**Before the Arbiter for Financial Services**

**Case ASF 224/2023**

**AQ**

**on behalf of**

**LSV and LHP**

**(collectively referred to as 'the Complainant(s)')**

**vs**

**ACT Advisory Services Limited**

**(C 65093) ('AASL', 'ACT' or**

**'the Service Provider')**

**Sitting of 27th December 2024**

**The Arbiter,**

Having seen the Complaint made against ACT Advisory Services Limited ('AASL', 'ACT' or 'the Service Provider') relating to the services provided by AASL to *LSV* and *LHP* ('the Companies') in its capacity as a Company Service Provider.[1]

The Complaint involves the allegations that AASL acted with gross negligence and breached its fiduciary duties and professional obligations. In essence and summary, this was claimed to have occurred in view of:

(a) Delays (by the director appointed by AASL) in handling certain matters relating to late tax payments due by one of the companies. The claimed shortfalls involved the alleged failure of the appointed director to sign an agreement that was reached with the tax authority for the settlement of the pending tax/ interest due and the inadequate liaison following tax payments

[1] PHL is a holding company of LSV – Page (P.) 30

made. It was claimed that a higher interest/penalty resulted after the initial agreement could not be utilised;

(b) The wrong advice allegedly given by AASL involving a BVI holding company which featured in the shareholding structure of one of the Companies; and

(c) Inadequate handling by AASL of matters concerning *Satabank*, with whom the Companies had opened and held bank accounts, which it was claimed also affected the prompt settlement of the tax dues, amongst others.

*The Complaint*[2]

In the Complaint Form to the Office of the Arbiter for Financial Services ('OAFS'), AQ explained that he was the sole shareholder and ultimate beneficial owner of two entities incorporated in Malta, *LSV* and *LHP*, (collectively 'the Companies'), which were previously served by his former Company Service Provider, AASL.

He explained that on 10th May 2022, he complained to AASL, where he detailed a series of events which he believed constituted a breach of their fiduciary duties and professional obligations.

AQ explained that the lack of progress in his complaints caused him significant distress and impeded his ability to manage his business affairs effectively. References to relevant correspondence and a timeline of events were attached to the Complaint (as per Annex 1 to the Complaint Form).[3]

AQ further explained that in 2015, his father established the indicated two Maltese companies and that in 2017, upon AASL's recommendation, his father decided to transfer his shares in *LHP* to a British Virgin Islands company.

The Complainant's father passed away in a fatal accident shortly thereafter, and after consultation with lawyers, AQ gained control of the Companies himself. A decision was reached to liquidate both Companies as expeditiously as possible with the Companies ceasing to generate revenues since 2018.

[2] Complaint Form on Page (P.) 1-11 with extensive supporting documentation on P. 12 - 258 and other material additional extracts from the revised complaint of 31st August 2024 (P. 284 - 303) which was updated *'with the missing or incorrectly calculated amounts as well as with additional clarifications'* (P. 283).
[3] P. 3 & 25

It was noted that AQ was then registered as a new signatory with respect to an account held with Satabank, and AASL was at that point requested to settle the tax dues from LSV's account, which request, it was claimed, was, however, disregarded. Shortly thereafter, Satabank's operations were suspended.

A diagram outlining the shareholding structure of LSV and LHP was presented for ease of reference.[4]

The Complaint included the following three main areas:

1) *Wrong advice involving a BVI holding company*

AQ explained that AASL had proposed to his father the formation of a holding company in the British Virgin Islands ('BVI') to serve as the parent company for the Maltese entities.

He claimed that the advice had significantly prolonged the process of transferring the shares from his deceased father to his family and was not sound legal advice.[5]

He further claimed that the decision on how to take control of the shares in the Maltese companies also took long due to AASL's initial proposal which involved costs in excess of EUR10,000. AQ noted that after he independently investigated the matter and himself proposed a more straightforward sale of shares by the BVI company to a family member, AASL then agreed to the Complainant's proposal which only required two simple documents and involved significantly lower costs.

It was claimed that AASL's proposal and general tardiness were an attempt to gain additional remuneration.[6]

AQ explained the process for the transfer of shares, where he noted that all of his father's heirs had signed resolutions authorizing the transfer of BVI shares to his sister on 31st January 2019, but these were not actioned upon as notified by AASL on 4th August 2019. He noted that as a result, it

[4] P. 285
[5] P. 286
[6] P. 286-287

was decided that additional resolutions were to be signed and he was then appointed as the beneficial owner of the Companies on 9th June 2020.

It was further submitted that based on the opinion of two Polish lawyers, AQ is aware that AASL's advice for the holding company in the BVI was, at the time, not an optimal solution as it exposed his father and subsequently himself to unnecessary tax risks and additional costs.

It was also claimed that despite being aware of the goal to liquidate the Companies and recover the funds from Satabank, AASL did not propose liquidating the holding company after the shares were successfully transferred from BVI to him. The Complainant remarked that other CSPs he has recently consulted immediately suggested this option to minimise the annual maintenance costs of the Companies.

It was further submitted that had the ownership not been transferred to the BVI holding company or prompt action had been taken, the issue with the suspended Satabank account would have been avoided in turn saving a significant amount of money on annual fees with a considerable amount of time spared.

2) *Overdue tax and additional penalty*

It was explained that the Companies were obliged to settle outstanding tax liabilities for 2017 and 2018, which had not been paid before the suspension of Satabank.

He claimed that a transfer of EUR280,000 could have been made from the Satabank account towards the partial settlement of tax.[7]

Interest penalty kept accruing on the outstanding tax liabilities after Satabank's suspension. Following discussions with the local tax authorities an agreement was reached for the reduction of the interest charges. AQ further explained that he decided to sign the agreement and instructed Stephen Balzan of AASL, who was at the time acting as director of the Companies, to proceed.

[7] P. 288

He explained that he had to borrow from his family to achieve this, but he was prepared to settle the payment within two months. It was noted that it was agreed that from the tax refund he was due to receive following the tax payment for 2017, he would then settle the outstanding tax for 2018, given that it was not financially possible for him to address both obligations simultaneously.

AQ noted that he transferred funds from his personal account to the Maltese tax authorities on 22 November 2019. He further noted that earlier, on 5 November 2019, the Complainant had informed AASL that he was almost ready to pay the tax and had requested confirmation of the transfer details.[8]

He explained that four months later he was, however, informed that the contract had not been signed and that they had to apply for a new remission of interest charges.

It was pointed out that AASL attempted to convince him that this was his fault either due to allegedly not informing them about the payment or because he did not pay the tax simultaneously, despite the previous agreement to make the payments step by step.[9]

AQ further explained that after 6 months he was informed that the previously agreed-upon contract with the tax authority, where a portion of the interest had been written off, could not be utilized anymore and a second contract had to be negotiated which, however, resulted in an additional interest of EUR 26,371 that had to be paid.

He noted that AASL was instructed to resolve this issue with the tax authorities and that he would not assume any additional interest charges given that he had settled the tax obligations on time and the error, he claimed, was solely attributable to AASL.

Given that he was not in a position to pay the additional interest, AASL stated that they would remit the difference themselves, provided that this

[8] P. 289
[9] P. 290 - 291

is paid back to them once the tax refund is received.[10] He noted that this additional amount was paid 8 months after his initial payment in November 2019.

AQ pointed out that following the tax payment due for the year 2018, the tax refund was received to AASL's own account on behalf of the Companies, despite the absence of his authorisation. He claimed that as a result, AASL held EUR274,376 in their bank account to protect its own interests.[11]

He claimed that upon receiving the refund, AASL deducted EUR 26,371 and the cost of their invoices without his consent.

He further claimed that following numerous reminders AASL returned the remaining amount but still retained EUR 12,532.61 on behalf of the Companies in their accounts, as his Companies did not have a bank account at the time.

AQ noted that he had informed AASL that he would not honour any future invoices until they reimburse him the EUR 26,371 in additional interest charges and resolve the issue with Satabank. As a result, AASL informed him of their decision to terminate their service agreement with his Companies on 16 December 2021.[12]

3) *Funds from Satabank*

AQ explained that following the suspension of the Satabank account in October 2018, he had engaged in numerous discussions with ACT to expedite the resolution of this matter and was also willing to travel to Malta to facilitate the authorisation process and address any potential concerns.

He noted that he is aware that several clients of Satabank began receiving funds in 2019 following an application to Ernst & Young ('EY')[13] for prioritization of their case. The Complainant believed that such process

[10] P. 291
[11] P. 292
[12] *Ibid.*
[13] The Competent Person appointed by MFSA in relation to Satabank p.l.c. - https://www.mfsa.mt/publication/public-notice-concerning-satabank-plc-3/

could have been successfully implemented for his Companies as well. He claimed that AASL, however, did not pursue this avenue.

He believed that it was possible to draft a letter to EY for the authorisation of a specific payment, but this, he claimed, was not done by AASL despite his numerous requests following his first request in December 2018. He submitted that tax payment constitutes a well-justified activity and he thus considered that this matter should have been resolved much earlier. It was noted that this would have eliminated the need for him to take the loan (for the payment of the due tax). He noted that despite repeatedly urging AASL, whilst it acted as his CSP, to expedite the resolution of this matter, the bank accounts remained blocked.

AQ claimed that the first request for documents was only made on 25 June 2020 and that he sent all the documents two months later as he needed time to obtain the documents from the Polish tax office and have them officially translated. [14]

He further claimed that as per media reports,[15] it was already evident for several months prior to the bank's suspension that Satabank was subject to scrutiny and had incurred fines. He accordingly claimed that this information suggested that the funds held in Satabank were not secure.

AQ submitted that no communication was received from AASL regarding such matter, which would have allowed him to take appropriate measures to switch banks and safeguard his companies' finances and cash flow.

He explained that accounts for both local Companies were established at Satabank in October 2016, but to the best of his knowledge, the bank did not meet the risk indicators at that time and was already under the regulator's radar in 2015.

It was submitted that Stephen Balzan of AASL had a fiduciary duty, as a director of the Companies, to act in their best interests, especially given Balzan's recommendation to open bank accounts at Satabank and the subsequent charges Balzan levied for this service.

[14] P. 293 - 294
[15] P. 28 & 294

> AQ pointed out again that after informing AASL of his reluctance to settle any of their invoices until the Satabank's issue is resolved and also AASL reimburses the additional interest charge of EUR 26,371, AASL informed him of their decision to terminate their service agreement to the Companies.
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> He claimed that had the overdue tax been paid before the suspension of Satabank, or EY was successfully convinced to release the funds or initiate the tax transfer, then the tax obligations would have been met on time avoiding the sum of EUR 34,361 in interest payments to the tax authority.[16]

It was thus alleged that AASL's actions were characterised by gross negligence and frequent tardiness in addressing crucial matters. AQ further noted that he often felt that his case was relegated to the background, raising his suspicion that this could be attributed to an attempt to gain additional benefits once the Companies were to be liquidated.

