

# **Billion Dollar Middle East Fraud Goes Uninvestigated:**

## **Suggestions for Improving UAE Legal and Prosecutorial System in Fraud Cases**

*Legal analysis submitted to United States American Bar Association for review and publication.*

**By Bruce J. Casino, Esq.**

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Executive Summary	4
Scope of Article	8
Whistleblower Documents	9
Omar Ayesh and Tameer Holding Investment LLC	9
The AIRajhis	11
United Arab Emirates Schemes: Primary Victim Omar Ayesh	14
2008 Third Party Valuation of Tameer	14
Tameer Group Ownership History	15
2005 Agreement	15
2007 Agreement	16
“Tameer is Intended to Die.”	16
Admission that Omar Ayesh Is a Shareholder	19
Specific Fraud Schemes to Render Tameer Valueless	20
Dubai – The 6 Plots	22
Dubai - Imperial Tower Project Revenue Redirection Scheme	23
Abu Dhabi – Tameer Towers and the 2022 Exit Plan to Defraud Individual Buyers	25
Expropriating the Shares of Tameer Holding LLC in Tatweer UAQ	27
Tameer and Mada	28
Illegal Activity to Conceal the Fraud	28
Abu Dhabi Royal Family Forgery	28
Backdated and False Board Resolutions and Retroactively Appointed Members	30
Transferring the Employees of Tameer to Gemstone	32
Fraudulent Financial Reports, Representations and Financial Manipulation	33
Evading Internal or External Audit of Tameer	34
Management noncompliance with audit access to IT systems	35

Faulty PwC Report	35
Compensation for Executives	38
Corrupting and Undermining Judicial Procedures	38
Threatening Potential Witnesses	38
Pressuring the Magistrate Judges Appointed by the Court	39
AIRajhi Legal Counsel, Asmaa Khan, Intentionally Misleads Court Experts	40
Expert Mohammad Saeed Al Shareef - Questionable Conclusion	41
AIRajhi's Audited Financial Statements Are Non-Compliant with International Accounting Standards (IAS)	43
UAE Court Rulings	47
Dubai Supreme Court Ruling: Ayesh vs Tameer Decided in Ayesh's Favor	47
Dubai Court: The Ayesh vs AIRajhi Civil Case	49
Qatar Scheme: Bridgehouse Capital ("BHC")	56
The Pearl Island Case	56
Bank Fraud to Finance Tower Development ("The Land")	58
Piercing the Corporate Veil in Qatar	59
Criminal Liability Under US Law	60
In the US the AIRajhis Would Not be Protected by Their Corporate Structures	60
Corporations Liable	61
Fraud, Misappropriation, Criminal Breach of Trust	62
Case Study Fraud: Enron	62
Case Reference: Abraaj Group	64
Case Study Fraud: Madoff	65
Conspiracy	65
RICO	66
RICO Case Study: Michael Milken	67
Accessory Liability	68
Bank Fraud	68
Money Laundering	69
Embezzlement	69
Suggestions for Reform in the UAE	69
UAE's Reputation	69
Corruption in the UAE	70
	2

Lack of Vigorous Criminal Enforcement	71
Refusing to Comply with the Court's Discovery and Other Orders Without Consequences: Lessons for the UAE Legal System	72
Lack of Transparency	74
Lack of Trained Investigators	74
Lack of Power of Investigators and Prosecutors	74
Lack of Standards and Enforcement Against Judges and Experts/Magistrates	75
Fear of Taking on Politically Powerful and High Net Worth Individuals	76
Restrictions on Foreign Investment	76
Problems with Saudi Anti-Corruption Reforms	77
Conclusion	78
APPENDIX: Summary of Omar Ayesh vs. Ahmed AlRajhi et. al. Cases and Conclusions	80

## Executive Summary

This article<sup>1</sup> reports on and analyzes in detail the facts, law, and judicial proceedings related to what is probably the largest real estate fraud case in Middle East history. In the matter examined there is neither question there was a fraud committed nor its dimensions. In a civil case, the Dubai Supreme Court, the highest court in Dubai (an emirate that is part of the United Arab Emirates (UAE)), and the highest court with respect to the case, finalized that determination in affirming a Court of Appeals decision that there was a fraud in the amount of USD \$1.13 billion, yet the award was not enforced due to technicalities in the case. In that case, *Ayesh vs. Tameer*<sup>2</sup>, the victim was Omar Ayesh, a Canadian real estate developer and investor.

This article provides an examination of the judicial proceedings in that case and the subsequent, ongoing case, *Ayesh vs AlRajhi*,<sup>3</sup> where Ayesh is attempting to pursue his remedies against the individuals who allegedly reaped the benefits and committed the fraud, and regain assets that were improperly transferred out of the company, Tameer Holding Investment, at the center of the fraud, in which Ayesh owns a 25% share, but which is controlled by the very wealthy and prominent AlRajhi family of Saudi Arabia.

The alleged perpetrators, five very wealthy and politically connected Saudi brothers, the AlRajhis, have relied on the “limited liability” status of Tameer as a defense, forcing Ayesh to pursue his rights by suing the AlRajhis individually as well as individual shareholders and managers in their shell companies to which assets were transferred to take them from Ayesh. As discussed in detail below, there is strong evidence of systematic corruption in the Tameer case using a series of related shell companies, sometimes in apparent collusion with public officials. Also discussed below is a document demonstrating the alleged participation in this scheme of a prominent member of the Abu Dhabi royal family. In addition, the highly questionable actions of one of the court-appointed experts (similar to fact-finding magistrates in the US legal system), the defrauding of hundreds of condo buyers, a massive bank fraud in Qatar (not involving Ayesh, but allegedly perpetrated by the AlRajhis), and numerous related matters are examined.

The UAE enjoys a relatively high reputation with respect to corruption; however, based on this look into certain aspects of its legal, judicial, and prosecutorial systems at least,

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<sup>1</sup> I have been asked to author the article by the Global Justice Foundation, a not-for-profit organization dedicated to establishing the highest standards of jurisprudence and law enforcement internationally.

<sup>2</sup> *Ayesh v Tameer*, Dubai Supreme Court case 650/2018 (May 2, 2018) (affirming judgement in Dubai Court of Appeals cases 1023/2014 and 1027/2014) <https://www.scribd.com/document/417554705/Exhibit-1-7-1-Supreme-Court-Decision-on-Ayesh-vs-Tameer-1023-and-1027-of-2014>. The Court of Appeals’ judgements and decisions in Appeal 1023/2014 and Appeal 1027/2014 can be found here: <https://www.scribd.com/document/472906438/Court-of-Appeal-Judgement-Commercial-1023-and-1027-of-2014-March-4-2015>

<sup>3</sup> *Ayesh v Al Rajhi*, Claim No. 127/2017, Commercial Plenary Court, Dubai.

much remains to be done to combat corruption.<sup>4</sup> The problems discussed below may keep major investors from the UAE because they understand they may face an unfair, possibly corrupt, system unwilling to investigate financial crimes of which they may become victims. The case examined provides further evidence of the need for caution by investors unless authorities remedy the obstacles to expedited, transparent judicial proceedings.

The article also provides several suggestions for UAE judicial, prosecutorial, and legal reforms arising from an examination of the AlRajhi case. The article will discuss the need for the UAE to reject the unequal legal system where only the wealthy and/or influential could win against litigants on the other side.<sup>5</sup> Instead, the UAE should focus on rigorously enforcing its recent criminal anti-corruption laws (even against the powerful, wealthy, and those well connected to royal families), devote substantial and sophisticated human resources to complex criminal investigations like the case examined, pay experts (magistrates) in complicated cases significantly more than they earn currently, and so on.

There is also a need to allow and encourage the courts to sanction discovery and other procedural violations, increase the willingness of prosecutors to conduct criminal investigations where credible evidence of crime exists, combat judicial corruption, develop the law concerning corporate veil piercing in the context of fraud, and allow for more direct foreign investment in place of requiring artificial structures which lend themselves to fraud. This effort must begin with support from the very top – the UAE’s royal family. These reforms are crucial for the UAE, or any nation, to ensure confidence in their business environment. The article also serves as a cautionary tale for investors dealing with Saudi businesses.

Surprisingly, there has been very little press reporting, legal or otherwise, concerning this significant matter. However, *Al Jazeera* recently did a major broadcast on the case, which included an interview with the author.<sup>6</sup>

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<sup>4</sup> For instance, Transparency International’s 2019 Corruption Perceptions Index ranks the UAE as number 21 of 180 nations. On that index the lower the score, the less corrupt is the nation. This places the UAE as significantly less corrupt than all its Middle East neighbors. It also ranks the UAE as less corrupt than the United States, France, Spain, Portugal and Italy. The case examined herein strongly suggests that the UAE’s reputation is misplaced. While one can accept that it is less corrupt than many of its neighbors, that is not saying much, given that its neighbors in the region are among the most corrupt nations on the planet. In fact, in the Association of Certified Fraud Examiner’s Report of the Nations, the UAE has the highest number of fraud-related cases in the region. Based on their recent handling of major financial crimes cases, as contrasted with the UAE’s handling of the Al Rajhi case, the Western nations mentioned above would seem less corrupt than the UAE. Of course, there are exceptions, including the efforts to undermine judicial and prosecutorial independence in certain cases by President Trump.

