.12.2015, when the present Application was filed?

R. Yes."

On 13.9.16 the learned counsel of the DGS, Mr. Hadjinestoros stated, and was not disputed, before the Court that:

"*... the DGS has to date received 738 information statements from depositors of FBME, natural and legal, 79 of which prima facie fall in the excluded categories of deposits based on Regulation 7. The remaining 659 totally apply for €38,2 million. 485 deposits have been in total compensated to date with approximately €27,5 million, while 174 depositors remain to be repaid with approximately €10,7 million (excluding the 79 cases that do not prima facie appear to be entitled to compensation*)."

The essential is that the above reason, which the Central Bank invoked, among others, in order to claim for a special liquidation order of FBME Bank Ltd with an Ex Parte Application, does not exist today.

Mr. Demetriou insisted that the public interest is served by the liquidation, since there is no other relief, no solution, as he stated. He admitted, and correctly, that the concept of Public Interest includes the interests and the protection of the depositors. I will not comment on his evidence that what concerns the Central Bank is only the protection of the clients of the branch of FBME Bank Ltd. He was asked by Mr. Taliadoros, and correctly, if any search-study was made before 21.12.15 (the date of the revocation of the operation license of a branch in Cyprus), in order to approximately estimate the percentage that each depositor will get in case FBME Bank Ltd is liquidated. The reply that he gave was

> "*For this to be done it depends on when the liquidation will take place and from what assets the liquidator will be able to repatriate. It is not something over which you can get a percentage and know. We hope and we still have the hidden hope that, if the procedure is completed, we will be able to repatriate sufficient in order to satisfy the depositors*."

In other words, the Central Bank is seeking for the liquidation of a foreign Bank without knowing if the liquidator to be appointed will be able to recover assets of the Bank found abroad.

The following questions and replies followed:

> "*Q.* *Yes, Mr. Demetriou but on 21.12.2015 the license was revoked and you came to the Court with an ex parte Application on 22.12.15, the next day and you were seeking for the issuance of a liquidation order, because the requirement of the public interest was satisfied.*
>
> *R.* *Yes.*
>
> *Q.* *Should you not tell the Judge, if you give us the order now, the depositors will, for instance, get 90% or if you do not give it to us, the amount will fall each day that passes? Was no study made?*
>
> *R.* *I repeat that a mathematical study had to be made, what we state to the Court, and I say this repeatedly in all of my affidavits, is that the issuance of the order is urgent, because with the issuance of the order, all the depositors will be satisfied to the maximum possible degree the soonest possible. While the issuance of the order, the adjudication of the application is delayed, this percentage is certainly reduced, there is no mathematical explanation which to put in a formula and find percentages. <u>There are many unpredictable factors</u>.*
>
> *Q.* *Were you not aware of all the assets of the branch on 21.12.15? All of the deposits, which the branch had in foreign banks everywhere in the world?*

R. *As I have repeatedly stated, we knew what was in the papers, in the balance sheet of the branch, we knew that. But from then on, what we can, what we could and what we would be ever able to get from them in order to liquidate and satisfy the liabilities of the branch, I repeat that this depended on too many things.*

Q. *So you did not make any such study, like the one I told you, until 21.12, correct?*

R. *We did not make a mathematical study with percentages saying, you know, it will be 80 in a month, 70 in two months and so on and so forth. It could not be done nor can such a thing be done.*

Q. *So you cannot even tell us today, if the liquidation order is issued today, what percentage of their deposits my clients will get, who together have 100 million euro.*

R. *The only thing I can tell you today is that a significant percentage of the deposits is, as I have said, deposited in German Courts, which creates additional problems in order to be able to be repatriated by the liquidator, when he will be appointed. And as time passes, certainly these amounts, which are deposited in Courts, will be increased. We already know that Commerzbank, where there are approximately 170 million dollars, and awaits for instructions or an agreement between the special manager and our administrator, has given an extension following attempts of the special manager until 18 June. If it does not receive instructions and the manager does not appear to agree to anything, these will end up in German Courts, hence the percentage that you clients will be able to get will be reduced more.*

Q. *So you cannot tell me today, in order to tell my clients, whom I may persuade to withdraw their opposition, that if you accept the liquidation today you will get a percentage of 50% of your deposits.*

R. *How can I be aware what the liquidator will be able to repatriate and apart from this, I think that what your clients are claiming and it is clearly substantial from the affidavit, is to set off some of their liabilities with the deposits –*

Q. *You are wrong-*

……

Q. *Is there any chance that they will lose one hundred percent of their deposits if the liquidation order is issued?*

R. *I believe no.*

Q. *So will they get the 10%?*

R. *What do you want me to reply to you? About the percentage? I hope that they will get 100%."*

(The underlining is made by the Court).

I am not saying that the matter, of whether the public interest is served by the liquidation of the specific Bank, with the particular facts and circumstances, is an easy task. Nor do I of course disagree with the position of Mr. Demetriou that there are plenty of unquantifiable variables. It is inconceivable that such a drastic relief should be, however, claimed at the expense of a Bank and for the Applicants to allege that they are not eventually aware which assets they will succeed in repatriating. It is possible that they may

not succeed in repatriating any assets; hence what is the reason of the liquidation in such a case? Mr. Demetriou expressed his personal belief at some point of his testimony by saying that he does not believe that the depositors will lose their deposits. This is not, however, sufficient, since this belief thereof is not supported by any facts. (I, of course, leave aside the fact that he stated at another point of his testimony that with every day that passes the deposited money is reduced at the expense of the depositors). All of this should have been examined and assessed by the Central Bank of Cyprus before the filing of the present Application. The Central Bank considered, however, wrongly in the opinion of the Court, that it had an obligation to file the Application for Liquidation, because it revoked the granted license. What the Central Bank essentially seeks is to secure the Liquidation order of the foreign Bank hoping in due course that the Liquidation will serve the public interest. This is not, however, what the Law provides.

Finally, the Central Bank of Cyprus seeks the special liquidation of the Bank, because it believes that this will strengthen the trust in the Cyprus Banking System and will save the good reputation and credibility of Cyprus. I do not consider that a Bank should be liquidated in the altar of trust in the Cyprus Banking System, because the correspondent Banks continue to refuse to repatriate the deposits and other funds, as a result of the announcement of FinCEN, reference to which was made hereinabove. The sad and unprecedented facts of March of 2013, that concerned the curtailment of deposits "bail-in", are still fresh. I do not consider that the liquidation of the specific foreign Bank, which can possibly once more result to a deposit devaluation of many millions of Euro, and indeed by a Court order (many depositors of FBME Bank Ltd with amounts of millions of Euro may possibly only get €100.000, which they will, anyhow, get whether it is liquidated or not), saves the good reputation and credibility of the Cyprus Banking System.

I, finally, find that it has not been proved that the special liquidation of FBME Bank Ltd serves the public interest.

In light of the above, It is not necessary to examine the remainig grounds of Objection.

The Application is dismissed with costs against the Applicants, as these will be assessed by the Registrar and approved by the Court.

(Sgn.) .....

J. Ioannides, P.D.J.

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Registrar