*Remedy requested*

A total of EUR 43,645 (revised upwards from the original claim of EUR 43,116)[17] were indicated as funds which AQ considered clearly belonged to the Companies but were being held in AASL's accounts. This figure was broken down as follows:

- EUR 27,618 (as additional interest imposed by the tax office due to the non-signature of the initial contract and the failure to notify the tax office of the payment)
- EUR 12,533 (being the remaining funds held after the tax refund and settlement of his loan)
- EUR 2,494 (for tax return on AASL's account plus VAT return)
- EUR 1,000 (for Invoice ACT3517, which included fiduciary services which, however, were agreed that will not be provided).

[16] P. 7 & 294
[17] P. 8 & 295

The following costs for the total of EUR 78,773 (revised downwards from the original claim of EUR 80,000) were, in addition, also listed:[18]

- EUR 5,830 (being the total of EUR 4,100 for the transfer of ownership to BVI and EUR 1,730 reversal to Malta);
- EUR 6,743 (being the difference between the total amount of interest paid and additional interest resulting from the invalidity of the first agreement);
- EUR 23,200 (for AASL's annual fees for 2019 and 2020 due to general delays, the BVI wrong advice case and Satabank case approx. EUR 11,600 annually);
- EUR 42,000 (for lost benefits associated with funds frozen at Satabank estimated at a rate in Eurozone of 3% annually, for approx. EUR 8,400 since January 2019);
- Assistance with the preparation of documentation for Satabank – two times EUR 500 (where, it was noted, the documents are still not finalised and the process of recovery from Satabank still ongoing).

The total claimed amount was thus calculated as EUR 122,418 (revised downwards from the original claim of EUR 123,000),[19] consisting of EUR 43,645 and the costs of EUR 78,773 as indicated above.

An additional detailed breakdown and explanations of the calculations were provided in the Annex to the letter dated 31st August 2024.[20]

**Having considered, in its entirety, the Service Provider's reply,**[21]

Where the Service Provider explained and submitted the following:

*Background information*

[18] As per revised figures – P. 295
[19] P. 8 & 295
[20] P. 296 - 302
[21] Reply of January 2024 (P. 264 – 269) to the Complaint filed with the OAFS, as well as key extracts from the subsequent reply of 14 October 2024 made by AASL following the revised complaint of 31st August 2024 (P. 305 – 322).

That AQ is the ultimate beneficial owner of two Maltese registered limited companies, *LSV* and *LHP*. His father (PP) was the company's UBO until 2017, with his shares subsequently inherited by his son (AQ).

AASL acted as a Corporate Service Provider from the date of incorporation of both companies until the date of termination on 6th July 2023. In his personal capacity, Stephen Balzan also acted as a director and secretary of both Companies until his resignation on 21st August 2023.

*Pleas regarding the competence of the Arbiter*

Whilst no pleas regarding the Arbiter's competence were raised in the Service Provider's reply of January 2024, the Service Provider raised certain material pleas about the Arbiter's competence in its reply of 14th October 2024. A summary of the said pleas and ensuing considerations are included further on in this decision.

*Rebuttal of allegations*

The following rebuttals of the Complainant's allegations were made in the Service Provider's reply:

1. *Overdue tax and additional penalty*

AASL explained that the issue relates to the payment of tax due to the Commissioner for Revenue by LSV in respect of years of assessment 2017 and 2018.

It noted that the tax due by the company in respect of these 2 years amounted to Eur430,487 in respect of year of assessment 2017 and Eur238,654 in respect of year of assessment 2018.

The tax was due to be paid by not later than 30th June 2018 in respect of year of assessment 2017 and 30th June 2019 in respect of year of assessment 2018.

Following the sudden and tragic demise of the AQ's father, the company found itself in financial difficulties as his successors were not in a position to continue the business which their father had started. The company was not in a position to meet its obligations including those related to the payment of the tax due.

Furthermore, the company had its funds held with Satabank blocked following the suspension of the bank's licence by the MFSA.

AASL explained that AQ transferred the following amounts to AASL's clients' account to settle both professional fees due to AASL as well as partially effect payments on account of the tax due:

- 7th December 2018, EUR22,860.84
- 7th December 2018, EUR92,838.75
- 17th September 2019, EUR104,978

The Complainant also asked AASL to utilise the funds from the Commissioner for Revenue by way of refund due to LHP in respect of year of assessment 2017 amounting to EUR368,989 to settle the rest of the tax due. AASL noted that it had in fact received the amount of EUR368,989 from the Commissioner for Revenue on 3rd July 2020.

AASL noted that it effected the following tax payments to the Commissioner for Revenue on account of tax and interest due for late payment:

- 10th December 2018 – EUR103,148 (3 days after receipt of funds from AQ)
- 19th September 2019 – EUR104,975 (2 days after receipt of funds from AQ)
- 8th July 2020 – EU240,674 (5 days after receipt of funds from the Commissioner for Revenue).

It further noted that another payment of EUR228,736 in respect of year of assessment 2017 was effected directly by AQ to the Commissioner for Revenue in November 2019. AASL claimed that AQ informed AASL that he had effected such payment in January 2020.

The Service Provider submitted that payments of tax were thus made by them immediately after receipt of the said funds and therefore any interest incurred by the company for late payment of tax was not a result of any omission from their end.

2. *Additional Penalty*

AASL explained that the issue here relates to an agreement between the Commissioner for Revenue ('CfR') and LSV, which they had assisted the client in achieving for the company to benefit from a reduction in interest on late payment of tax as explained above.

It noted that the CfR had agreed to such an agreement and sent them a draft version for this to be signed in October 2019, after they had, on behalf of the company, made a request for remission of additional tax and interest dated 17th September 2019.

It was further noted that the agreement was subject to the payment of tax and the reduced interest in full within three months. Furthermore, the tax authorities had asked them to inform them as soon as payment was effected.

AASL submitted that as can be seen from the calculations presented, the full payment of tax and additional interest was not effected on time. The Service Provider pointed out that as stated, a partial payment of tax was effected directly to the tax authorities by AQ in November 2019, of which AASL was only notified in January 2020. AASL noted that, furthermore, the balance of tax and interest due in respect of year of assessment 2018 was only effected to the CfR in July 2020 after they had received the refund of tax.

AASL also submitted that in view of the fact that the full payment of tax was not effected on time, it did not proceed with the signing and submission of the said agreement to the CfR. Consequently, the CfR proceeded to allocate the amount received, first against the interest due (before the reduction) and then the remaining balance was allocated against the tax due.

The Service Provider pointed out that since the payment of the balance due was not effected on time, the CfR considered the original agreement as null and void.

AASL explained that during the following weeks it had contacted officials of the CfR and asked them if they could consider accepting the original agreement dated October 2019 on humanitarian grounds, given the fact that the company found itself in financial difficulties, mainly due to the tragic circumstances in which the Complainant's father (PP) had died and that the company had funds in its Satabank account which were however blocked due to the reasons mentioned. A negative reply was, however, received from the tax authorities.

It explained that their client was then assisted in negotiating a revised agreement dated 26th March 2020, after they had on behalf of the company made another request for remission of additional tax and interest in February 2020. The new agreement, however, was not as beneficial as the one mentioned earlier.

AASL noted that the Complaint relates to the fact that they had not signed the original agreement dated October 2019 and that they had not informed the tax authorities of such a payment. It further noted that, as stated, they had not signed the agreement because it would not have been a valid one given that the full payment of tax was not done as required by the tax authorities and consequently, the signed agreement would not have been a valid one.

The Service Provider submitted that, furthermore, they could not have informed the tax authorities that the payment was effected in November 2019, because they were only informed of such a payment in January 2020, that is, after the tax payment was effected and after the tax authorities had allocated the payment as explained.

AASL additionally submitted that AQ had admitted that he did not have the necessary funds to pay the tax liability for both full years and that this showed that AQ and LSV were never in a position to benefit from the reduction in terms of the first agreement. It argued that this was given that AQ could not pay the tax within the stipulated deadline.

The Service Provider highlighted that the tax agreement stipulated that the payment of tax due must be effected within 3 months and had to be settled within three months from date of agreement. It submitted that AQ was well informed that the first agreement would not have been valid unless the tax due was paid within 3 months.

It reiterated that AQ had been informed that as soon as he effects the payment in November 2019, he was to inform AASL so that the tax authorities would be informed immediately and would not allocate part of the payment against the interest due but allocate same against the pure tax and the reduced interest. AASL submitted that despite AQ was informed about this by its staff it was his sole decision to inform AASL of the payment two months later, in January 2020, when it was evidently too late.

3. *BVI Wrong Advice*

AASL explained that it had been engaged by AQ's father (PP) to set up a company in the British Virgin Islands to hold the shares in LHP. The name of the company in the BVI was *Corsair Investments Limited* ('Corsair').

Corsair was a company registered in the British Virgin Islands which AASL had assisted AQ's father (PP) to set up for the purpose of holding shares in LHP. AASL claimed that AQ's father (PP) had informed them that the set-up of this company was necessary after he received the pertinent advice from his Polish lawyers.

Following the demise of his father, AQ asked AASL to make the necessary arrangements for the shares held by the BVI company in LHP to be transferred to his heirs. AASL noted that they asked AQ to provide them with the relevant documentation confirming who the shares will be transmitted to, however, they did understand that the tragic circumstances in which his father passed away lead to a number of delays in them receiving the pertinent documentation. It noted that the fact that AQ's father (PP) had a number of heirs who were still minors continued to complicate matters.

The Service Provider explained that they were then informed at a later stage by AQ that the shares will be inherited by his sister and that his mother, brothers and sisters were ready to sign a waiver to waive their rights to receive the said shares in his sister's favour. AASL claimed that whilst they were in the process of preparing the relevant documentation, AQ subsequently informed them that it would very likely be that the shares will not be inherited by his sister but will instead be inherited by him.

AASL understood that, at the time, the family was waiting for the pertinent advice from their Polish legal advisors and thus the process was subsequently delayed.

The Service Provider noted that, in fact, the shares were inherited by AQ and AASL had prepared and filed the necessary documentation with the *Malta Business Registry* ('MBR') once they were provided with the necessary documentation confirming the above mentioned.

AASL submitted that as can be seen and, also, as stated by AQ in the Complaint, the *'unnecessary tax risks and additional costs'* which were incurred were in

relation to tax and legal implications arising in Poland. AASL further submitted that its area of expertise is in relation to Maltese tax implications, and they could never provide any advice in relation to tax and legal matters arising from a Polish perspective. It submitted that any advice on legal and tax matters arising in Poland should have been obtained by AQ before proceeding to set up the company in the BVI.