<sup>5</sup>The Carnegie Endowment for International Peace recently published a report outlining “Dubai’s Role in Facilitating Corruption and Global Illicit Financial Flows, pointing out that “[o]ther major challenges are the emirate’s highly personalized institutions and lack of mechanisms to hold elites accountable.”  
<https://carnegieendowment.org/2020/07/07/dubai-s-role-in-facilitating-corruption-and-global-illicit-financial-flows-pub-82180>

<sup>6</sup> “Dubai: The Investment Illusion” which aired on Al Jazeera was put on their YouTube channel:  
<https://youtu.be/vRxS9UYHD8I>; see also Jared Whitley, “Was PwC Mixed Up in the Middle East’s Worst Real Estate Swindle?” The Economic Standard (Aug 20, 2019), <https://theeconomicstandard.com/was-pwc-mixed-up-in-the-middle-east-s-worst-real-estate-swindle>

The primary alleged fraudsters in this case are five brothers in the AlRajhi family using certain of their businesses to perpetuate the fraud. The two highest-profile brothers are Abdullah, the Chairman of AlRajhi Bank, the world's largest Islamic bank, and Chairman of AlRajhi Holding, and Ahmed, who is vice-chairman of AlRajhi Holding and was appointed in June 2018 as Saudi Arabia's Minister of Labor and Social Development by Saudi ruler Crown Prince Mohammed bin Salman Al Saud (commonly known as MBS).<sup>7</sup>

In spite of the Dubai Supreme Court decision confirming the shareholding of Omar Ayesh in the Tameer company, controlled by the AlRajhis, and the successful efforts by the AlRajhis using Tameer and a series of shell companies to illegally take USD 1.13 billion from Ayesh, to date UAE prosecutors have ignored clear evidence of fraud and have turned a blind eye to alarming related matters such as witness intimidation, the resignation of the UAE equivalent of a magistrate judge, who withdrew from the case as he explained, after being denounced and threatened by the AlRajhi lawyers for ruling in favor of Ayesh. The court accepted this withdrawal, and appointed a substitute expert/magistrate judge, without investigating the threats.

There is also analysis of American laws that would be implicated had the facts of the case occurred in the United States, and of prominent US cases with some parallels to the AlRajhi case that have resulted in criminal prosecution. Had facts of this matter occurred in the United States, there almost certainly would be a major investigation with likely prosecutions for white-collar crimes. While fraud, embezzlement, and theft are the crimes that first come to mind, there are numerous other criminal and civil statutes that would have been violated. Among them are money laundering, Racketeering Influenced and Corrupt Organizations ("RICO") laws, breach of fiduciary duty laws, real estate fraud, bank fraud, and conspiracy to commit and hide each of the above. These are contrasted with UAE laws and prosecution approach.

Based primarily on the facts he has been able to obtain from the documents submitted to the courts and the legal briefs and decisions he has reviewed; the author has reached certain conclusions:

1. The actions taken by the AlRajhis if undertaken in the United States would very likely constitute financial fraud, embezzlement, conflict of interest/breach of fiduciary duty, and misappropriation of assets, all as part of a pattern of racketeering activity which, as the Dubai Supreme Court affirmed, resulted in damages to Ayesh of USD \$1.13 billion, not including interest or potential profits on that amount over the past decade.
2. The AlRajhis certainly would be targets of a significant investigation and very likely be prosecuted if they had committed similar acts in the United States, but the UAE prosecuting authorities, while aware of the matter, have not even begun an

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<sup>7</sup> Stephen Kalin, *Saudi Arabia names businessman as labor minister, boosts culture and environment*, Reuters (June 1, 2018, 8:17 PM), <https://www.reuters.com/article/us-saudi-government/saudi-arabia-names-businessman-as-labor-minister-boosts-culture-and-environment-idUSKCN1IY00B>.

investigation. Likewise, AIRajhi senior executives, in-house counsel, board members and partners who participated in such actions would likely be prosecuted if the infractions were committed in the US. Indeed, the fraud scheme undertaken by the AIRajhis has parallels to well-known US financial white-collar criminal cases. Indeed, the UAE authorities should initiate a major investigation of the AIRajhi matter before further time elapses.

3. While the UAE now has a legal framework to address financial crime, this case, which in the US would have resulted in a prompt criminal investigation, demonstrates a need for further reform and actual enforcement of recent, tougher laws in the UAE. If faith in the UAE as a significant place for foreign investments is to be ensured, prosecutorial resources need to expand to include experts in complex financial crimes and other reforms. The highest levels of government in the UAE need to ensure that even complex financial crimes involving prominent persons such as the AIRajhis and requiring corporate veil piercing, will be pursued vigorously.

The documents reviewed and linked to in this article have revealed multiple instances since 2007 where the AIRajhis partner with local real estate developers, take over the developer's projects and companies, then fail to deliver on promises made to those partners, their investors, and customers, and fraudulently transfer assets to companies owned exclusively by the brothers. This holds true even beyond the Ayesh case, with strong evidence of this pattern being applied to others.<sup>8</sup> One scheme involves a pattern of fraud whereby the AIRajhis purposely partner with an investor on a residential development, commence unit sales, take money from the public, suspend construction, restructure ownership of assets away from investors, exhaust plaintiffs in years of legal battles and related costs, settle for fractions of the investment, create premeditated corporate veils to have claims denied, subsequently develop the real estate projects under new brands, and eventually resell the units of the defrauded former owners. Thus Ayesh is far from the only victim of the AIRajhis.

Documents indicate that this scheme is an intrinsic part of the AIRajhis' business practice in the UAE and that their internal legal counsel and management team are significantly compensated for developing and executing such schemes to defraud customers, investors, and partners.<sup>9</sup>

The recitation of facts that follows is based on a review of thousands of pages of documents, including English translations of judgements in UAE courts and witness

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<sup>8</sup> See discussion of Bridgehouse Capital, below.

<sup>9</sup> Exhibit 7.1: E-mail from Federico Tauber, President and CEO, Tameer, to Eng. Ahmed Al Rajhi, Owner/Partner, Al-Rajhi Holding (Feb. 19, 2014, 10:23 AM) (Tauber requests a 4.4M AED bonus compared to his last year's bonus of 2.2M AED), <https://www.scribd.com/document/413397860/Exhibit-7-1-Federico-Tauber-requests-a-4-4M-AED-bonus-compared-to-his-last-year-s-bonus-of-2-2M-AED-for-taking-care-of-Tameer>. ("Last year bonus was AED 2, 867, 753. My proposal for current bonus was AED 4, 404, 000... I believe that I have been able to contribute very well to the success of the business, by taking care of AEP, Tameer...")

statements, expert opinions commissioned by the UAE courts, and documents sourced from a whistleblower. Those documents provide strong evidence of premeditated crimes, performed methodically, with precautions taken to conceal the criminal conversion of the properties in question. A large cache of whistleblower-obtained documents was recently turned over to the Dubai Court in *Ayesh v AIRajhi*.<sup>10</sup> They corroborate long-standing complaints about the AIRajhi family's business practices and raise red flags for those directly investing or partnering in the region with the AIRajhis. A number of those are discussed below.

## Scope of Article

The author, Bruce J. Casino, is a long-time white-collar practitioner, based in Washington DC, until recently, as a partner at major American (AmLaw 100) law firms. He taught the White-Collar Crime course for thirteen years at the George Washington University Law School. He has published many articles on white-collar crime subjects<sup>11</sup> and served as the chair of American Bar Association (ABA) subcommittees on aspects of white-collar crime. He currently is the chair of the Global Compliance Subcommittee of the ABA's Litigation Section, Criminal Litigation Committee.<sup>12</sup>

The author reviewed thousands of pages of available documentation. He examined legal documents and expert opinions submitted to UAE's Dubai courts and leaked whistleblower documents that have been accepted by the experts appointed by the Dubai court in *Ayesh v AIRajhi*. The author emailed and attempted to call counsel for the AIRajhis for any relevant documents or explanations they might be able to provide. Their counsel did not respond. Nonetheless, it is clear from the filings and expert reports and judicial decisions in the cases what the AIRajhi's position has been in the litigation.

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<sup>10</sup> Claim No. 127/2017, Commercial Plenary Court, Dubai.

<sup>11</sup> See e.g., B. Casino, *Compliance Programs and International White-Collar Crime*, ABA (Aug 8, 2017), <https://www.americanbar.org/groups/litigation/committees/criminal/articles/2017/summer2017-compliance-programs-and-international-white-collar-crime/>; Bruce J. Casino & Scott Maberry, *FCPA, Due Process, and Jurisdictional Overreach by the DOJ and SEC*, ABA (June 12 2013), <https://www.americanbar.org/groups/litigation/committees/criminal/articles/2013/spring2013-0613-fcpa-due-process-jurisdictional-overreach-doj-sec/>; What's in the New FCPA Guide, Co-Author, ABA Criminal Litigation Newsletter, March 13, 2013; The \$155 Million Medco Settlement: Providing a Framework for Pharmacy Benefit Management Compliance, Health Law Litigation, Spring 2007 Compliance and International White-Collar Crime, Summer 2017 Review, ABA Section on Litigation; International White-Collar Crime: The Need for a Global Approach, 2016 International White-Collar Enforcement, 2016, Aspatore Books/Westlaw; Compulsory Confession Without Absolution: Complying with the FAR Mandatory Disclosure Rule, Co-author with John Chierichella, Briefing Papers, September 2015, Thompson Reuters/Westlaw; All Government Contractors Subject to New Human Trafficking Law, National Defense, June 2015; Court Broadens Confidentiality of Investigations, Co-Author, The National Law Journal, August 18, 2014; Attorney-Client Privilege Protection in Internal Investigations Upheld by D.C. Circuit: Good News for Corporate Counsel, Co-Author, Bloomberg Law, July 24, 2014; Compulsory Confession Without Absolution - Government Contracts Compliance in the 21st Century, Co-Author with John Chierichella, Government Contracts Compliance, Aspatore Books/Westlaw 2014; Success in White Collar Crime Cases, The New Perils of White Collar Crime: Leading Lawyers on Mitigating Liability in a Post Sarbanes-Oxley Era, Aspatore Books/Westlaw, 2006.

