

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, :

Plaintiff, :

v. :

ALL FUNDS HELD BY OR FOR THE :

BENEFIT OF AFGHANISTAN :

INTERNATIONAL BANK AT STANDARD :

CHARTERED BANK, NEW YORK, OF AN :

AMOUNT UP TO, BUT NOT TO EXCEED, :

\$10,100,000 OF THE TOTAL SUM OF ANY :

FUNDS HELD IN ANY ACCOUNT AT :

AFGHANISTAN INTERNATIONAL BANK :

CONTROLLED BY OR FOR THE BENEFIT :

OF HIKMATULLAH SHADMAN :

INCLUDING, BUT NOT LIMITED TO, :

ACCOUNT NUMBER 050210000527810, IN :

THE NAME OF HIKMAT SHADMAN :

LOGISTICS SERVICES COMPANY, :

ACCOUNT NUMBER 050210001288613, IN :

THE NAME OF FAIZY ELHAM BROTHERS :

LTD., AND ACCOUNT NUMBER :

0502102001425115 IN THE NAME OF :

EVEREST FAIZY LOGISTICS SERVICES; *et* :

al., :

Defendants *in rem*, :

No.: 12-cv-1905 (RDM)

STATEMENT OF STIPULATED FACTS

Plaintiff, the United States of America (“Government”), and Claimant, Afghanistan International Bank (“AIB”), stipulate to the following facts for the purposes of facilitating the briefing and adjudication of the pending Motion to Strike (Docket No. 93) and any responsive filings to such motion, including any responses thereto.

The following Statement of Stipulated Facts is in no way to be construed a waiver of any defenses or arguments that either party may have. This Statement of Facts is limited to areas in

which AIB has asserted that it requires discovery in order to oppose the Motion to Strike and does not necessarily contain all facts pertinent for resolution of that motion. Accordingly, each party may assert additional facts in any of its filings with the Court. Further, while the Government believes that many of the stipulated facts listed below are immaterial or irrelevant to the Motion to Strike, it has entered into this stipulation to facilitate the resolution of the Motion to Strike.

1. The United States of America recognizes the Islamic Republic of Afghanistan (“Afghanistan”) as a sovereign nation.

2. Article 4 of the Afghanistan Constitution states, “[n]ational sovereignty in Afghanistan shall belong to the nation, manifested directly and through its elected representatives.”

3. Article 64.11 of the Afghanistan Constitution states that, “[t]he President shall have the following authorities and duties: . . . Appoint the . . . Attorney General”

4. The Afghanistan Bank Law states that, “Da Afghanistan Bank” (“DAB”) is the central bank of Afghanistan.

5. The Afghanistan Bank Law states that, “[i]n carrying out its tasks, Da Afghanistan Bank shall enjoy thorough legal powers, including those to pass regulations to facilitate [orderly] electronic transactions between Da Afghanistan Bank and banks and their respective customers.”

6. Article 2.2(6) of the Afghanistan Bank Law states that, “[t]he basic tasks of Da Afghanistan Bank for which Da Afghanistan Bank shall be responsible are: . . . To issue or register the license and to regulate and supervise banks, foreign exchange dealers, money service providers, payment system operators, securities service providers, securities transfer system

operators and such other persons as shall be submitted to its oversight in accordance with the law” Additionally, Article 83 of the Afghanistan Bank Law states that, “Da Afghanistan Bank shall be responsible for the licensing, regulation and supervision of banks.”

7. Article 6.1 of the Afghanistan Law of Banking states that, “Da Afghanistan Bank has the exclusive right to issue and to revoke banking licenses, and to issue and to revoke permits for banks to operate branch offices and representative offices.”