4. *Satabank*

AASL submitted that following the suspension of the bank's licence by MFSA in 2018, it had continuously kept AQ updated on the situation. The Service Provider noted that it had numerous exchanges of correspondence with both EY Malta and Dr Richard Galea Debono appointed as administrators to manage the bank's assets.

It noted that it kept a record of all the work which they had done on this matter as well as the exchanges of correspondence they had with both EY Malta as well as Dr Galea Debono. Copies of such could be presented during the proceedings.

AASL submitted that AQ was, in the meantime, continuously being updated on progress. The Service Provider explained that it also met representatives of EY Malta who informed them that they would do their best to speed up the process, however, several reminders to keep them updated remained unanswered. A timeline of all the work done by AASL related to this issue was produced in 'Doc 3' to the Service Provider's reply of October 2024.[22]

AASL pointed out that AQ asked them whether it would be advisable for him to come to Malta and meet the administrators of the bank. The Service Provider subsequently informed him that if he would like to visit Malta, that might help the process. AASL submitted that AQ never came to Malta despite his promises to visit the bank and that AQ then asked whether it would be possible to organise a video call with the administrators. It submitted that despite trying on several occasions to set up an appointment for a video call with the administrators of the bank no reply was, however, ever received.

AASL highlighted that it was important to note that it had asked AQ to provide them with the documents which at the time were being requested by the

[22] P. 331 - 332

administrators of Satabank to release the funds. AASL noted that AQ did provide some of them but did not provide the full list of documentation and information which were being requested.

It submitted that, apart from the above, at the time of all these exchanges of correspondence with the administrators of the bank, the transmission of the shares *'causa mortis'* was not yet completed due to the reasons mentioned. The Service Provider claimed that they were thus faced with a situation whereby they could not identify who the real UBO was, given that they had not been provided yet with the pertinent documentation related to the transmission *'causa mortis'* of the said shares.

Additional submissions were further made on this point in the reply of October 2024.[23]

Further explanations and a detailed breakdown were, in turn, also provided by the Service Provider in respect of the revised figures requested as compensation.[24]

5. *AASL's concluding remarks in its reply*

The Service Provider submitted that it can never be held responsible for any of the complaints raised for the following reasons:

a) Given that it ensured that the tax payments were effected as soon as the necessary funds were made available to it. It submitted that any interest incurred was thus a result of the late remittance of the said funds to AASL and the late notification to AASL by AQ that the tax was paid to the tax authorities.

b) The first proposed agreement with the Maltese tax authorities could not be signed and submitted to the tax authorities given that the payment of the tax due as explained was not effected. AASL submitted that any signed agreement would thus still have been considered by the tax authorities as

[23] P. 317
[24] P. 319 - 321

null and void as the payment of the tax in full, as well as the reduced interest, was one of the conditions for a valid agreement.

c) The 'wrong advice' which AQ referred to is related to Polish tax and legal issues. AASL submitted that AQ was well aware that AASL's expertise lies exclusively in Maltese tax matters, and as such, they have never offered advice on foreign tax and legal issues, including those related to the BVI company.

d) AASL had recommended the services of Satabank given that the bank was a duly licensed bank by the MFSA. It submitted that it was not aware of the lack of compliance with AML laws by the said bank as well as the fact that MFSA would take a drastic action to suspend and eventually cancel the bank's licence.

**Preliminary**

***Competence of the Arbiter and other preliminary aspects***

The Arbiter is reproducing below his decree of 25th October 2024, wherein the aspects claimed by the Service Provider about the Arbiter's competence (which were raised at a later stage during the proceedings of the case), as well as other aspects, were comprehensively considered: [25]

> **'Decree of 25th October 2024**
>
> During the hearing of 23rd July 2024, AQ testified *inter alia* that certain corrections were required to the Complaint filed with the Office of the Arbiter for Financial Services ('OAFS'). It was accordingly agreed, during the said hearing, that a revised complaint reflecting the new figures and

[25] P. 334 - 343

supporting evidence was to be provided.[26] The Service Provider was also allowed to submit its reply thereafter to the revisions made.

Having seen the revisions of 31st August 2024,[27] and the Service Provider's subsequent reply of 14th October 2024,[28] the Arbiter shall first make certain key observations and considerations as follows:

*(a) Revisions and subsequent reply* – It is noted that rather than continuing on the complaint and reply as first filed with the OAFS and merely highlighting the corrections needed and supplementary submissions, the revisions and subsequent reply filed by both parties were done in a way and manner as if they were a replacement altogether of the original complaint and the original reply filed with the OAFS.[29]

However, the Arbiter did not grant permission for a replacement or new arguments but only for additional clarifications and corrections.

Whilst the essence of the Complaint and allegations made in the Complaint received by the OAFS on 29 December 2023 remained fundamentally the same in the revisions submitted on 31 August 2024, the original complaint and reply are, for the avoidance of any doubt, not being replaced by the communications of 31 August and 14 October 2024, respectively.

The Arbiter accordingly hereby decrees that the contents of the original complaint and reply filed by the parties with the OAFS on 29th December 2023 and 23rd January 2024 respectively,[30] remain valid and are the basis and subject matter of the case under consideration (subject to any material corrections and related additional submissions provided during the case proceedings).

[26] P. 282
[27] P. 284 - 303
[28] P. 305 - 322
[29] That is the complaint filed on p. 3 - 9/19 - 24 and the reply filed by the Service Provider on p. 264 - 269
[30] P. 3-9 & P. 264 - 269

Material clarifications and valid supplementary points raised in the communications of 31 August and 14 October 2024 are, for all intents and purposes, thus regarded as additional submissions and clarifications in continuation of the original complaint and reply and will be reflected as considered appropriate in the Arbiter's decision.

*(b) Competence of the Arbiter* – It is noted that, in its reply of 14th October 2024, the Service Provider raised new preliminary pleas regarding the Arbiter's competence to hear this case.

Such matters were not raised earlier by the Service Provider - neither in its first written submissions to the OAFS of January 2024 nor during the extensive hearing of 23rd July 2024 - but only at a late stage in the proceedings of the case through the Service Provider's reply of 14th October 2024.

The Arbiter, furthermore, does not condone any unprofessional attempts to stultify the progress of the proceedings of a case and shall not allow the proceedings to be dragged on unnecessarily. Article 19(3)(d) of the Act requires the Arbiter to *'deal with a complaint in a procedurally fair, informal, economical and expeditious manner'.* The Arbiter considers that the raising of preliminary pleas at a late stage after an extensive hearing was already held on its merits appears as a mistimed attempt to avoid being judged on merits.

The Arbiter shall next proceed to consider and address the aspects raised about his competence as follows:

*(i) Claim of no eligible customer under the Act*

In its reply of 14th October 2024, the Service Provider referred to the definition of *'customer'* and *'financial services provider'* under Article 2 of the Act.

The Service Provider claimed that AQ had *'submitted the Complaint in his personal name and capacity, and not in the name and on behalf of LHP and LSV respectively'*.[31] AASL noted that *LHP* and *LSV* were the ones which had engaged it to provide certain services as a Company Service Provider ('CSP').

The Service Provider further submitted that AQ *'is not, and has never been, [its] customer'* given that *LHP* and *LSV* have *'separate juridical personality'* and *'a legal personality which is distinct and separate from that of its members'* as per Article 4(4) of the Companies Act (Chapter 386 of the Laws of Malta).[32] AASL submitted that:

> *'LSV and LHP, both have the ability to assume rights and obligations in their own name. It follows therefore, that a right or obligation pertaining to both companies is to be enforced by or against the companies themselves and not by or against its members. The fact that liabilities of the companies are not liabilities of its members is rooted in the notion of limited liability, enshrined in Article 67 of the Companies Act which expressly states that the 'members' liability is limited to the amount, if any, unpaid on the shares respectively held by each of them.*
>
> *The above is a result of the separate legal personality of both companies, and thus rights of the said companies are not rights of its members and should not be enforced by the latter.*
>
> *As such, it is respectfully submitted that the Complainant does not have sufficient legal standing and interest to submit and pursue the Complaint pursuant to the Act'* [33]

The Arbiter considers that whilst it is indeed correct that LSV and LHP ('the companies') have their own legal personality and were the parties who entered into an arrangement with AASL for the

[31] P. 307
[32] *Ibid.*
[33] *Ibid.*

provision of services as a company service provider, however, AASL's claims regarding his lack of competence to hear the case on the basis of no eligible customer are outrightly refused. This is when considering various factors, including the following:

*i.i Context and substance of the Complaint*

Although Section 1 of the Complaint Form and the Complaint registered by the OAFS indicated an individual, AQ,[34] the context and substance of the Complaint against AASL clearly pertain to AQ's companies.

Indeed, in his explanations of his Complaint to the OAFS, AQ not only started by specifically referring to the two companies in question, LSV and LHP, which are the subject of this Complaint but also specifically pointed out his position within the companies, stating that:

> *'… I am writing to your attention a matter of great concern involving my former Company Service Provider, ACT Advisory Services Limited, under the management of Mr Stephen Balzan. ACT Advisory Services Limited previously served as the Company Service Provider for two entities, LSV and LHP , of which I am currently the sole Shareholder and Ultimate Beneficial Owner'. [35]*

As also testified by both parties during the hearing of 23rd July 2024, it is also clear that the context of the Complaint involves a company and not AQ in his personal capacity. Indeed, both parties provided the context themselves at the start of their testimony where AQ stated *inter alia* that *'I say that my company had some liabilities …'*[36] and Stephen Balzan of AASL testified *'the company that Mr AQ had …'.*[37]

[34] P. 1
[35] P. 3 – Emphasis added by the Arbiter
[36] P. 271
[37] P. 273

The Service Provider is furthermore totally incorrect in its claim *'that the Complainant submitted the Complaint in his personal name and capacity',*[38] given that in an attachment to the Complaint Form titled *'Index AI', 'Description: Complaint capacity',*[39] AQ clearly and categorically highlighted that:

> *'I am writing this complaint as the sole shareholder and beneficial owner of the companies, which can be easily verified in the MBR register. As the beneficial owner for whom CSP provides services in the field of managing these companies and representing them, I am harmed by the described actions of ACT Advisory Services Limited …'.*[40]

It is thus clear that AQ was not making the Complaint in his personal capacity but as a representative of the companies to which he had material connections. Whilst acknowledging that instead of completing the personal details of Section 1 of the Complaint Form to the OAFS, AQ should have rather completed another section of the form outlining that he was complaining on behalf of a business, this is, however, considered as an administrative error which does not change the substance and context of the Complaint made.