<sup>12</sup> Bruce J. Casino, LinkedIn, <https://www.linkedin.com/in/bruce-casino-779a505/> (last visited June 21, 2021).

## **Whistleblower Documents**

The whistleblower documents chronicle the business activities of members of the AlRajhi family, executive staff, and external and in-house legal counsel and provide evidence of criminal decisions, activities, and a pattern of fraudulent behavior. These documents also include notes, agreements, communications, and executive/board presentations that were improperly kept from being disclosed during discovery in the Ayesh litigations.

The whistleblower documents demonstrate that a remarkable range of individuals have fallen victim to the AlRajhis, including individual buyers of condos, corporate investors, partners, hedge funds, banks, brokers, and property owners.

The authenticity of the whistleblower documents is indisputable. Legal counsel for Tameer management discussed the material, acknowledging their existence. For instance, the documents are debated by Tameer Holding LLC counsel in the Ayesh v AlRajhi litigation in their memo submitted to the experts committee in that case, dated October 18, 2018. Tameer discussed the documents leaked by the whistleblower and stated that these are internal communication between the employees, a *de facto* confirmation of their validity. Similarly, in his memo dated January 1, 2019, Federico Tauber's (former President of Tameer and a defendant in the Ayesh v AlRajhi case) counsel disputed the import of some of the leaked documents, but nonetheless, requested their original copies while noting that as per UAE law, such emails are considered evidence.<sup>13</sup> In jurisdictions with robust legislation surrounding corrupt practices, the affirmation of the validity of these documents would have garnered a referral to public prosecutorial or attorney general review and immediate criminal investigation. In the Tameer case, however, cracks in legal procedure allowed Tameer counsel to minimize the importance of the documents; and in fact, they later reneged on their acknowledgement after an expert committee issued their conclusions in Ayesh's favor for 6.8 billion UAE dirhams, flippantly rejecting their validity. The fundamental flaw lies less with the AlRajhi counsel, and more with the Dubai judicial system that ignored egregious unlawful conduct holding neither counsel nor the AlRajhis in contempt or accountable for the crimes exposed by the documented evidence.

## **Omar Ayesh and Tameer Holding Investment LLC**

Omar Ayesh, a Canadian national, established Tameer in 2003. He successfully built a number of iconic residential and office towers in Dubai and introduced the North American concept of the "industrial park" to the market. As President of Tameer, Ayesh eventually built the company into one of the region's leading real estate development companies.

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<sup>13</sup> Exhibit 1.7.1: Court of Cassation, Appeal No. 650/2018, Commercial, (U.A.E.).  
<https://www.scribd.com/document/417554705/Exhibit-1-7-1-Supreme-Court-Decision-on-Ayesh-vs-Tameer-1023-and-1027-of-2014>

Tameer is well known for building the Princess Tower in Dubai which was named the tallest residential building in the world in the Guinness Book of World Records.<sup>14</sup> Recognizing his leadership and vision, he was voted CEO of the Year in the Property Development category of ITP Publishing Group's annual CEO Awards in 2007.<sup>15</sup> Under the leadership of Ayesh, Tameer won the prestigious Mohammad bin Rashed Business Award in 2007.<sup>16</sup> He was also nominated as a finalist for Ernst & Young entrepreneur of the year for 2007.<sup>17</sup>

In 2005 Ayesh sold 50% of Tameer to Ahmed AlRajhi.<sup>18</sup> Tameer continued to realize growing success and extremely high valuations.<sup>19</sup> Under the guise of complying with a UAE law that required all onshore companies to be owned by a Gulf State ("GCC") national (such as a Saudi), in 2007 Ayesh was pressed to accept a restructuring agreement. This agreement included selling an additional 25% to Ahmed AlRajhi. Ayesh retained the remaining 25%. However, because of UAE law, Ahmed AlRajhi would hold Ayesh's remaining 25% of all assets in Tameer's onshore company, in trust for Ayesh and Ayesh would maintain 25% direct ownership in Tameer's offshore assets. Later in 2007, Ayesh entered into the above-described Agreement for the Sale and Purchase of Shares (2007 SPA) to restructure the group ostensibly with a goal of floating an Initial Public Offering (IPO).<sup>20</sup>

This required a transaction in which both parties transferred assets between onshore and offshore companies to maintain an overall 75% / 25% ownership of assets. Soon after the signing of the agreement, the situation became acrimonious, as the AlRajhi brothers did not complete the IPO and did not transfer assets they were required to do, leading to a protracted legal standoff.<sup>21</sup> As discussed below, Ahmed and his brothers engaged in a

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<sup>14</sup> Guinness World Record News, *Princess Tower in Dubai named tallest residential building*, Guinness World Records (May 24, 2012), <http://www.guinnessworldrecords.com/news/2012/5/princess-tower-in-dubai-named-tallest-residential-building-42171>

<sup>15</sup> Edward Poultney, *CEO 2007 Awards*, Arabian Business (Nov 1, 2007, 04:00 AM), [www.arabianbusiness.com/ceo-2007-awards-53286.html](http://www.arabianbusiness.com/ceo-2007-awards-53286.html).

<sup>16</sup> *The Winning Companies of the Mohammed Bin Rashid Al Maktoum Business Award 2007*, Dubai Chamber, <https://www.dubaichamber.com/what-we-do/business-excellence/mrm-business-excellence-award/the-business-excellence-award/winners-testimonials#sec4>.

<sup>17</sup> *Ernst & Young Welcomes the Entrepreneur of the Year 2007 Award Finalists to Dubai*, albawaba (Feb 23, 2008), <https://www.albawaba.com/news/ernst-young-welcomes-entrepreneur-year-2007-award-finalists-dubai>.

<sup>18</sup> Exhibit 1.1.3: Waleed Abdullah Ali Ibraheem Al Marzooqi(signatory), Ahmed Suleiman Al Rajhi(signatory), Omar Jamal Hasan Ayesh(signatory), *Tameer Shareholders Agreement*, (April 7 2005) <https://www.scribd.com/document/413389637/Exhibit-1-1-3-2005-Shareholder-Agreement>.

<sup>19</sup> *Homegrown Success Boosts Regional Reach*, Construction Week Online (Sept 08, 2007), <https://www.constructionweekonline.com/article-1410-homegrown-success-boosts-regional-reach>.

<sup>20</sup> Exhibit 1.2.3: Omar Jamal Hasan Ayesh(signatory), Ahmed Suleiman Al Rajhi(signatory), Waleed Abdullah Ali Ibraheem Al Marzooqi(signatory), *Agreement for the Sale and Purchase of Shares and Land Portions and Assignment and Novation of Projects*, (Dec 11, 2007), <https://www.scribd.com/document/413398128/Exhibit-1-2-3-The-Agreement-for-the-Sale-and-Purchase-of-Shares-and-Land-Portions-and-Assignment-and-Novation-of-Projects-the-2007-SPA>.

<sup>21</sup> Awad Mustafa, *Dispute Over Tameer's Ownership Moves into Courts*, The National (Nov. 2, 2009, 4:00 AM), <https://www.thenational.ae/business/property/dispute-over-tameer-s-ownership-moves-into-courts-1.487214>

massive conflict of interest with respect to the 25% held in trust for Ayesh and how they dealt with that minority interest.

## The AIRajhis

The AIRajhi family is one of the wealthiest business families in Saudi Arabia. Its businesses are controlled by five brothers. As mentioned above, the two highest-profile brothers are Abdullah, who is the Chairman of AIRajhi Bank, the world's largest Islamic bank, and the Chairman of AIRajhi Holding, and Ahmed, who is Vice-Chairman of AIRajhi Holding and was appointed as Saudi Arabia's Minister of Labor and Social Development in 2018.<sup>22</sup>

Understanding the key players is essential in determining the extent of collusion and involvement in the fraud committed. Under US federal law "whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal."<sup>23</sup> This would mean that all of those with a role in the fraud committed by the AIRajhis could, in the United States, be prosecuted as principals, not simply as conspirators.

Some of the key players include the following:

1. Abdullah AIRajhi who, documents show, was the final decision maker on many matters related to Tameer despite not being a shareholder and having no legal ties to the company. For instance, a confidential fax was sent to Abdullah AIRajhi informing him that although no "real sale" existed between Tameer and both Sunstone and Moonstone (shell companies set up to misappropriate assets), payment of 13.7 million AED for land transfer fees was required to avoid an attack from Ayesh.<sup>24</sup> Soon after the fax, the assets were transferred in the manner requested strongly indicating that Abdullah AIRajhi approved this payment to avoid future legal action by Ayesh. Communications related to real estate offers for Tameer plots were also sent to Abdullah AIRajhi for his approval.<sup>25</sup> Abdullah also gave the green light to establish

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<sup>22</sup> Stephen Kalin & Marwa Rashad, *Saudi Arabia names businessman as labor minister, boosts culture and environment*, Reuters (June 1, 2018, 8:17PM), <https://www.reuters.com/article/us-saudi-government/saudi-arabia-names-businessman-as-labor-minister-boosts-culture-and-environment-idUSKCN11Y00B>.

<sup>23</sup> Title 18, Principals, 18 U.S.C § 2(a) (1998).

<sup>24</sup> Exhibit 2.11.1: Fax from Federico Tauber, President and CEO, Tameer, to Abdullah Al Rajhi (Nov. 27, 2013) (FT Informing Abdullah that they should pay the transfer fee to avoid potential attacks from Ayesh when transferring the lands from Tameer to Gemstone), <https://www.scribd.com/document/412514329/Exhibit-2-11-1-Executive-recommendations-to-Al-Rajhi-to-pay-hefty-transfer-fees-to-avoid-potential-civil-or-criminal-action>.