8. Articles 14.1(4) and 14.1(7) of the Afghanistan Law of Banking state that, “[t]he banking license of a bank may be revoked [only] by decision of Da Afghanistan Bank on [one or more of] the following grounds: . . . The bank conducts its administration or banking operations in an unsound or imprudent manner or otherwise violates a law, or a regulation or order of Da Afghanistan Bank, or any condition or restriction attached to a license or permit issued by Da Afghanistan Bank; . . . [or] the bank fails to comply with an order given to it by Da Afghanistan Bank or any other requirement imposed on it by law or by regulation”

9. AIB is a licensed bank in Afghanistan and is required to comply with Afghanistan banking law.

10. In a letter dated November 29, 2011, the US Army, Task Force 2010, and Expeditionary Business Operations Banking team requested that AIB place a hold on two accounts: an account ending in 7810 held in the name of Hikmat Shadman Logistics Services Company (the “7810 Account”) and an account ending in 8613 held in the name of Faizy Elham Brothers, Ltd. (the “8613 Account”).

11. The November 29, 2011 letter directed to AIB stated that action would be taken to recover the funds identified as erroneously received into the 7810 and 8613 Accounts.

12. There were no requests by the United States Department of Justice to block Shadman's accounts until the submission of the initial mutual legal assistance request.

13. In or about November 2012 the Government sent to Afghanistan a mutual legal assistance request. A supplemental mutual legal assistance request was sent in or about December 2012. The initial request included copies of two seizure warrants. The supplemental request included a copy of the Complaint filed November 20, 2012 (Doc. No. 3) and arrest warrants *in rem* issued for, among other things, the 7810 and 8613 accounts.

14. The Complaint, seizure warrants, and arrest warrants *in rem* were sent to Afghanistan pursuant to the United Nations Convention Against Corruption as a mutual legal assistance request.

15. The mutual legal assistance request included, among other things, a request that Afghanistan seize the 7810 and 8613 Accounts.

16. Afghanistan received the mutual legal assistance request on or about December 31, 2012.

17. On or about January 15, 2013, the Afghan Attorney General's Office directed AIB to block the 7810 and 8613 Accounts.

18. On or about March 16, 2013, the Afghan Attorney General's Office instructed AIB to unblock the 7810 and 8613 Accounts.

19. On or about March 20, 2013, the Afghan Attorney General's Office issued a decree stating that, "not only the orders issued by [the District Court for the District of Columbia] in regards to repay of movable and immovable assets of Hikmatullah Shadman the head of Logistics Services Inc., legally cannot be implemented, but also the above order is clearly contradicts the Article (40) of Country's Constitution. Therefore, at this moment, based

on Article (39) of Temporary Criminal Executive Law, the documents cannot be circulated [cannot be in progress]. This is to avoid violating the country's laws and there are not enough evidence for Article (169) of Criminal Executive Law.”

20. To date, the Afghan Attorney General’s Office has not rescinded the March 20, 2013 decree.

21. In or about April 2013, DAB sent AIB a letter that stated in part, “Your bank is officially warned that, afterwards before blocking any corporate or individual account you are obliged to inform the central bank and avoid any similar actions in the future. No authorities but only central bank and permitted courts have the right to give order for blocking and unblocking the customers accounts.”

22. On or about April 4, 2013, the Government learned that the freeze on the 7810 and 8613 Accounts had been lifted.

23. Subsequently, the Afghan Attorney General informed the Government that Afghanistan would not comply with the mutual legal assistance request.

24. On or about October 2, 2013, DAB sent AIB a letter stating that, “[a] commercial Bank in Afghanistan is not permitted to offset the seizure of the bank's funds by a foreign government decision against a depositor's account in Afghanistan.”

25. On or about October 2, 2013, DAB sent AIB a letter stating that, “[e]xcept in accordance with an order from an authorized court of Afghanistan through the Central Bank, a commercial bank in Afghanistan must make all funds in an account available to the depositor.”

26. On or about October 2, 2013, DAB sent AIB a letter stating that, “[n]o contractual term between a bank in Afghanistan and a depositor may override the [] limitations [listed in Paragraphs 24 and 25], unless expressly authorized by DAB.”

27. AIB has, pursuant to 18 U.S.C. § 98(k)(1)(B), requested that the U.S. Attorney General exercise his discretion to suspend or terminate this forfeiture action insofar as it relates to the defendants *in rem* claimed by AIB. The United States has declined that request.

Respectfully submitted,

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