*i.ii Juridical interest*

The Arbiter notes that AQ is not only the sole ultimate beneficial owner of LSV and LHP but also the sole director, company secretary, and legal/judicial representative of the said companies.[41]

[38] P. 307
[39] P. 255
[40] P. 256 – Emphasis added by the Arbiter
[41] https://register.mbr.mt/app/query/get_company_details?auto_load=true&uuid=a10218a2-ec66-5507-88b7-a8439bb08d19

https://register.mbr.mt/app/query/get_company_details?auto_load=true&uuid=9a2cb1ad-3743-5af9-a74a-d12b29080e7f

He indeed occupied such posts effective 10th October 2023 and thus before the registration of this Complaint with the OAFS on 29th December 2023), after Stephen Balzan of AASL resigned from acting as the sole director, company secretary and legal/judicial representative of LSV and LHP on 21st August 2023 as per the records held with the Malta Business Registry.[42]

In its reply of 14 October 2024, AASL also noted that:

> *'Lastly but not least it is important to point out that the complaint to the Arbiter was filed by the complainant in 2023. The appointment of the complainant as a director of LSV was filed in April 2024, back dated to October 2023.'* [43]

Whilst the Form K, *'Notification of changes among directors or company secretary or in the representation of the company and the directors' consent and declaration for appointment pursuant to Articles 139(1), 139(5) and 146(1)'* of the Companies Act, was stamped as received by the MBR on 16 March 2024 for LHP and 9 May 2024 for LSV , both forms stipulated that AQ *'has been appointed as director of the company with legal and judicial powers and secretary of the company'* with an *'Effective date of change 10th October 2023 (10/10/2023)'.* The late filing of such form with the MBR is thus not considered to have any effect on the Complaint in consideration under Cap. 555.

It is also noted that one of the disputed matters involved a tax issue affecting the companies, a settlement for which was made directly by AQ himself as confirmed by AASL during the sitting of 23rd July 2024.[44] This was further confirmed by AQ during the same sitting when he also testified, *'I paid from my*

[42] https://register.mbr.mt
[43] P. 310
[44] P. 274

*personal account directly to the tax authorities, and it was made as a loan for the company.'*[45]

The juridical interest of AQ is indeed quite evident and there is no doubt that AQ has all the necessary capacity to represent the Companies and file his Complaint accordingly.

*i.iii Other aspects – Definition of 'customer'*

Article 2 of the Act defines *'customer'* as a *'a natural person, including his successors in title, a micro-enterprise or consumer associations'.* A *'micro-enterprise'* is, in turn, defined as *'an enterprise which employs fewer than ten persons and whose annual turnover and, or annual balance sheet total does not exceed two million euro (€2,000,000)'.*

The latest available annual report and financial statements filed with the MBR for the year ended 31st December 2021, in respect of LSV and LHP,[46] were also presented by AQ as part of the attachments to his Complaint Form.[47]

The said accounts indicated a *'Loss for the financial year'* for the year ended 31st December 2021 of (EUR 5,505) in respect of LHP and of (EUR 7,189) in respect of LSV.[48] The *'Total equity and liabilities'* position was of EUR 1,739,693 for LHP and EUR 1,674,540 for LSV as at 31st December 2021.[49] Both companies thus satisfy the EUR 2 million threshold criteria mentioned in the definition of micro-enterprise under the Act.

The Arbiter, furthermore, has sufficient comfort that the said companies also satisfied the number of employees criteria applicable for a micro-enterprise under the Act. This is when considering the details emerging from the respective financial statements regarding, for example, the *'Administrative*

[45] P. 276
[46] https://register.mbr.mt/app/home
[47] Annexes 'Index: AF' and 'Index: AG' – P. 221 – 252
[48] P. 226 & 243
[49] P. 227 & 244

*Expenses'* in respect of both companies,[50] as well as taking into consideration that after the original ultimate beneficial owner of the companies passed away in 2017,[51] a decision was taken *'to liquidate both companies'* where *'both companies have ceased generating revenue since 2018'.*[52]

For the reasons amply mentioned, the Arbiter accordingly determines that the Service Provider is not justified in its request to dismiss the case based on its claim that the Arbiter has no competence to hear this complaint due to the matters raised about the customer's eligibility.

The Arbiter refers to the definition of *'parties'* under Article 2 and also Article 22(8) of the Act where the latter grants the Arbiter power, subject to the provisions of the Act, to regulate the proceedings as he thinks fit and proper in accordance with the rules of natural justice.[53]

Consideration is also made of Article 175 of the Code of Organization and Civil Procedure (Chapter 12 of the Laws of Malta), which deals with the *'Power of court to order or permit amendment of written pleadings'.*[54]

[50] P. 237 & 252

[51] P. 264

[52] P. 3

[53] Article 2 of Cap.555 of the Laws of Malta defines: '*'**"parties" in relation to a complaint means** the complainant, the financial services provider against whom the complaint is made, and **any other person who in the opinion of the Arbiter should be treated as a party to the complaint**'* whilst Article 22 (8) of Cap. 555 provides that *'Subject to the provisions of this Act and of any rules made thereunder as stipulated by article 33, **the Arbiter shall regulate the proceedings as he thinks fit and proper in accordance with the rules of natural justice: Provided that no proceedings before the Arbiter shall be invalid because of any non-observance of any formalities if there has been substantive compliance with the law**.'* – Emphasis added by the Arbiter

[54] *Article 175 of Cap. 12 of the Laws of Malta provides that: '(1) The court may, at any stage of the proceedings, at the request of any of the parties, until judgment is delivered after hearing where necessary the parties, order the substitution of any act or permit any written pleading to be amended, either by adding or striking out the name of any party and substituting another name therefor or by correcting any mistake in the name or in the character of the parties, or by correcting any other mistake or by causing other submission of fact or of law to be added even by separate note, provided that no such substitution or amendment shall affect the substance either of the action or of the defence on the merits of the case.*

> Having considered the particular circumstances of this case and the pertinent matters, the Arbiter is of the opinion that *LSV* and *LHP* are to be treated as complainants.
>
> Given that the parties to the Complaint filed with the OAFS were first incorrectly registered as AQ against ACT Advisory Services Limited, the Arbiter orders that the case file be corrected and updated as reflected in this decree to read as AQ on behalf of LSV and LHP against ACT Advisory Services Ltd'.[55]

In his decree of October 2024, the Arbiter furthermore requested AASL, in terms of Article 25(5) of the Act, to produce certain documents, in order to consider further the Service Provider's additional claim that the services and activities complained of do not fall within the scope of the Act (an aspect which was also only raised in AASL's reply of 14th October 2024). The documents requested were:

*' - a copy of the contractual engagements that LSV and LHP had entered into with AASL and/or Stephen Balzan;*

- *a confirmation as to whom payment was made by LSV and LHP for the directorship services provided by Stephen Balzan;*
- *a copy of the reply the Service Provider sent to the formal complaint made by AQ.'* [56]

Further to the provision of the said documents, the Arbiter has the following comments and observations to make:

*Claim that the services and activities complained of do not fall within the scope of Cap. 555*

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*…*
***(3) Any judicial or administrative omission or mistake in a judicial act may until the court shall have delivered judgment and disposed of the case be remedied by a court of its own motion**.'* – Emphasis added by the Arbiter

[55] End of main extract from the decree of October 2024 - P. 334 - 343
[56] P. 342 - 343

In its communication of 14th October 2024, AASL submitted that the Arbiter does not have the competence to hear this Complaint with respect to the services provided and activities complained of.

In the said communication, AASL listed the services it is authorised by the MFSA to provide (as a company service provider), and also listed the services for which LSV and LHP had engaged AASL.[57]

The Service Provider noted that the services provided as a company service provider involved only: (a) arranging for another person to act as director and company secretary and (b) provision of a registered office. It pointed out that it was never itself *'appointed as director of LHP and LSV respectively'*.[58] AASL further submitted:

> *'… that the various services and activities complained of by the Complainant do not fall within the* scope *of any of the services that ACT is authorised to provide by the MFSA as a licensed company service provider'*.[59]

The Service Provider further noted that the matters complained of mainly comprised of the following: (1) the provision of tax compliance services by AASL (2) the incorporation of the BVI holding company and subsequent transfer of ownership and (3) the recovery of funds held by Satabank on account of the companies.

As to the provision of tax compliance services and support to the companies, AASL argued that the Arbiter lacked statutory competence to deliberate and adjudicate such matters as this is not an area which requires a license or other authorisation in terms of any financial services law in Malta and is not regulated as a financial service. It submitted that such tax compliance services and support was not one of the services or activities set out in the *Company Service Providers Act* and that its services in this regard were furthermore limited to '*the preparation and filing of the relevant annual income tax returns as well as to the attendance of payments of any income tax due'*.[60]

[57] P. 306 - 307
[58] P. 307
[59] *Ibid.*
[60] P. 308

With regard to the incorporation of the BVI holding company (Corsar) and subsequent transfer of ownership, it noted that AASL's role and engagement was mainly limited to act as an intermediary between the ultimate beneficial owner at the time (AQ's father), and the third-party registered agent in the BVI for the incorporation of Corsar (as per the terms of the engagement letter dated 14th July 2017, attached to its reply).[61]

AASL highlighted that it was not responsible for the incorporation of Corsar nor the transfer of ownership and neither for the subsequent liquidation of this company, as these were matters handled by the BVI registered agent. In essence, it again submitted that the services AASL provided are not set out in the Company Service Providers Act; are not regulated as financial services; and do not require a licence or authorisation under financial services law in Malta. AASL submitted that the Arbiter accordingly lacked statutory competence to deliberate and adjudicate on the allegations made about such matters.

AASL submitted that in his capacity as director of LSV and LHP, Stephen Balzan *'always acted and performed his role, functions and duties as director of the said companies in his personal and individual capacity, and not as a representative of ACT'*.[62]

The Service Provider further submitted that it was *'only responsible to arrange for another person to act as director of LHP and LSV respectively'* and that complaints relating to the conduct and performance of Stephen Balzan as director *'should have been directed and addressed to Mr Stephen Balzan directly, in his personal and individual capacity, and not against ACT'*.[63]

AASL reiterated that it was not a director of the companies. It further pointed out that Stephen Balzan was not a financial services provider or licensed in his personal and individual capacity in terms of any financial services law in Malta and that the Arbiter accordingly lacked statutory competence to deliberate and adjudicate such matter too.