<sup>25</sup> Exhibit 4.1.10: E-mail from Federico Tauber, President and CEO, Tameer, to Eng. Ahmed Al Rajhi, Tameer Owner/Partner, Higaze Mohammed, Assistant to Ahmed Al Rajhi, Yousuf Naji, Assistant to Ahmed Al Rajhi (Nov. 21, 2013 4:08 PM) (Tauber informing Ahmed about an interested buyer for a Tameer plot), <https://www.scribd.com/document/413388157/Exhibit-4-1-10-November-21-2013-email-from-Federico-Tauber-to-Ahmed-Al-Rajhi-informing-him-of-an-interested-buyer-for-a-Tameer-plot>; Exhibit 4.1.11: E-mail from Federico Tauber to Ahmed Al Rajhi, Tameer Owner/Partner (Oct. 23, 2013, 4:10 PM) (Tauber informing Ahmed that the client is not interested in buying Business Bay lots at their requested price), <https://www.scribd.com/document/413403666/Exhibit-4-1-11-Email-from-Federico-Tauber-to-Ahmed-ARajhi-informing-him-that-the-client-is-would-not-increase-his-offer>.

asset management companies to deprive Ayesh from the revenues of Imperial Residence owned by an off-shore company were Ayesh holds shares.

2. Ahmed AIRajhi was the main legal partner in Tameer. In a 2009 arbitration, he argued that he had no involvement in the decision making of Tameer's management. Despite this, documents and communications show that he was the go-to person for authorizations on most key decisions. For instance, emails regarding recommendations for board structure to protect shareholders from questionable and challengeable transactions were addressed to Ahmed AIRajhi for his approval and agreement to indemnify.<sup>26</sup> Furthermore, Ahmed AIRajhi was involved in appointing pseudo board members, forcing them to sign fake board resolutions, and providing them with indemnification letters in case of future legal action against them.<sup>27</sup> Of course, he was also technically the trustee holding Ayesh's 25% share in Tameer.<sup>28</sup>
3. Ibrahim AIRajhi was another legal partner in Tameer and the co-authorized signatory on issues related to Umm Al Quwain Real Estate Development ("Tatweer") (a company of the Tameer Group).<sup>29</sup>
4. Faisal and Khaled AIRajhi were the owners of shell companies taking assets from Tameer.<sup>30</sup> While they had no legal relationship to Tameer, Faisal was involved in board member selections for the company (he named two of the three members of

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<sup>26</sup> Exhibit 2.5.1: E-mail from Federico Tauber, President and CEO, Tameer, to Ahmed Al Rajhi, Tameer Owner/Partner (May 13, 2013, 10:01 PM) (FT telling AR why there needs to be a board), <https://www.scribd.com/document/413406920/Exhibit-2-5-1-Email-from-Federico-Tauber-To-Ahmed-Al-Rajhi-regarding-why-there-needs-to-be-a-board>.

<sup>27</sup> Exhibit 2.7.1: E-mail from Federico Tauber, President and CEO, Tameer, to Ahmed Al Rajhi, Tameer Owner/Partner (Jan. 29, 2014, 9:35 AM) (Tauber telling Ahmed to push Philip AKL to sign the board resolutions), <https://www.scribd.com/document/413395378/Exhibit-2-7-1-January-29-2014-email-from-Federico-Tauber-asking-Ahmed-Al-Rajhi-to-Push-Phillip-AKL-to-sign-the-board-resolutions> ; Exhibit 2.8.1: E-mail from Phillip AKL, former board member and president, Tameer, to Ahmed Al Rajhi, Tameer Owner/Partner (Feb. 03, 2014, 12: 25 PM) (E-mail from AKL to Ahmed requesting indemnity prior to signing the MoM's), <https://www.scribd.com/document/413403322/Exhibit-2-8-1-Email-from-Phillip-AKL-to-Ahmed-Al-Rajhi-requesting-indemnity-prior-to-signing-board-resolutions> ; Exhibit 2.9.1: Chain of E-mails between Mona Agha, former board member, Tameer, Federico Tauber, and Ahmed Al Rajhi, Tameer Owner/Partner (From Dec. 11, 2013, 12: 32PM to Feb. 11, 2014, 12:14 PM) (chain of E-mails regarding the board resolutions Mona was asked to sign without prior knowledge despite fear of criminal prosecution), <https://www.scribd.com/document/413403369/Exhibit-2-9-1-Chain-of-emails-between-Mona-Agha-Federico-Tauber-and-Ahmed-Al-Rajhi-regarding-the-board-resolutions-Mona-was-asked-to-sign-without-p>.

<sup>28</sup> Exhibit 1.2.3: *Agreement for the Sale and Purchase of Shares and Land Portions and Assignment and Novation of Projects*, *supra* note 20.

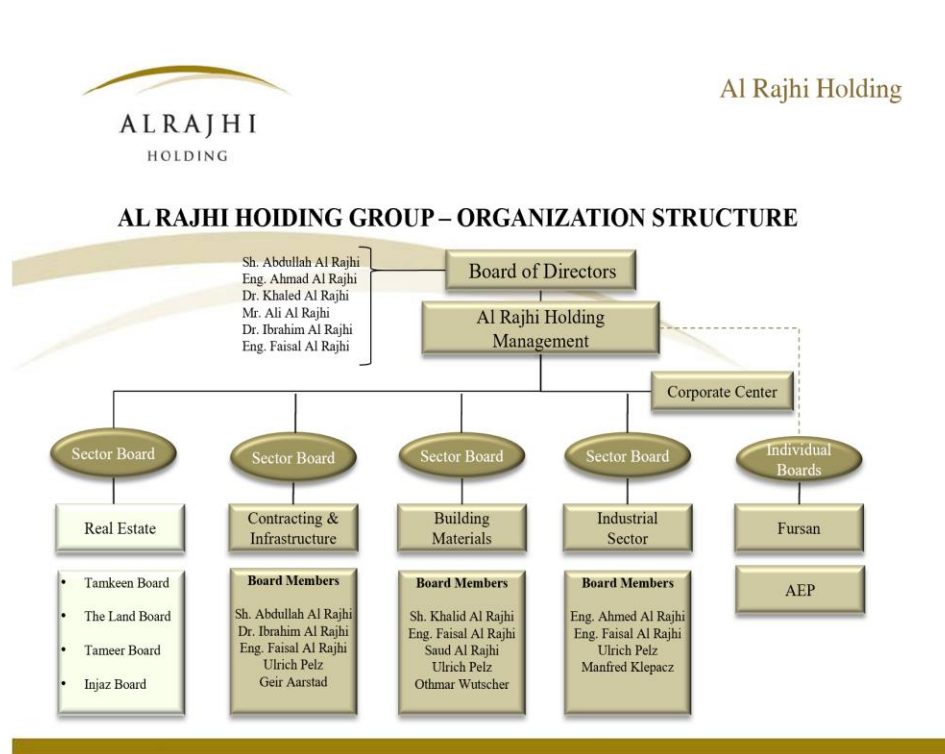
<sup>29</sup> Exhibit 8.1: E-mail from Tauber, President & CEO, Tameer, to Ahmed Al Rajhi, Owner/Partner, Tameer (Jun. 24, 2014, 5:15 PM) (describing Ibrahim Al Rajhi's involvement in decisions to transfer Tameer Holding Investment Shares), <https://www.scribd.com/document/417555667/Exhibit-8-1-Email-from-Federico-to-Ahmed-Al-Rajhi-describing-Ibrahim-Al-Rajhi-involvement-in-decisions-to-transfer-THI-shares> ; Exhibit 8.3: E-mail from Federico Tauber, President and CEO, Tameer, to Ahmed Al Rajhi, Tameer Owner/Partner (June 27, 2013, 10:33 AM) (Tauber getting Ahmed's approval to transfer shares for UAQ project from Tameer to Ahmed), <https://www.scribd.com/document/414001195/Exhibit-8-3-Email-from-FT-to-AR-getting-his-approval-to-transfer-shares-for-UAQ-project-from-Tameer-to-AR>.

<sup>30</sup> Exhibit 3.5: *Gemstone July 2014 Board PowerPoint Presentation*, (July, 2014) at 114 (Confirming that the structure is to keep Ayesh away), <https://www.scribd.com/document/414520151/Exhibit-3-5-July-2014-Board-Monthly-Report-confirming-that-the-structure-is-to-keep-Omar-Ayesh-Away-pg-114>.

the board that approved the transfer of plots to the shell companies where he owns shares).<sup>31</sup>

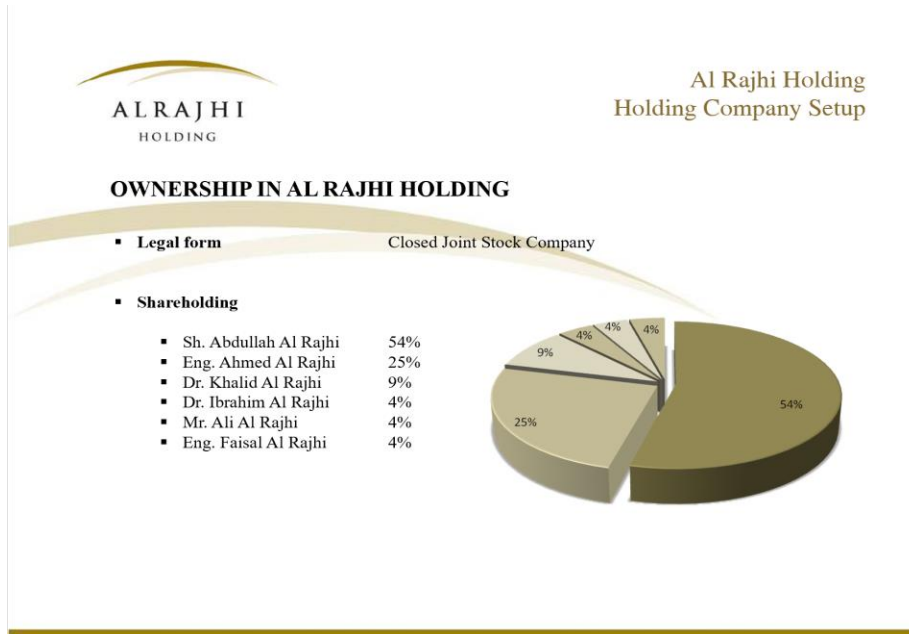
5. Aasma Khan, the in-house counsel for Tameer, became the in-house counsel for AlRajhi holdings also. She coordinated the legal strategy regarding the transfer of assets from Tameer and the litigation by individual and corporate property owners.<sup>32</sup>
6. Frederico Tauber was the President and CEO of Tameer, having been appointed by the AlRajhis and coming from AlRajhi Holding. He later became the CEO of the key shell companies (Gemstone, Moonstone, and Sunstone) to which Tameer assets were transferred.