The Service Provider also submitted that any provision of support and resources by AASL to Stephen Balzan is not a financial service and that AASL was thus *'not*

[61] P. 309 & 323-326
[62] P. 309 - 310
[63] P. 310

*to be considered as a financial services provider for the purposes of the Act in this particular scenario'*.[64]

In its final submissions of 29th November 2024, AASL again asked the Arbiter:

*'… to consider the remaining pleas which have yet to be taken into consideration, namely:*

*(a) The services which have been the subject of the complaint, do not fall within the scope of any of the services that ACT is authorised to provide by the MFSA as an authorised CSP.*

*(b) Any complaints relating to the conduct and performance of Mr Stephen Balzan's duties as a director of both LSV and LHP should have been addressed to him directly in his personal and individual capacity and not against ACT.*

*(c) Mr Stephen Balzan does not qualify as a service provider for the purposes of the Act'*.[65]

*Arbiter's position on the remaining pleas*

The Arbiter notes that AASL is authorised by the MFSA as a *'Class C CSP'* Company Service Provider ('CSP') under the Company Service Providers Act, Chapter 529 of the Laws of Malta ('the CSP Act').[66] By virtue of such authorisation, AASL is authorised to provide the following services:

- *'arranging for another person to act as director or secretary of a company, a partner in a partnership or in a similar position in relation to other legal entities;*
- *formation of companies or other legal entities;*

[64] *Ibid.*
[65] P. 374 - 375
[66] Financial Services Register - MFSA

- *offering service to third parties of acting as director or secretary of a company, a partner in a partnership or in a similar position in relation to other legal entities;*

- *provision of a registered office, a business correspondence or administrative address and other related services for a company, a partnership or any other legal entity.'* [67]

Whilst the Arbiter accepts that there are certain aspects of the Complaint, namely, the alleged wrong advice provided involving the BVI company and matters related thereto, that are considered to be outside of the competence of the Arbiter (as they do not involve any of the activities listed above falling under the Service Provider's CSP licence), the Arbiter, however, considers that there are other aspects raised in the Complaint which fall within his competence.

**The key aspect deemed to fall within the Arbiter's competence involves the CSP's activities that AASL was engaged to provide in terms of its CSP licence. This, thus, involves the alleged breach of fiduciary and professional obligations of AASL and Stephen Balzan's actions or lack thereof with respect to the directorship services provided**.

Whilst the Complainants could have pursued their claims through valid legal means either against Stephen Balzan individually or Stephen Balzan and the Service Provider together, there is, however, nothing precluding the Complainants from seeking claims for loss/damages from the Service Provider itself with the OAFS in respect of the directorship services offered through ACT for the reasons amply mentioned in this decision.

In dismissing the Service Provider's claim about his competence, the Arbiter takes into consideration various factors, particularly the following:

- *Engagement & contractual relationship for directorship services* - As described by the Service Provider itself in its reply of 14th October 2024, LSV and LHP had engaged AASL to provide certain CSP services, whereby AASL

[67] As per the MFSA's Financial Services Register. The Schedule to the CSP Act also refers.

*'had arranged for and procured Mr Stephen Balzan … to be appointed as director and company secretary'* of the said companies.[68]

It is noted that following the Arbiter's request, AASL only presented two Engagement Letters which related to the formation of the companies (LSV and LHP) and related services that were entered into with AASL (and a Cypriot agent who was described by AASL as having *'initially introduced (the Complainant's father) to ACT'*).[69]

The said Engagement Letters indicated *'Other services'* that AASL could provide (with such services also including *'Acting as company directors'* amongst others).[70]

It is, furthermore, noted that Complainant's father, PP, signed a *'Check List of Services'* form issued by AASL in respect of both companies, where apart from certain company incorporation services there was also selected the provision of *'Company Director'* as well as '*Administration Support (mandatory if ACT is a Director)'* apart from other services.[71]

It is thus clear that **AASL was the contracting party in respect of the disputed services and indeed no arrangement has been presented nor emerged as existing between the Companies and Stephen Balzan in his personal and individual capacity regarding the provision of services as director**.

- *Lack of exclusion of liability clauses* – It is furthermore noted that **the Service Provider did not refer to any exclusion of liability clauses applicable to AASL in respect of the directorship services provided by Stephen Balzan. Nor any such clauses have indeed emerged from the contractual arrangements** that were entered into with the Service Provider for the provision of the CSP services. Indeed, the contractual arrangement did not include any explicit nor implicit waiver for the actions of the individual director so appointed by AASL.

[68] P. 306 & 307
[69] P. 344 & 361 - 368
[70] P. 362 & 366
[71] P. 351 & 352

- *Context of Regulatory framework* – **AASL's responsibilities and potential liability for the services in question also emerge when considering the provisions of the *Company Service Providers Rulebook* issued by the MFSA**, which is applicable to AASL in its capacity as a CSP. It is noted that the definition of 'Arranging' and Rule R4-4.1 specifically provides that:

  *'Arranging* *In the context of paragraph (b) of the definition of Company Service Providers in Article 2 of the Act, the term 'Arranging' means the act of putting in order or providing for another person to act as a company director, company secretary, partner or in a similar position in another legal person.* ***This includes the situation where a person who is employed by, or who is a director or shareholder of a CSP, is selected by that CSP to act as a director or company secretary or in a similar position to an entity as part of the company services which the CSP provides to that entity****.*

  *…*

  Rule R4-4.1 *CSPs may only arrange for natural persons to act as director or secretary of a company, a partner in a partnership or a similar position in relation to other legal entities.* ***In the case of CSPs set up as a legal person, they can only arrange for the appointment of their officers or employees to act as director or secretary in client entities or a similar position****.'*[72]

  AASL could thus only arrange for one of their officers to be appointed to act as director for the clients. Stephen Balzan was so appointed being a senior officer of AASL.

- *Remuneration* - **It has furthermore not been claimed, much less proven, that Stephen Balzan received any fees for services in his personal capacity. All fees (including directorship fees) were claimed by a formal invoice from AASL**. This was confirmed by Stephen Balzan himself in his email of 1st November 2024, where he stated the following:

[72] Emphasis added by the Arbiter

> *'Please note that ACT is authorised by the MFSA to arrange for others to act as a director. In this case, ACT had arranged for the undersigned to act as a director of both LSV and LHP. For practicality purposes, ACT issued one invoice for all services rendered (including that of acting as a director). Internal arrangements were then made for the undersigned to be paid for his services accordingly. This procedure did not only apply to LSV and LHP but applied and still applies in respect of all clients'.*[73]

It is noted that the invoices issued by ACT (as reproduced in the submissions of 31st August 2024), indeed included, for both LSV and LHP, an item payable for *'Acting as company director for the year ended …'*.[74] (The copies of the said invoices were not contested by the Service Provider).

- *Lack of independence & Legal relationship between Balzan and AASL* - Stephen Balzan himself is ultimately described as *'one of the founding members'* of AASL. Balzan signed his communications with AQ as *'Partner – Tax and Corporate Services'* or *'Director – Tax, Corporate Services and Private Clients'* of AASL.[75]

  The Service Provider is indeed closely associated and connected with Stephen Balzan who acted as the individual director of LSV and LHP. According to the records held with the MBR, Stephen Balzan is, in fact, a director, company secretary, judicial and legal representative and a major shareholder of AASL.[76]

  Whilst it is not disputed that Stephen Balzan and AASL are two separate and distinct legal persons, the actions of the two vis-à-vis the Companies are effectively intertwined in respect of the disputed matter.

  This is also due to the very nature of the services provided and regulatory requirements as outlined above.

[73] P. 344
[74] P. 301
[75] https://www.act.com.mt/about-us/stephen-balzan/
[76] https://register.mbr.mt/app/query/get_company_details?auto_load=true&uuid=d0a192d2-34c7-5a3d-b073-4696938d3e68

It is also noted that, as emerging from the extensive correspondence between the parties that was produced during the case, Stephen Balzan always communicated from his email address of AASL and featured his roles with AASL. No correspondence was produced showing Stephen Balzan communicating with the Complainants in his personal and individual capacity.

- *Other* - In the scenario and circumstances described above, the Service Provider cannot justifiably and reasonably avoid or deflect its responsibility and legal liability by arguing that *'any complaints relating to the conduct and performance of Mr Stephen Balzan's duties as director of LHP and LSV respectively should have been directed and addressed to Mr Stephen Balzan directly, in his personal and individual capacity, and not against ACT'*.[77]

**A complainant is reasonably justified in seeking redress from its corporate CSP for the alleged shortcomings of the CSP's *'officers or employees',* whom the CSP would have engaged and arranged to act as directors. This is particularly so when considering the scope and context within which the personal director acted and the connections outlined in this decision. A different interpretation, as the Service Provider is inherently suggesting, could give rise to abuse in the financial services framework creating also unnecessary uncertainty and mistrust.**

This is even more so when AASL was the contractual party in respect of the directorship services offered by Stephen Balzan and when Balzan himself is a senior official of AASL and occupied such dual roles.

As shall also be considered further on in this decision, there is also the aspect of whether the specific actions or non-actions of Stephen Balzan as director of the Companies were possibly influenced by his personal interests in the Service Provider. The exchange of emails occurring in early November 2019 between AQ and Stephen Balzan is particularly relevant in this regard[78] - namely, the emails issued by Stephen Balzan on 5th November, where Balzan told AQ: *'If fees [of AASL] are not paid by end of*

[77] P. 310
[78] P. 98 - 102

*this week, all services for both companies will be terminated'*[79] and another email where Balzan reiterated, '*When our fees are paid, we will proceed'*.[80]

**All of these aspects reinforce the justification and basis for seeking claims for damages against AASL in the circumstances as done by the Complainants.**

The potential to treat the case similar to that of an employer-employee/ agency relationship for vicarious liability, increases in such circumstances. The CSP could similarly be held responsible for the alleged shortcomings and wrongful act of its own official, which it so appointed in the post of individual director for its client/s.

When considering the substance of the matter and the particular circumstances, the Arbiter is accordingly dismissing the Service Provider's claims that the Arbiter lacks the statutory competence to consider this case. The Arbiter will proceed to deliberate and adjudicate the case on those aspects deemed to fall within his competence as indicated earlier.

*Other – Preliminary*

It is noted that, in its reply of 14th October 2024, AASL also requested the Arbiter the following:

*'… we kindly request that you exercise your power in terms of Article 25(5) of the Arbiter for Financial Services Act (Chapter 555 of the Laws of Malta) to summon representatives of the MTCA, in particular officials within the International and Corporate Tax Unit to confirm the above mentioned'.* [81]

In the same reply, AASL also referred to the complaint made by AQ with the MFSA and the subsequent online supervisory meeting and communications AASL held and exchanged with the MFSA regarding the matters complained of. The Service Provider referred to the outcome of the inspection held by the MFSA and pointed out *inter alia* that:

[79] P. 100
[80] P. 99
[81] P. 313

> *'… the issue with the complainant has already been inspected by the MFSA. The said MFSA had also widened its inspection to other areas which are directly or indirectly related to the complaint filed by the complainant. We are pleased to note that the MFSA concluded the inspection to our satisfaction'*.[82]

The Arbiter was also requested by AASL to exercise his powers in terms of Article 25(5) of Cap. 555 *'to summon representatives of the MFSA, in particular officials within the Trustees and Company Service Providers Supervision Unit within the MFSA to confirm the above mentioned'*.[83]

In its final submissions, AASL furthermore referred to their request for the Arbiter to summon witnesses pointing out that *'we have requested the Arbiter to summon representatives of the MFSA and MTCA, for which we have yet to receive a reply'*.[84]

The Arbiter, however, did not consider there was a need for him to request, at that late stage of the proceedings, the testimony of the MFSA and MTCA representatives as witnesses. It is to be noted that, in his decree of 25th October 2024, the Arbiter *inter alia* requested the parties to provide their final submissions so that he can proceed to adjudicate the case.[85]

The Arbiter's decision in this regard is furthermore based when taking into account other aspects as follows:

a) Given that the first agreement and understanding reached with the tax authorities was not in dispute. What was rather being contested were the specific actions or non-actions of AASL within the context of such an agreement. Furthermore, the testimony of the MFSA's officials (just to primarily confirm the exchanges held between MFSA and AASL as described by the Service Provider) were not deemed necessary either at that stage to understand the facts or assess the issues further.

b) The Service Provider could have itself summoned its witnesses earlier.

[82] P. 318
[83] *Ibid.*
[84] P. 375
[85] P. 343

c) The provisions of Chapter 555 of the Laws of Malta, particularly Article 19(3)(a), 19(3)(d), the proviso to Article 21(2)(a) and Article 22(8). Furthermore, the Arbiter considered that he had the relevant and pertinent facts of the case following the extensive submissions and hearing previously held.

The Arbiter accordingly did not accede to AASL's request for the said officials to be summoned by him as suggested by AASL at that stage.

Having exhaustively considered all the preliminary matters, the Arbiter shall next proceed to consider the merits of the case on the aspects deemed to fall within his competence.

**The Merits of the Case**

**The Arbiter will decide the Complaint by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.[86]**

The Arbiter is considering all pleas raised by AASL relating to the merits of the case together to avoid repetition and to expedite the decision as he is obliged to do in terms of Chapter 555[87] which stipulates that he should deal with complaints in '*an economical and expeditious manner'.*

**Observations and Conclusions**

*Setting up of the BVI Company, Corsair*

As detailed above, the disputed advice allegedly provided by AASL involving the BVI company, Corsair, within the shareholding structure of the Companies does not fall within the Arbiter's competence. The disputed advice (either to PP and/or subsequently to his heirs) is a matter that does not constitute any of the licensable activities listed in AASL's CSP licence issued by the MFSA.

The Arbiter further notes that AASL's role in the registration formalities with the MBR relating to the eventual specific transfer of shares in *LHP* to AQ (following

[86] Cap. 555, Art. 19(3)(b)
[87] Art. 19(3)(d)

the removal of Corsair from the shareholding structure) is ultimately not a disputed subject matter in this Complaint.

Therefore, the Arbiter shall thus not delve into this aspect any further and will proceed to consider the other key aspects of this Complaint.

*Overdue tax and additional penalty*

The following is a timeline and overview of some of the extensive communications and documents presented during the case which are considered particularly relevant to the matter in question, and which provide the relevant context to the main issues arising:

Timeline [88]

- 16 Sept 2019: Email from AQ to ACT asking whether the account details were *'… still correct for transfer the tax from my personal account?'*[89]

- 16 Sept 2019: Email from ACT to AQ informing him *inter alia* that *'It is recommended to apply for reduction of interest and penalties before making tax payments'*.[90]

- 16 Sept 2019: Email from AQ's sister to AASL[91] outlining the AQs' agreement for the payment of the corporate tax due – where a payment of EUR 104,978 to the tax office was to be made from an ACT account with the remainder of tax due of EUR 222,339 to be made by AQ (from borrowed funds), *'directly to the Malta Tax Office'*.[92]

- 17 Sept 2019: Email from ACT to AQ's sister outlining the following:

  > *'Please note that we must submit the form for remission of interest and penalties before you make further payments. Kindly note that interest will not increase till end of the month.*

[88] As outlined in this decision, the timeline includes only an extract of some of the various exchanges presented during the case.
[89] P. 159
[90] P. 123
[91] P. 119 - 122
[92] P. 121

*Once the form is processed and hopefully approved, you will need to pay the updated balance of tax AND penalties due for the year 2016. Once it is paid, you will receive the refund for that year amounting to 368,989, which funds you may wish to use to pay for tax due in respect of the year 2017.*

*We will prepare and submit the form now.'* [93]

- 17 Sept 2019: *Request for Remission of Additional Tax and Interest* form dated 17 September 2019, signed by Stephen Balzan as Director of LSV in respect of LSV year of assessment 2017 and 2018. The said form described the request for remission as follows:

  *'Failure to pay the tax within the statutory deadline was due to the sudden death of the main beneficiary of the company, AQ's father (PP), and due to the blocking of funds of the company by Sata Bank, which prevented access to the cash accumulated. Currently, the funds are still blocked, however, the heirs of PP are ready to resolve this difficult situation by granting a loan to the company for the purpose of payment of tax'.* [94]

- 23 Sept 2019: Email from AQ's sister to ACT asking *inter alia*: *'Have we any response from Tax office about reduction of interests?* [95]

- 4 Oct 2019: Email from AQ to ACT asking whether they had any news from the tax authorities and also for ACT to have a look at the loan agreement that was to be entered into *'… between me and LSV which will be necessary to pay the tax from my personal account'*.[96]

- 23 Oct 2019: Email from AASL enclosing *'the agreement received from the tax department today'* and requesting AQ to let them know if he was *'ready to agree to the terms of the attached'*.[97]

[93] P. 140 - 150
[94] P. 53A
[95] P. 148
[96] P. 140
[97] P. 104

- 23 Oct 2019: AQ replied by email on the same day stating:

  *'That is great news, of course we agree for that … We are almost ready to pay it, could you tell me if it have to be paid as one transfer or can be splitted to few? I am asking because my bank (probably) will not like such one big transfer. For clarification – I mean tax + interests for 2017 at first'.*[98]

- 23 Oct 2019: First ICTU contract (dated 23rd October 2019) which indicated a reduction of EUR 29,470 so that the total balance due (comprising of a *'Tax Balance'* and *'Interest'*) for year of assessment 2017 and 2018 in respect of *LSV* was reduced from EUR 497,633 to EUR 468,163.[99]

- 23 Oct 2019: Email from an Executive (Tax Services, Yury Tananaev) of ACT who informed AQ of the following:

  *'I spoke to the tax authorities and they informed me that you can pay in 2 payments (1 payment for each year).*

  *The amounts are the following:*

  *2016 (Y/A2017) - €228,736*

  *2017 (Y/A2017) - €239,427*

  *As agreed earlier, you should be able to pay the tax due for the first year, then receive the tax refund for that year and use it to pay for the next year.*

  *Please bear in mind that all dues must be settled within 3 months from the date of the agreement.'*[100]

- 3 Nov 2019: Stephen Balzan of ACT sent a reminder to AQ asking him: *'Please advise on the way forward. At least I need you to get back to me*

[98] *Ibid*.
[99] P. 213
[100] P. 103

*with respect to our fees. These have now been pending for quite some time. Please give this some priority'*.[101]

- 5 Nov 2019 (00:06): AQ sent an email to Stephen Balzan of ACT where he stated:

  *'Thank you for the reminder.*

  *Tomorrow I will have all necessary funds on my account and I will be able to make the transfer to tax authorities for first tranche – 228,736 EUR. Firstly, I would like to have signed the loan agreement between me and LSV and sent to me by email and physically. Please see the attachment.*

  *If everything is ok, tomorrow I will also send it signed by email and physically to you. I think that there should not be a problem with the loan ending date – then will be just some interests.*

  *Could you please check and confirm attached transfer details? Especially payment description.*

  *I would like to emphasize that we are not in a position to pay your invoices from the private funds but surely will pay it from companies after creating new bank accounts. Hope you can accept that, it would be really helpful.*

  *So, to do it we have to hurry up with transfer of the shares to me and apply for tax refund after my successful payment of the first tranche.'*[102]

- 5 Nov 2019 (06.27): Stephen Balzan of ACT sent email to AQ where he informed him the following:

  *'I am sorry to say that your proposal is not acceptable. I wonder how you can find Eur228k to pay the tax but you do not find a few thousand Euros to pay our fees.*

[101] P. 102
[102] P. 101

*We have been very patient with you but now it is high time to say enough.*

*In view of this, we will not be proceeding with any further work until our fees are paid in full.*

*If fees are not paid by end of this week, all services for both companies will be terminated.*

*Please be guided accordingly.'* [103]

- 5 Nov 2019 (12.41): AQ sent email to Stephen Balzan of ACT where he *inter alia* stated:

*'I am sorry to say that, but the best contact with you is only when it comes to your fees.*

*It is not about money. Invoices are for companies so it is better to being paid by them …*

*But I hope we can make a compromise, our proposal is as follows:*

*Please specify which 2018 (invoice no.) are not paid, I was sure everything was paid up – please see email from my mother to you 07.12.2018.*

*Then we will pay you from private funds for that and inheritance/ BVI case. Next, when it will be finished we will continue the remaining activities and fees. But I am also asking you to give it some priority.'*[104]

- 5 Nov 2019 (12.45): Stephen Balzan of ACT replied by email to AQ and stated:

*'I am so sorry to say this but you should be ashamed of saying this when I have been patient with you for such a long time. When our fees are paid, we will proceed'*.[105]

[103] P. 100
[104] *Ibid.*
[105] P. 99

- 5 Nov 2019 (13.02): AQ sent an email to Balzan of ACT where he stated: *'I just proposed to pay all fees which is due to now and in advance for nearest steps, what more can you ask for?'*[106]

- 5 Nov 2019 (13.12): Stephen Balzan of ACT replied *'Your first comment was very unwelcome and you should have never said it. I will check what is due and will let you know'*.[107]

- 6 Nov 2019: Yury from ACT sent email to AQ stating: *'Please do let us know once the payment of €228,736 is done, as we will need to follow it up with the tax authorities'*.[108]

- 11 Nov 2019: AQ sent an email to Stephen Balzan of ACT asking *'Do you have any new info about our case?'*[109]

- 11 Nov 2019: Stephen Balzan of ACT replied to AQ stating *'Yes …, will shortly get back to you as I was abroad as has just returned to Malta'*.[110]

- 22 Nov 2019: AQ made a direct tax payment to the tax authority of EUR 228,736 on 22 Nov 2019 from his Revolut account described as *'To N/Res Tax Ref-EUR'*.[111]

- 27 Nov 2019: AQ sent a reminder to Stephen Balzan of ACT stating that '*I would like to remind you about our case. Unfortunately, time is running out'*.[112]

- 4 Dec 2019: Stephen Balzan (as Partner of ACT) indicated the balances due for LSV (of EUR 4,069.18) and LHP (of EUR 3,236.77).[113]

- 16 Dec 2019: AQ asked Stephen Balzan to specify the invoice numbers.[114]