The following are two organizational charts created by the AlRajhis' holding company showing the AlRajhi corporate structure.



<sup>31</sup> Exhibit 2.5.7: E-mail from Frederico Tauber, President and CEO, Tameer, to Ahmed Al Rajhi, Tameer Owner/Partner (Apr. 11, 2013, 4:12 PM) (Tauber informing Ahmed that Faisal Al Rajhi recommended board members for Tameer), <https://www.scribd.com/document/413402986/Exhibit-2-5-7-April-11-2013-Email-between-Federico-Tauber-and-Ahmed-Al-Rajhi-informing-him-that-Faisal-Al-Rajhi-recommended-board-members-for-Tameer>.

<sup>32</sup> Exhibit 2.1.1: Chain of E-mails between Aasma Khan, Chief Legal Officer, Tameer, Ziad Touma, Former Group General Counsel of Al Rajhi Group Holding, and Ahmed Al Rajhi, Tameer Owner/Partner (From Apr. 30, 2013, 5: 14 PM to May 05, 2013, 7:34 PM) (Chief legal Officer Aasma A. Khan confirming that "Tameer is Intended to Die"), <https://www.scribd.com/document/412499327/Exhibit-2-1-1-Tameer-is-Intended-to-Die-email-confirmation-by-Chief-Legal-Officer-Aasma-A-Khan>.



The above two Images are from an AlRajhi Holding Group Profile Presentation.<sup>33</sup>

## United Arab Emirates Schemes: Primary Victim Omar Ayesh

### *2008 Third Party Valuation of Tameer*

In planning for a proposed IPO, an evaluation of Tameer’s assets was conducted in 2008 by Gulf International Bank (GIB). The objective of the evaluation, as per the January 2008 report by GIB, was to “present the intrinsic valuation based on the combined financial projections of projects currently under development, and potential growth and development of future new projects.”<sup>34</sup> That assessment pegged the value of the property portfolio at US\$5 billion dollars,<sup>35</sup> thus valuing Ayesh’s 25 percent at US\$1.25 billion dollars at the time.

The 25% was also valued at more than US \$1.2 billion by the five experts whose findings were accepted by the court (and affirmed by the Dubai Supreme Court) in Ayesh v

<sup>33</sup> Exhibit 1.0.2: Al Rajhi Holding, *Group Profile Presentation*, (Feb. 2010) (Note that Tameer and related entities are the main real estate holding. Ayesh’s 25 % ownership is not referenced), <https://www.scribd.com/presentation/413399920/Exhibit-1-0-2-Al-Rajhi-Group-Corporate-Profile>.

<sup>34</sup> Exhibit 1.4.3: Gulf International Bank, *Preliminary Valuation of Tameer Holding*, (Jan 1, 2008), <https://www.scribd.com/document/412497982/Exhibit-1-4-3-Gulf-International-Bank-Valuation-of-Tameer-Holding>.

<sup>35</sup> *Id.*

Tameer<sup>36</sup> and at \$1.8 billion by two of the three experts in Ayesh v AIRajhi.<sup>37</sup> Through a series of transactions, Tameer's assets were transferred or allegedly "sold" to shell companies owned by the AIRajhi family, causing the company, including Ayesh's 25% stake, according to the AIRajhis, to have no value at all. If committed in the United States, such activities would likely lead to civil and criminal fraud, racketeering, tax, money laundering, violation of fiduciary duty and other legal actions. As discussed below, the actions are reminiscent of the asset transferring and fraud aspects of a number of well-known US cases, including Enron.

Note also that the US \$1.8 billion and 1.2 billion figures do not include the profits and interest that would have been produced by those amounts over the years since the valuations.

### ***Tameer Group Ownership History***

#### **2005 Agreement**

Tameer Group, upon conclusion of a shareholder's agreement dated 07-04-2005, consisted of Tameer Emirates Real Estate Establishment (Tameer Dubai) and Tameer Real Estate Establishment (Tameer Sharjah). That entire group, as well as the companies and projects affiliated therewith, were owned fully by Ayesh. Tameer Dubai at the time was technically held in trust by Walid Abdullah Ali Al Marzouqi, for Ayesh.<sup>38</sup>

This was due to foreign investment laws in the UAE. Ayesh is a Canadian citizen. By virtue of the agreement, Tameer Sharjah was transformed from a sole proprietorship into a limited liability company, and a new company was incorporated in Dubai, Tameer Holding Investment LLC ("Tameer"). The two companies constitute Tameer Group.

Pursuant to the 2005 agreement, Ahmed AIRajhi purchased 50% of the shares of both companies, while Ayesh retained the remaining 50% of the shares of the companies.

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<sup>36</sup> Exhibit 1.7.2: *The Experts' Report of the Lawsuit No. 1023/2014 Commercial Appeal*, submitted by appointed experts' committee to the Dubai Court of Appeal (U.A.E.) (Jan. 15, 2016) at 23, 24., <https://www.scribd.com/document/417557810/Exhibit-1-7-2-Expert-Report-Submitted-to-the-Court-in-Ayesh-vs-Tameer-1023-and-1027-of-2014-Page-23-and-24-Fraud-Valuation>.

<sup>37</sup> Exhibit 1.8.1A: *Expert Opinion Conclusion in Ayesh v. Al Rajhi, Part 1* (Feb. 06, 2018) <https://www.scribd.com/document/423550027/Exhibit-1-8-1A-Expert-Opinion-Conclusion-in-Dubai-Court-Ayesh-vs-Al-Rajhi>; Exhibit 1.8.1B: *Expert Opinion Conclusion in Ayesh v. Al Rajhi, Dubai Court Part 2* (Feb. 06, 2018) (U.A.E.) at Part 2 Page 81., <https://www.scribd.com/document/417557535/Exhibit-1-8-1B-Expert-Opinion-Conclusion-in-Dubai-Court-Ayesh-vs-Al-Rajhi>.

<sup>38</sup> Exhibit 1.1.3: *Tameer Shareholders Agreement*, *supra* note 18.

## 2007 Agreement

A sale and purchase agreement dated 11-12-2007<sup>39</sup> concluded between Ayesh, Al Marzouqi, and Ahmed Sulaiman AlRajhi provided that Ayesh sell an additional 25% of the shares in Tameer Group of Companies to Ahmed AlRajhi. The agreement required that the remaining 25% of shares held by Ayesh, which had been held in trust by Al Marzouqi, now be held in trust by Ahmed AlRajhi and Ibrahim AlRajhi.<sup>40</sup> The agreement included a provision that, upon completion of sale and legal restructuring, Ayesh would continue to hold 25% of the shares in Tameer Group, while Ahmed AlRajhi would hold 75% of shares in Tameer Group. Furthermore, Ahmad AlRajhi and Ibrahim AlRajhi were named trustees on behalf of Ayesh in the management of his shares, which required that they act in the best interest of Ayesh using due care to preserve the value of such shares. This trust arrangement created a fiduciary duty owed by them toward Ayesh under UAE law<sup>41</sup>, a duty which as discussed herein, was repeatedly violated.

### ***“Tameer is Intended to Die.”***

Whistleblower-obtained documents show that the AlRajhi brothers partnered with Ayesh apparently with the sole objective, unbeknownst to Ayesh, that “Tameer is intended to die.”<sup>42</sup> In her email dated April 30, 2013, sent to Ziad Touma (AlRajhi in house legal counsel) with a copy to Federico Tauber and Mansour Al Kharboush, AlRajhi legal strategist and AlRajhi appointed in-house counsel for Tameer, Aasma Khan, states:

“For now, I would request that the additional deletions and changes to the MOAs of Tameer be left aside given that it complicates the reading of the MOA and that Tameer is intended to die.”<sup>43</sup>

Federico Tauber, President of Tameer, assisted in executing the strategy to dissolve Tameer. In 2013 the AlRajhis began an effort to move assets away from Tameer Holding into shell companies owned by AlRajhi brothers, established for the sole purpose to “hold the plots,” and effectively erode and make worthless Tameer Holding and Ayesh’s 25% share.

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<sup>39</sup> Exhibit 1.2.3: *Agreement for the Sale and Purchase of Shares and Land Portions and Assignment and Novation of Projects*, *supra* note 20.

<sup>40</sup> *Id.* According to Annex No. (1) of the agreement and as a restructuring was necessary, it was agreed to transfer the full shares held by Al Marzouqi (on behalf of Ayesh) at Tameer Holding Investment LLC, being 2,500 shares representing 50% of the shares of such company, as 2,499 shares to Ahmed Sulaiman Al Rajhi and one share to Ibrahim Al Rajhi, Tameer Owner/Partner, Tameer Holding LLC.