[106] *Ibid.*
[107] *Ibid.*
[108] P. 191
[109] P. 98
[110] *Ibid.*
[111] P. 41
[112] P. 98
[113] P. 97
[114] *Ibid.*

- 22 Dec 2019: Stephen Balzan sent AQ a breakdown and list of the various invoices for payment in respect of LHP and LSV.[115]

- 07 Jan 2020: AQ confirmed to ACT that everything was fine in respect of the said invoices and asked for bank details so that he can make a transfer. AQ further noted that, *'Attached you will find tax payment confirmation, would be grateful for proceeding'*.[116]

- 26 Mar 2020: Second ICTU contract (dated 26 March 2020) which indicated a reduction of EUR 8,398 so that the total balance due comprising of a *'Tax Balance'* and *'Interest'*) for year of assessment 2017 and 2018 in respect of *LSV* was reduced from EUR 275,443 to EUR 267,045.[117]

- 2 Apr 2020: Email from ACT to AQ explaining that:

  > *'… following a request for Remission of additional tax and interest which we had submitted so that part of the interest due will be waived off.*
  >
  > *As a matter of fact, as shown in the attached agreement, a reduction in interest amounting to €8,398 was given.*
  >
  > *Please note that you may pay the tax due for YA2017 amounting to €26,371 and the tax due for YA2018 amounting to €240,674 separately. However, these have to be paid within 3 months from the signing of the agreement'*.[118]

- 16 June 2020 – AASL provided a synopsis of what happened with respect to the tax due by LSV for years of assessment 2017 and 2018, where it was *inter alia* stated the following:

  > *'… Back in October 2019 Yury [official of ACT] had informed you that the tax authorities (IRD) had issued an agreement … following a request for the reduction of interest and penalties. From the*

[115] P. 96
[116] *Ibid.*
[117] P. 32
[118] P. 207

*correspondence with Yury, it transpires that you had agreed to the said agreement following which Yury had informed you to make the first payment of Eur228,736. Yury had also asked you to inform us once the said payment was made, however we did not find any correspondence from your end confirming that the transfer was effected. As a result, the IRD was not informed that the payment of Eur228,736 was done. Consequently, IRD (as per their normal practice) first allocated the payment against the interest and then the remaining balance was allocated against the pure tax. In addition, according to our understanding the second payment amounting to Eur239,247 never reached the IRD, despite this being highlighted in the said agreement and also in one of Yury's emails. For the above-mentioned reasons, the IRD have considered the agreement dated 23rd October 2019 as null.*

*… [IRD] issued another agreement for the company dated 26th March 2020…This new agreement shows a balance of pure tax of Eur26,291 for YA2017. As stated above, the reason for such balance is because the payment done by your kind self of Eur228,736 was set off firstly against the interest due of Eur31,059 + Eur1,203 (one month interest). The remaining balance of Eur196,474 (Eur228,736-Eur31,059-Eur1,203) was allocated against the pure tax of Eur222,765. Hence the remaining balance of unpaid tax amounting to Eur26,291 (Eur222,765-Eur196,474).'* [119]

- 24 June 2020: Email from ACT to AQ explaining *inter alia* that:

*'… I have today spoken to the responsible person at IRD and they informed me that they are willing to make the following exception. They have asked the company to settle the balance for Year of Assessment 2017 of Eur 26,371 (as per attached agreement) by this Friday. Once IRD receives the payment, they will release the 6/7th refund for year of assessment 2017 which amounts to Eur368,989. With this funds, the company will then settle the tax for Year of assessment 2018 amounting to Eur240,674'*.[120]

[119] P. 49
[120] P. 177

- 25 June 2020: Email from ACT to AQ explaining *inter alia* that: *'Kindly note that if the new signed agreement and the additional interest of Eur 27k does not reach IRD by tomorrow, LSV will lose the reduction of interest provided in this new agreement'*. [121]

Further analysis

With respect to the Service Provider's main submissions (as to why the first agreement of October 2019 was not signed), the Arbiter observes the following:

a) *Submission that AASL did not proceed to sign and submit the agreement to the CfR in view that the full payment of tax was not effected on time*.

This cannot reasonably be considered as a valid excuse. This is so even more when considering the exchanges of communications and facts of the case as outlined in the Timeline above. AQ had made the first payment in November 2019 (one month from the date of the agreement). The contents of the email sent by AASL dated 23 October 2019 particularly also refer. There was thus still the possibility for the tax refund to be received within the three months of the agreement for the second payment to be effected as explained in the said email. Further comments below also refer.

b) *Submission that AASL did not sign the agreement because it would not have been a valid one as the full payment of tax was not done as required by the tax authorities*. *AASL reiterated that the first proposed agreement could not be signed and submitted to the tax authorities as the payment of the tax due was not effected. It argued that any signed agreement would have been considered by the tax authorities as null and void as the payment of the tax in full and reduced interest was a condition for a valid agreement.*

The Arbiter cannot reasonably accept such a spurious submission either. Not only has it not been proven nor emerged that the full payment of tax needed to be done first before the agreement had to be signed, but it logically follows that the agreement had to be first signed for the

[121] P. 215

agreement to take effect and payments treated accordingly within the terms of such agreement.

In case where the full payment of tax was not done within the terms of a signed agreement, then the specific provisions outlined in the agreement covering such a scenario would have applied accordingly.

The Service Provider claimed that the tax due would, in any case, not have been paid on time and/or in full, and the tax authorities would have anyway eventually deemed the agreement null and void.

AASL's assumption that the tax would not have been paid on time and/or in full is not only baseless but is not reflective of, and goes against, the intention and purposes of the original agreement and the communications exchanged related thereto as outlined above.[122] Any such claim indeed defeats the purpose of the arrangement that AASL had in the first place worked on to achieve for LSV. The observations in paragraphs (a), (c), (d) and (e) additionally refer.

c) *Submission that AASL could have not informed the tax authorities that the payment was effected in November 2019, as it was only informed of the payment in January 2020.*

This again does not excuse the inaction on the part of Vitaco's sole director to sign the agreement with the tax authorities. It also does not excuse the inaction to follow up on AQ's email of 5th November 2019 wherein AQ clearly notified that *'Tomorrow I will have all necessary funds on my account and I will be able to make the transfer to tax authorities for first tranche – 228 736 EUR'*.[123] In the said email, AQ indeed pointed out that *'… to do it we have to hurry up … and apply for tax refund after my successful payment of the first tranche'*.[124]

AASL was furthermore clearly aware that AQ was going to make a payment himself (emails of 23 October 2019 and 5 November 2019 particularly refer),[125] and was itself clearly aware of the importance to adhere with the

[122] Such as the email dated 23 Oct 2019 from Yury (P. 103).
[123] P. 101
[124] *Ibid.*
[125] P. 101, 103 - 104

timings and act fast to ensure that the payments were done and refund sought within the applicable timeframes to achieve the scope of the original agreement. At no point did AASL indicate that the time deadlines for tax payment/recovery/payment were unrealistic.

d) *Submission that AQ could not pay the tax within the stipulated deadline as he had himself admitted that he did not have the necessary funds to pay the tax liability for both full years.*

The said submission cannot reasonably be considered acceptable. Apart that it has never emerged that AASL ever communicated any of such claimed concerns or that it was not confident that the agreement will be satisfied, (which begs the question why it would have sought such an agreement in the first place in September 2019), the observations already made in (a) to (c) above and, also, in (e) below further refer.

e) *Submission that it ensured the tax payments were effected as soon as funds were made available to it and that any incurred interest was only the result of the late remittance of funds to AASL and late notification to it by AQ that the tax was paid*

The fact is that Balzan did not sign the first agreement as director of LSV. Given that the tax authorities did not have a signed agreement in place this was reasonably the primary factor which contributed to the IRD allocating the payment of Eur228,736 *"as per their normal practice",*[126] instead of treating the payment in terms of the agreement, which should have been in place had Balzan signed and sent such an agreement to the IRD.

This, in turn, had implications on the tax refund and the ability to settle the remaining tax due on time.

It is further noted that, in his testimony of 23 July 2024, Balzan *inter alia* stated that:

*'We informed him that as soon as he affects payment, he should inform us immediately so that the tax authorities would, when they receive the payment, allocate the payment against the pure tax and not against the*

[126] P. 49

*interest because we were in negotiations with them to have this agreement signed'*.[127]

It is evident that once Balzan signed the agreement as Director of LSV, the agreement would have been finalised accordingly and put into effect. No further negotiations were clearly needed with the tax authority – the authority itself sent the final agreement to the Service Provider as per the communications outlined in the timeline above.

In his testimony, Balzan further stated that:

*'… once the interest is paid, you cannot then enter into an agreement to reduce it because it has been paid. And that was the reason why we were asking Mr AQ to inform us immediately once he affects this payment …'*.[128]

This statement is, however, rather misleading and another attempt to obfuscate the matter. This is also given that the agreement reasonably had to be signed and delivered to the tax authority before a payment was affected and not vice versa. A notification by AQ that he had sent the payment would have rather facilitated the follow-ups that the Service Provider could have done with the tax authority for the prompt issue of the refund for the second payment rather than required for the signing of the agreement.

Furthermore, the possibility of settling the payments within the three-month deadline was attainable, so much so that Balzan/AASL went into the trouble of doing a *'Request for Remission of Additional Tax and Interest'* in September 2019 to achieve the first agreement and later, the second agreement (which had a similar three-month deadline).[129] The latter was indeed achieved and benefitted from, as confirmed during the hearing on 23rd July 2024.[130]

The Service Provider's submissions are, in the circumstances, rather pointless and considered to be just a feeble attempt to try and mask the shortfalls arising on this matter, which shortfalls are considered to have resulted in material adverse consequences to the Complainants.

[127] P. 274
[128] *Ibid*.
[129] P. 32 & 213
[130] P. 277

Nothing has emerged that inhibited Stephen Balzan from signing the first proposed agreement and promptly sending such to the tax authorities. Indeed, it was in the best interests of LSV that Balzan had to quickly proceed to sign and send the agreement to the tax authorities following AQ's confirmation of acceptance of the agreement on 23rd October 2019.[131]

Instead, Stephen Balzan seems rather to have been more focused on, and bothered with, first getting payment of the fees due to AASL putting his, and AASL's interests first, over those of LSV to the material detriment of the Complainants.

The Arbiter notes that as a director of the Companies, Stephen Balzan was duty bound to act in the best interests of the companies involved. Article 136A(1) of the Companies Act (Cap. 386), which deals with the *'General duties of directors'*, provides [in sub-article (1)] that *'A director of a company shall be bound to act honestly and in good faith in the best interests of the company'*, and [in sub-article (3)(a)] that *'be obliged to exercise the degree of care, diligence and skill which would be exercised by a reasonably diligent person …'*.