<sup>41</sup> DIFC Law No. 2 of 2009 (DIFC Companies Law).

<sup>42</sup> This is specifically confirmed in a communication by their counsel, Aasma Khan. Exhibit 2.1.1: Chain of E-mails between Aasma Khan, Chief Legal Officer, Tameer, Ziad Touma, Former Group General Counsel of Al Rajhi Group Holding, and Ahmed Al Rajhi (From Apr. 30, 2013, 5: 14 PM to May 05, 2013, 7:34 PM) (Chief legal Officer Aasma A. Khan confirming that “Tameer is Intended to Die”), <https://www.scribd.com/document/412499327/Exhibit-2-1-1-Tameer-is-Intended-to-Die-email-confirmation-by-Chief-Legal-Officer-Aasma-A-Khan>.

<sup>43</sup> *Id.* (emphasis added)

Starting in 2013, multiple companies including Gemstone Investment LLC, Moonstone Investment LLC, Sunstone Investment LLC, Blue Onyx Commercial Investment LLC, Lapis Lazuli Asset Management LLC, Lazuli Asset Management LLC, and others owned by the AlRajhis were created to take ownership of the Tameer assets.<sup>44</sup> Aasma Khan was the architect of this structure to transfer and misappropriate the assets by grossly undervaluing the assets in the transfers to the shell companies. She developed various shell company structures - single brother and multiple brother schemes - that were shared with the AlRajhis. For instance in a board presentation, Tameer's management recommended that "[a] separate group of companies needs to be established under a different NEWCO name and parent so that the structure does not mirror and that one group of companies is not owning all of Tameer's former assets."<sup>45</sup> Khan generated the documents to fabricate sales between Tameer Holding and shell companies registered for the purpose of taking over the assets and prepared the related documents for the Land Department.<sup>46</sup>

Throughout the process of the asset transfers, emails demonstrate that the AlRajhi brothers, their executives and lawyers, were aware that the land title transfer transactions were criminal in nature, for which they might be held accountable, and that they should take precautions to avoid any direct liability.<sup>47</sup> There are several email communications that reiterate instructions that NEWCOs are being created for the purpose of holding the plots and assets. The "Tameer is intended to die" plan demonstrates a clear intention to eliminate Tameer and by extension, Ayesh's shares. The strategy of moving assets out of Tameer was even an agenda item on a Tameer shareholder presentation. In August 2013, Federico sent an agenda for the Tameer monthly review meeting to Ahmed AlRajhi which listed item #15 as "*Decide on strategy to take the remaining plots out of THI*".<sup>48</sup>

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<sup>44</sup> Exhibit 2.4.1: Government of Dubai (Department of Economic Development), *Sunstone Investment LLC Initial Trade Name Reservation Certificate*, (Apr. 29, 2013), <https://www.scribd.com/document/413389965/Exhibit-2-4-1-Registering-of-Sunstone> ; Exhibit 2.4.2: *Memorandum of Association of Blue Onyx Commercial Investment LLC*, (Sept. 20, 2014), <https://www.scribd.com/document/413395193/Exhibit-2-4-2-Memorandum-of-Association-of-Blue-Onyx-Commercial-Investment-LLC> ; Exhibit 2.4.7: Government of Dubai (Department of Economic Development), *Lazuli Asset Management LLC Initial Trade Name Reservation Certificate*, (May, 11, 2014), <https://www.scribd.com/document/413395227/Exhibit-2-4-7-Lazuli-Asset-Management-LLC-Initial-Name-Reservation-11-07-14> ; Exhibit 2.4.8: Government of Dubai (Department of Economic Development), *Lapis Lazuli Initial Name Reservation*, (Jul. 11, 2014), <https://www.scribd.com/document/413395305/Exhibit-2-4-8-Lapiz-Lazuli-Initial-Name-Reservation-11-07-14>.

<sup>45</sup> Exhibit 3.5: Gemstone Board Powerpoint Presentation *supra* note 30 at 26 (Acquisition of Reem Island Plots from Tameer) (emphasis added).

<sup>46</sup> Exhibit 4.3.1: Chain of E-mails between Aasma Khan, Federico Tauber, Mansour Al Kharboush, Yousif Naji, and Osamah Alsharif (From Feb. 26, 2014, 2:06 PM to Feb. 27, 2014, 6:58 PM) (Transfer of properties to Sunstone and Moonstone at a fraction of the offers received signed), <https://www.scribd.com/document/413398750/Exhibit-4-3-1-Transfer-of-properties-to-Sunstone-and-Moonstone-at-a-Fraction-of-the-Offers-Received-Signed> .

<sup>47</sup> Exhibit 2.11.1: Letter from Federico Tauber, President and CEO, Tameer, to Abdullah Al Rajhi, *supra* note 24.

<sup>48</sup> Exhibit 2.1.2: E-mail from Federico Tauber, President and CEO, Tameer, to Eng. Ahmed Al Rajhi, Tameer Owner/Partner (Aug. 26, 2013, 10:13 AM) (Confirming meeting agenda to include transfer of assets, employees, and financials), <https://www.scribd.com/document/413389778/Exhibit-2-1-2-Email-from-Tameer-CEO-Federico-Tauber-to-Ahmed-Al-Rajhi-in-August-2013-confirming-agenda-for-meeting-transfer-of-assets-employees-an>.

Recommendations for corporate structure (manager vs board, board with AIRajhi brothers vs. board without)<sup>49</sup> and company structures (single brothers vs. multi-brother) are both evidence of the fraud being performed methodically, as all these precautions were meant to protect the AIRajhis from the legal impact of expropriating the rights of Ayesh and other concerned stakeholders.

The Dubai Court of Cassation, in cases No. 316/2003 and 69/2007, held that where a shareholder has exploited the principle of the independent liability of the company as a means to conceal fraudulent acts or misappropriation of the funds of the company in order to cause harm to his partners or creditors, the protection bestowed by law for a shareholder in an LLC will not be upheld. In these circumstances, it may be possible for a shareholder to be held liable in their personal capacity for such dispositions, and such liability will extend to their personal assets.<sup>50</sup> Unfortunately, in the UAE where corporate manipulations involve influential individuals, corporate veil piercing is generally not permitted, even in the case of fraud.<sup>51</sup>

There are also multiple examples of precautions undertaken by the AIRajhis that conceal the criminal conversion. For example, Board reports were issued after-the-fact, falsely stating that sales were executed due to a lack of interest and were necessary because of liabilities Tameer could no longer settle. Similarly, in a fax sent from Federico Tauber to Abdullah AIRajhi and Ahmad AIRajhi<sup>52</sup>, he admits there was no true sale in one case and the referenced transaction involved the mere transfer of assets between sister companies. But in an attempt to protect the brothers, Tauber also said that they had to be cautious and pay a discounted land transfer fee to hide the true nature of the transaction.

In his fax Tauber says:

He [the government official] would only agree to avoid payment of fees in the case that the assets are transferred between companies of exactly same shareholders. *This is not the case, as Tameer and Gemstone are owned by different AIRajhi brothers.*

We have discussed with our legal advisor and having Eng. Ahmed and Eng. Ibrahim as the shareholders of the company that is receiving the plots is not advisable at all. *Both from potential OA attack and from potential bankruptcy issues when the pressure of Tameer Towers cases starts to heat up.*

We have further discussed with the Land Department and they have accepted that there is no real sale and therefore will apply the official government valuation of

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<sup>49</sup> Exhibit 2.5.1: E-mail from Tauber to Ahmed Al Rajhi, Tameer Owner/Partner, *supra* note 26.

<sup>50</sup> Adnan Chida, Piercing the Corporate Veil & Directors' Liability, Taylor Wessing (Apr. 6, 2016), <https://united-arab-emirates.taylorwessing.com/en/piercing-the-corporate-veil-directors-liability>.

<sup>51</sup> Jed Hayden, Piercing the Corporate Veil - The Case of Dubai World, <https://www.dayofdubai.com/news/piercing-corporate-veil-case-dubai-world>.

<sup>52</sup> Exhibit 2.11.1: Letter from Tauber to Abdullah Al Rajhi, *supra* note 24.

the plots instead of the value of the transaction. Therefore, the fees to be paid will be AED 13.7 million.

*We do not have any other choice but to pay these fees to keep the structure legally safe.*<sup>53</sup>

As discussed, the AlRajhis created a series of shell companies in order to transfer and hide Tameer's assets. When it comes to structuring – or restructuring – a company, it is of course, always prudent to anticipate potential legal liabilities and complications down the road. It is, however, a crime to frame an entire company exclusively around the need to further a fraud and fraudulently defeat future litigation or arbitration. The AlRajhis' enterprise, with its similar patterns of fraud and multiple schemes, would, in the United States, fall under both civil and criminal racketeering laws.<sup>54</sup>

### ***Admission that Omar Ayesh Is a Shareholder***

During the arbitration case 252/2009, the first case in which the parties entered into arbitration, Ahmed AlRajhi stated under oath that Ayesh is his partner in both Tameer Holding Investment LLC and Tameer Group of companies.<sup>55</sup>

On May 29, 2013, Tauber sent an email to Ahmed AlRajhi informing him that a general assembly meeting for the free zone companies is required to approve changes to board members. He notes in the email that “*As you will notice, we need to invite Mr. Omar Ayesh as he is a shareholder.*”<sup>56</sup>

On July 18, 2013, Ayesh requests, through a series of letters, information regarding Tameer companies as per his shareholder rights. Although internally AlRajhi had acknowledged Ayesh to be a shareholder, on February 17, 2014, the legal department headed by Aasma Khan delivered a set of letters in response to Ayesh's requests stating “*We are in receipt of your letter dated 18 July 2013 and note that you are not a shareholder in this entity. Therefore, we do not understand the reason for your inquiry.*”<sup>57</sup>

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<sup>53</sup> Id. (emphasis added).