Stephen Balzan had a conflict of interest in view of his dual roles. Balzan demanded first the settlement of outstanding payments to his company AASL, before he would *'proceed'* with the services to the Companies. As indicated above, in his emails of 5th November 2019, he informed AQ that *'If fees [of AASL] are not paid by end of this week, all services for both companies will be terminated'*,[132] and in another separate email he told him, '*When our fees are paid, we will proceed*'.[133] Balzan was still director of the Companies at the time and remained so until he eventually resigned much later in August 2023.

Such a seemingly drastic and inappropriate action was taken at a time when it was essential to act quickly in the best interest of LSV given the timeframes that needed to be adhered to for the purpose of the first agreement to be achieved (and save EUR 29,470 as a result of the said agreement with the settlement of tax due of EUR 468,163).[134]

[131] P. 104
[132] P. 100
[133] P. 99
[134] P. 213

It rather seems that Balzan used such urgency to favour and prioritise the interests of his own company by putting pressure on AQ to settle first the fees due to AASL (of slightly over EUR 4,000 payable in respect of LSV and over EUR 3,000 in respect of LHP).[135] It is noted that this occurred at a time when AQ did not object and was agreeing that he was to pay the fees due but requested more time to settle such dues - in his email of 5th November 2019, AQ stated: *'I would like to emphasize that we are not in a position to pay your invoices from the private funds but surely will pay it from companies after creating new bank accounts. Hope you can accept that, it would be really helpful'*.[136]

Whilst Balzan had to safeguard his own interests and that of AASL too, the consequences of the delay and/or disproportionate action taken by Balzan in the circumstances gave rise to a material detriment to the Complainants, when he did not promptly sign the first agreement reached with the tax authorities and submit this as required once AQ had confirmed his acceptance of such agreement and there was urgency to execute this quickly.

The reason for not signing the agreement and submitting this to the tax authority at the time can reasonably only be attributed to either:

(i) an act of negligence for overlooking to sign and send the agreement of October 2019 and follow up with AQ/tax authority regarding the settlement and refund; and/or

(ii) Balzan not signing the agreement at the time in October/November 2019 as he first wanted the pending invoices of AASL to be settled first.

It is considered that the actions or lack thereof that occurred at the time give rise to a breach of fiduciary duty resulting from the negligence in adequately carrying out the directorship services in respect of LSV and its best interests and/or lack of duty to act fairly, responsibly and with due and reasonable care and diligence.

[135] P. 96
[136] P. 101

Consideration is also made of the rules applicable under the CSP Rulebook issued by MFSA, including the following:[137]

> *'R1-2.1 CSPs shall act in an ethical manner with due care, skill and diligence, taking into consideration the best interests of their clients and the integrity of Malta's financial system.*
>
> *R1-2.2 CSPs shall act honestly, fairly and professionally and shall comply with the relevant provisions of the Act, the regulations issued thereunder, and these Rules, as well as with other relevant legal and regulatory requirements …'.*

The Arbiter accordingly accepts the request for compensation on this matter for the reasons indicated. The exact amount of the compensation payable is further detailed in the ensuing section.

**Claims made and amount of compensation**

Given the various and distinct claims made, the Arbiter shall now proceed to list and outline his decision on each respective claim accordingly:

*(A) Additional interest charges due to non-signature of initial contract – claim Eur27,618*

The Arbiter considers that it would be fair, just and reasonable for the Complainants to receive compensation of Eur26,371 being the main balance of additional payment in interest that was incurred following the first unsigned agreement.

The said amount of Eur26,371 is reflected in various communications exchanged between the parties.[138] An explanation of the ensuing implications for additional payment as a consequence of the non-execution of the first agreement[139] was provided by the Service Provider itself in its

[137] *'Chapter 1 General Scope and High-Level Principles'* of the Company Service Providers (CSP) Rulebook issued by the Malta Financial Services Authority.

[138] E.g. – In an email dated 06.08.2020, AASL stated to KP: *'Attached please find the signed agreement and the proof of payment (bank transfer) of the Eur26,371. Kindly note that we had done our best to try and annul this interest'* (P.43). Other correspondence also refers – e.g. email from AASL dated 06.08.2020 (P.43); email dated 25.06.2020 (P.44); email from AASL dated 24.06.2020 (P. 46).

[139] For a slightly lower amount of EUR26,291.

email of 16 June 2020.[140] The amount of Eur26,371 was furthermore acknowledged by AQ in various of his correspondence and also submissions.[141]

The above figure differs by Eur1,247 from the total sum of Eur27,618.54 calculated by the Complainants in their latest detailed breakdown of compensation requested of 31st August 2024.[142] The said difference mainly reflects the claimed one-month interest of *'Eur1,203'* indicated by the Complainants as the interest calculated by the tax unit *'for an additional month due to the fact that the payment was made on November 22 and the first agreement was dated October 23'*.[143]

The Arbiter, however, considers that the payment of Eur26,371 is more corroborated and appropriate in the circumstances, having also considered the actions of both parties on this particular matter.

*(B) Remaining funds after-tax refund (claim of Eur12,533) & Tax and Vat refunds (claim of Eur2,494)*

The Complainants claimed that they should have had remaining funds of Eur 12,533 in their account after the tax refunds (of 2017 and 2018) and the loan refund to AQ.[144] The Service Provider provided an explanation of how the balance of Eur12,533 was utilised and actually claimed that LSV and LHP had outstanding balances due to it.[145]

As to the further claim of Eur2,494 in tax and vat refunds made by the Complainants,[146] the Service Provider similarly provided its own explanations and how this amount was reflected in the calculations relating to the balance of Eur12,533.[147]

[140] P. 49
[141] E.g. Attachment to the Complaint Form to OAFS (P.21); Email from KP dated 24.06.2020 (P. 45) and ultimately in the detailed calculations included in KP's submissions of 31st August 2024, which specifically stated *'Less Interest paid EUR 26,371'* (P. 297).
[142] P. 296
[143] P. 296
[144] P. 8 & 297
[145] P. 319
[146] P. 8 & 298
[147] P. 319 Amount is quoted as €12,633

In his final submissions, the Complainant did not elaborate or mention any further these aspects following the explanations provided by AASL.

On the basis of the information presented during the case and submissions made, the Arbiter finds no sufficient basis substantiating the claims made and is accordingly dismissing the request made by the Complainants on these aspects.

*(C) Invoice ACT3517 (claim of Eur1,000) & Transfer of ownership to the BVI (claim of Eur5,830)*

As outlined earlier in this decision, the Arbiter only has competence in relation to the activities falling under the Service Provider's CSP licence.

Given that these specific claims relate to the services involving the BVI company they are deemed to fall outside the Arbiter's competence and hence will not be considered.

*(D) Difference between the total amount of interest paid and additional interest – claim Eur6,743*

The Arbiter considers that this matter is already covered in his decision outlined under section (A) above.

*(E) AASL's annual fees for 2019/2020 – claim Eur23,200*

On the basis that the services of AASL were not yet terminated at the time and in the absence of proof substantiating the Complainants' requests for refund or non-payment of AASL's fees for the indicated years, the Arbiter considers that there is no reasonable and justifiable basis on which the Complainants' claim for Eur23,200 can be accepted. The Arbiter is accordingly refuting the Complainants' request in this regard.

*(F) Lost benefits associated with frozen funds (claim of Eur42,000) and Assistance with preparation of documentation for Satabank (claim of Eur1,000)*

Whilst understanding and sympathising with the Complainants' position, the Arbiter finds no solid grounds and basis on which he can accept the request for compensation or any part thereof.

It is noted that it was argued by the Complainants that there was already *'Information which suggested irregularities in Sata Bank's activities'* dating back from June 2018.[148] Whilst such articles indicated certain serious irregularities, the Service Provider cannot be blamed for the ensuing material developments involving the bank or for not anticipating such sensitive developments.

Having seen the communications exchanged between the parties,[149] the timeline as summarised by the Service Provider[150] and the submissions made, the Arbiter considers that there is no sufficient evidence substantiating the claims made for this aspect to be upheld. The Arbiter is accordingly dismissing the Complainants' requests in this regard.

## Decision

**Given the identified shortcomings outlined earlier, the Arbiter concludes that it is fair, equitable and reasonable in the particular circumstances and substantive merits of the case to award the Complainants a compensation of €26,371 for damages suffered due to the failure by the appointed director to sign and submit in a timely manner the first agreement reached with the tax unit as amply considered in this decision.**

**In addition, the Arbiter is awarding Complainants moral damages of €2,850 as a token compensation for failure of the Service Provider and the director it appointed to act in the best interest of the companies when faced with evident conflict of interest situations as explained in this decision.**

**The amount of €2,850 is basically the annual fee for acting as director and secretary for the companies.[151]**

**Therefore, in accordance with Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta, the Arbiter orders ACT Advisory Services Limited to pay the amount of**

[148] E.g. https://timesofmalta.com/article/another-bank-comes-under-scrutiny.680672 https://timesofmalta.com/article/satabank-fined-60500-by-watchdog.683928

[149] Including P. 55–65; P. 67–69; P. 71–74; P. 76–79; P. 81–85; P. 87-91; P. 93

[150] P. 331-332

[151] P. 30 - €1,000 as director for LSV and €850 as director for PHL
€500 as secretary of LSV and €500 as secretary of PHL

**€29,221 (twenty-nine thousand, two hundred and twenty-one Euros) as compensation to the Complainants for the reasons stated in this decision.**

**With interest at the rate of 3.15% p.a.[152] from the date of this decision till the date of payment.[153]**

**Each party is to bear its own costs of these proceedings.**

**Alfred Mifsud**
**Arbiter for Financial Services**

**Information Note related to the Arbiter's decision**

*Right of Appeal*

The Arbiter's Decision is legally binding on the parties, subject only to the right of an appeal regulated by article 27 of the Arbiter for Financial Services Act (Cap. 555) ('the Act') to the Court of Appeal (Inferior Jurisdiction), not later than twenty (20) days from the date of notification of the Decision or, in the event of a request for clarification or correction of the Decision requested in terms of article 26(4) of the Act, from the date of notification of such interpretation or clarification or correction as provided for under article 27(3) of the Act.

Any requests for clarification of the award or requests to correct any errors in computation or clerical or typographical or similar errors requested in terms of article 26(4) of the Act, are to be filed with the Arbiter, with a copy to the other party, within fifteen (15) days from notification of the Decision in terms of the said article.

In accordance with established practice, the Arbiter's Decision will be uploaded on the OAFS website on expiration of the period for appeal. Personal details of the Complainant(s) will be anonymised in terms of article 11(1)(f) of the Act.

[152] Equivalent to the current Main Refinancing Operations (MRO) interest rate set by the European Central Bank.
[153] It is to be noted that in case this decision is appealed, should this decision be confirmed on appeal, the interest is to be calculated from the date of this decision.