<sup>54</sup> The Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1964(c) (1970) (“RICO”).

<sup>55</sup> Exhibit 1.6.3: Ayesh v Al Rajhi, Arbitration Number 252/2009, The Dubai International Arbitration Centre (Dec. 11, 2011) at 60, 61 (Transcript of Arbitration Proceedings Cross-Examination of Ahmed Al Rajhi), <https://www.scribd.com/document/427411067/Exhibit-1-6-3-DIAC-Case-252-of-2009-Day05-Transcript-of-Arbitration-Proceedings-Cross-Examination-of-Ahmed-Al-Rajhi>; Exhibit 1.6.4: Ayesh v Al Rajhi, Arbitration Number 252/2009, The Dubai International Arbitration Centre (Dec. 12, 2011) at 16 (Transcript of Arbitration Proceedings Cross-Examination of Ahmed Al Rajhi), <https://www.scribd.com/document/427411705/Exhibit-1-6-4-DIAC-Case-252-of-2009-Day06-Transcript-of-Arbitration-Proceedings-Cross-Examination-of-Ahmed-Al-Rajhi>.

<sup>56</sup> Exhibit 2.2.1; Exhibit 2.2.1 Attachment: Attached Draft Letter from Ahmed Al Rajhi to Omar Ayesh, <https://www.scribd.com/document/413400022/Exhibit-2-2-1-Attachment-May-29-2013-Email-Attachment-Draft-Letter-Inviting-Omar-Ayesh-to-Board-Meeting> (inviting Ayesh to Board Meeting).

<sup>57</sup> Exhibit 2.2.9: E-mail from Sharmeen Qureshi, Tameer to Rabab Biko (Feb. 17, 2014) (Attached to E-mail are 19 photocopied letters from Tameer denying that Ayesh is a shareholder)(emphasis added), <https://www.scribd.com/document/413401381/Exhibit-2-2-9-Letters-to-Omar-Ayesh-on-February-17-2014-denying-that-he-is-a-shareholder>.

On March 24, 2014, a representative for Ayesh sent an email to Tauber requesting information and confirmation of Ayesh's shareholder rights in Tameer.<sup>58</sup> This email triggers an internal communication identifying a strategy to respond in a manner that denies the existence of any rights Ayesh has in the company, and in turn, any right to information. While internally they continued to recognize Ayesh's legal rights as a 25% shareholder of Tameer, on April 21, 2014, in an email sent by Tauber to Ahmed AlRajhi and Ibrahim AlRajhi, Tauber attaches a draft letter to Ayesh for approval where he informs Ayesh that they “*reject and refute any and all explicit and implicit allegations that any alleged ‘shares’ is [sic] held in trust for you pursuant to the Agreement for the Sale and Purchase of Share and Land Portions and Assignment and Novation of Projects, dated 11 December 2007 (“2007 SPA”).*” This was, of course a rejection of Ayesh's ownership, through the trust, of 25% of the shares of Tameer. The letter was mailed on April 20, 2014.<sup>59</sup>

On October 11, 2016 Ayesh sent a letter to Ahmed and Ibrahim AlRajhi and Federico Tauber stating that he was willing to fulfill his obligations under the 2007 SPA and asking Ahmed to do the same, rather than refusing to recognize Ayesh's share ownership. The reply received from Tameer,<sup>60</sup> through their lawyer in Jordan, requested the transfer of certain plots in Jordan to Tameer Real Estate International (Tameer Jordan). It did not address Ayesh's share ownership concern.

### ***Specific Fraud Schemes to Render Tameer Valueless***

As discussed previously, in 2014, the remaining Tameer Holding assets were transferred to shell companies owned by brothers other than Ahmed AlRajhi in order to deprive Ayesh of his interest in these assets under the guise of a sale for an amount much lower than

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<sup>58</sup> Exhibit 2.2.4 and attachment: E-mail from Tauber to Ahmed Al Rajhi, Tameer Owner/Partner (Mar. 24, 2014, 3:51 PM) (Attached letter from Ayesh to Tauber requesting information and confirmation of Ayesh's shareholder rights in Tameer), <https://www.scribd.com/document/413400150/Exhibit-2-2-4-March-24-2014-Email-from-Federico-Tauber-to-Ahmed-Al-Rajhi-regarding-letter-received-from-Omar-Ayesh-requesting-access-to-information>; <https://www.scribd.com/document/413400160/Exhibit-2-2-4-Attachment-March-24-2014-Email-Attachment-from-Federico-Tauber-to-Ahmed-Al-Rajhi-regarding-letter-received-from-Omar-Ayesh-requesting>.

<sup>59</sup> Exhibit 2.2.5 and corresponding attachment: E-mail from Tauber to Ahmed Al Rajhi, Chairman of Al-Rajhi Bank/Al-Rajhi Holding (Apr. 1, 2014, 10:35 AM) (<https://www.scribd.com/document/413400627/Exhibit-2-2-5-April-1-2014-Email-from-Federico-Tauber-to-Ahmed-Al-Rajhi-with-draft-reply-to-Omar-Ayesh>; <https://www.scribd.com/document/413400632/Exhibit-2-2-5-Attachment-April-1-2014-Email-Attachment-from-Federico-Tauber-to-Ahmed-Al-Rajhi-with-draft-reply-to-Omar-Ayesh>) ; Exhibit 2.2.6 and corresponding attachment: E-mail from Tauber to Ahmed Al Rajhi, Tameer Owner/Partner (Apr. 21, 2014, 8:18 PM) (<https://www.scribd.com/document/413400660/Exhibit-2-2-6-April-21-2014-Email-from-Federico-Tauber-to-Ahmed-Al-Arajhi-with-a-full-reply-to-Omar-Ayesh> ; <https://www.scribd.com/document/413400670/Exhibit-2-2-6-Attachment-April-21-2014-Email-Attachment-from-Federico-Tauber-to-Ahmed-Al-Arajhi-with-a-full-reply-to-Omar-Ayesh> ; Exhibit 2.2.7 and corresponding attachment: E-mail from Tauber to Ahmed Al Rajhi (Apr. 29, 2014, 6:47 AM) (<https://www.scribd.com/document/413400714/Exhibit-2-2-7-April-29-2014-Email-from-Federico-Tauber-to-Ahmed-Al-Rajhi-with-draft-reply-to-OA>; <https://www.scribd.com/document/413400719/Exhibit-2-2-7-Attachment-April-29-2014-Email-Attachment-from-Federico-Tauber-to-Ahmed-Al-Rajhi-with-draft-reply-to-OA>).

<sup>60</sup> Exhibit 2.2.11: Letter from Mohammad Zaidan, Managing Partner, Petra Law Firm, to Ayesh, founder and ex-president, Tameer (Nov. 24, 2016), <https://www.scribd.com/document/413406339/Exhibit-2-2-11-November-26-2016-Notice-in-Response-to-Omar-Ayesh-Letter-dated-October-11-2016>.

the market price.<sup>61</sup> The net result of these transfers was to render Tameer worthless. This was allegedly also because the value of any remaining assets was less than the value of liabilities, commitments, loans from Mr. AlRajhi and banks according to the highly questionable PWC report discussed below. This position and the assertion that the transfers were at fair market value were the key elements to the AlRajhi's defense in the litigation. Yet no documents in the cases discussed provided any audited financial statements, and only in 2016 provided unaudited financial statements rejected by the experts assigned by the courts as being clearly inaccurate. In 2008, Tameer Holding owned over 50 properties, which included several projects like Princess Tower, Elite Residence, Silver Tower, Regal Tower, Palace Towers, AlJawzaa and Imperial Residence and others as well as a land bank including six plots (three Business Bay plots, a prime Sheikh Zayed Road "al Sufouh 1 plot" (known as the Hard Rock Café plot in reference to the building previously located there), and two plots in prime locations in Sharjah).

In December 2012, Federico Tauber, the president of Tameer was given 9 months of broadly scoped power of attorney to rapidly establish a number of new companies, open bank accounts, transfer bank financing, and complete land transfers to new companies.<sup>62</sup> In 2014, Ahmed AlRajhi began to transfer Tameer Holding assets away from Tameer into shell companies under a parent company, Gemstone Investment LLC, which was owned by the AlRajhi brothers, with the sole intention of dissolving Tameer and eliminating any value in Ayesh's shares as well as attempting to move out of reach assets that could be used to repay other purchasers who had been defrauded in their purchase of condominiums in Tameer properties.

Gemstone Real Estate Development – the AlRajhi-owned company led by Tauber who was also Tameer's AlRajhi-appointed president – listed Tameer's completed projects on its website as its own<sup>63</sup>, even though they were developed by Tameer. The AlRajhi brothers, in fact, established Gemstone, Sunstone and Moonstone with the intent of transferring ownership of Tameer shares and projects to be fully under their control, taking from Omar Ayesh the value of his shareholding in the process and violating the duties owed him under the trust through which those shares were held. In 2018, the aforementioned Gemstone website was deleted, presumably due to exposure of the

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<sup>61</sup> Exhibit 2.9.3: Written Resolution of the Board of Directors of Tameer Holding Investment LLC (the "Company") Circulated on 12 December 2013, THI-CR-2013-001, (Dec. 12, 2013) at 4, section IV. <https://www.scribd.com/document/413398505/Exhibit-2-9-3-December-12-2013-Board-Resolution-THI-CR-2013-001-Bank-Financing-Termination-and-Land-Transfer>.

<sup>62</sup> Exhibit 2.3.7: E-mail from Aasma Khan, Chief Legal Officer, Tameer, to Tauber (Dec. 9, 2012, 11:57 AM), <https://www.scribd.com/document/413389865/Exhibit-2-3-7-Broad-Power-of-Attorney-Given-to-Federico-Tauber-for-Sales-of-Lands>.

<sup>63</sup> <https://www.gemstone-group.com/> (Since November 2018, the website has been removed by Gemstone); Archived copy of Gemstone Group's Website, <http://web.archive.org/web/20181106034004/https://www.gemstone-group.com/> (Archived Nov. 06, 2018); Tameer, <http://www.tameer.net/projects.aspx> (Last visited Jul. 8, 2019).

improper transfer in litigation, in particular, the Supreme Court's ruling in the *Ayesh v Tameer* case, and in anticipation of further litigation.

### **Dubai – The 6 Plots**

The whistleblower documents demonstrate an example of how assets exchanged ownership from Tameer to Moonstone and Sunstone. Fabricated and backdated Tameer board resolutions, discussed later, assert that “due to a lack of interest from third parties to purchase the properties,” Tameer should sell the assets at 20-40% of their true market value. This recommendation was allegedly based on the unwillingness of other purchasers to buy at a higher price compared to the AIRajhi owned shell companies Moonstone, and Sunstone, who were willing to buy at a price supposedly higher than the valuation they had received for the plots.

However, email communications confirm that all plots had higher market value offers rejected by the AIRajhi brothers. For instance, they rejected an offer to sell the three plots of Business Bay alone for 900 million AED (approximately USD \$225 million for this property alone).<sup>64</sup> Ahmed AIRajhi sold all six of these plots including Business Bay plots to Sunstone and Moonstone at far below market value for 242 million AED (approximately USD \$65 million)

In fact, one of the plots devalued was slated to be one of the UAE's most iconic projects, expected to generate 5 billion AED in profits once sold. This land is located on Sheikh Zayed Road; and once housed the Hard Rock Café. Tameer purchased the plot for 700 million dirhams during Omar Ayesh's tenure; however, the AIRajhi Brothers claimed a value – and transferred ownership to their Moonstone shell company in February 2014 – of AED 100 million.

In November 2013, Tauber received an independent offer for one of the Business Bay plots (the smallest one, BB 004), which he countered for AED 250 million, and informed Abdullah AIRajhi accordingly.<sup>65</sup> (Note, this plot was later transferred to an AIRajhi owned company for only 88 million AED). Subsequently, In April 2014, Federico received an offer of 65 million AED for one of the other Sharjah plots.<sup>66</sup> There are several other examples

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<sup>64</sup> In his email dated 10 Oct. 2013, Mr. Bader Akram of Soldair wrote:

“Dear Mr. Federico,

As per our call I shared your counter offer regarding Tameer Business Bay Plots for AED 1,300,000 with my client and he is offering as a final & unconditioned offer AED 900,000,000 valid till 12 Oct 2013.” Exhibit 4.1.4: E-mail from Bader Akram, Manager, Solidair Real Estate, to Tauber (Oct. 10, 2013, 8:06 AM) (Solidair confirming to Tauber an unconditional offer for the land), <https://www.scribd.com/document/413388073/Exhibit-4-1-4-Solidaire-Realty-confirming-to-Federico-Tauber-an-unconditional-offer-for-the-land>.

<sup>65</sup> Exhibit 4.1.10: E-mail from Tauber to Abdullah Al Rajhi (Nov. 21, 2013, 4:08 PM) (Informing Al Rajhi of an interested buyer for a Tameer plot), <https://www.scribd.com/document/413388157/Exhibit-4-1-10-November-21-2013-email-from-Federico-Tauber-to-Ahmed-Al-Rajhi-informing-him-of-an-interested-buyer-for-a-Tameer-plot>.

<sup>66</sup> Exhibit 4.1.5: E-mail from Deema Saeed, broker, to Tauber (Apr. 1, 2014, 1:26 PM), <https://www.scribd.com/document/413388198/Exhibit-4-1-5-Email-from-Agent-Dima-Saeed-informing-FT-that-her-client-is-offering-65M-AED-for-Sharjah-Lots>.

where there were real buyers and investors expressing interest and providing offers contrary to Tameer's later declared position that no offers existed. In fact, on one of the plots of Business Bay, there was already a project in progress that had a projected cash income of 1.07 billion AED as per a June 2014 shareholders report.<sup>67</sup>

In Tameer's back-dated board resolution dated December 12, 2013, the AIRajhis include several insufficient offers as evidence of no interest but only included offers up until 2011<sup>68</sup> and did not list market value offers received afterwards.

The assets were eventually transferred to shell companies Sunstone, and Moonstone at grossly diminished values under the guise of a legitimate arm's length sale.<sup>69</sup>

### ***Dubai - Imperial Tower Project Revenue Redirection Scheme***

Imperial Residence was a residential tower completed in December 2014 and meant to be a revenue generating asset in which revenues were directed to a free zone company, Tameer Real Estate FZC, owned by Ayesh and Ahmed AIRajhi. Ayesh could maintain ownership in this company without establishing a trust, because it was established in a free zone where he was permitted to hold direct ownership. The revenues of this project, however, were ultimately transferred to a company owned by an AIRajhi-owned company but excluding Ayesh.

The AIRajhis' devised a larger scheme involving new companies that would be used to misappropriate the shares and rights of Ayesh (see above section "Tameer is Intended to Die"). The initial plan for the Imperial Residence was to appoint a hotel operator; however, the scheme would ultimately do so not under Tameer, but rather under an asset management company, a fully AIRajhi-owned entity. The stated goal was to redirect revenues of the Imperial project directly to AIRajhi family members. This misappropriation of opportunities and related violation of fiduciary duties to all the shareholders of Tameer was a common theme in the actions by the AIRajhis. This type of action is strictly prohibited by American law.

In a management presentation in June 2014, the AIRajhis were advised:

In preparation for the transition of Imperial Residences to an Auris run hotel residence, the Gemstone family needs to establish 2 new NEWCO's in order to establish the operating company for this venture. The first owned by Khalid and

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<sup>67</sup> Exhibit 4.2.1: *Gemstone: Group presentation*, (June, 2014) at 2, 114, <https://www.scribd.com/document/413388287/Exhibit-4-2-1-June-2014-Management-Presentation-includes-creation-of-Gemstone-to-transfer-BB-SZ-plots-out-of-Tameer-pg-2-114>.

<sup>68</sup> Exhibit 2.3.7: E-mail from Aasma Khan, Chief Legal Officer, Tameer, to Tauber, *supra* note 64.

<sup>69</sup> *Id.*; Exhibit 2.11.1: Letter from Tauber to Abdullah Al Rajhi, Chairman of Al-Rajhi Bank/Al-Rajhi Holding, *supra* note 24; and Exhibit 4.3.1: Chain of E-mails between Aasma Khan, Tauber, Mansour Al Kharboush, CEO, Al Rajhi Holding, and Osamah Alsharif (Feb. 26, 2014, 2:06 PM to Feb. 27, 2014, 6:58 PM) (Transfer of properties to Sunstone and Moonstone at a fraction of the offers received signed), <https://www.scribd.com/document/413398750/Exhibit-4-3-1-Transfer-of-properties-to-Sunstone-and-Moonstone-at-a-Fraction-of-the-Offers-Received-Signed>.

Faisal AIRajhi (NEWCO 1). NEWCO 1 will own 99% of NEWCO2, with 1% owned by ENG Faisal AIRajhi. NEWCO 2 will be the asset management company for the Imperial Residences that will also contract with Auris. *This structure will protect the brothers from direct exposure and will secure the revenue stream from the operating company in favor of the shareholders and away from Tameer Real Estate Free Zone Company that is owned by Omar Ayesh.*<sup>70</sup>

Documents show that this strategy was approved by the shareholders (Ahmed and Ibrahim AIRajhi).<sup>71</sup> The same text was forwarded to Ahmed AIRajhi for his approval.<sup>72</sup>

Documents show that the approval to form these companies was approved by Abdullah AIRajhi personally as shown by the email chain below.

In his email dated July 2, 2014, sent to Ahmed AIRajhi with a copy to Mansour Al Kharboush, Tauber requested Ahmad AIRajhi's approval. Ahmed AIRajhi replied on the same day giving direction that they should get approval from Abdullaah AIRajhi who was neither an officer, board member, or shareholder:

"Dear Federico

Please consult with *Mr. Abdullaah*

Thank you"<sup>73</sup>

On July 15, 2014 Mansour Al Kharboush replied to Tauber's email<sup>74</sup>:

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<sup>70</sup> Exhibit 4.2.1: *Gemstone: Group presentation, supra* note 68 at 114.

<sup>71</sup> In her email dated 9/18/2014, sent to Mansour Al Kharboush with a copy to Federico Tauber, Aasma Khan wrote: 5. MOA of Lapis Lazuli Asset Investment LLC. The formation of this company has been approved by the shareholders as well as the shareholding. It is being formed in Dubai and the MOA form is what has been previously approved by you. The purpose of this company is to be the investment holding company for the company that will manage the Imperial Project's hotel residence management. There will be a subsidiary formed once the company is completed that will be the operating company to contract with the hotel operating company.

Exhibit 2.4.4: E-mail from Aasma Khan, Chief Legal Officer, Tameer, to Mansour Al Kharboush, CEO, Al Rajhi Holding (Sept. 18, 2014, 3: 55 PM), <https://www.scribd.com/document/413992064/Exhibit-2-4-4-Communication-Regarding-New-Asset-Management-Companies-Blue-Onyx-LLAM-LAM>.

<sup>72</sup> *Id.*

<sup>73</sup>

Dear Eng. Ahmed,

As discussed in previous Board Meetings we need to set up the legal vehicle that will be the Operating Company of the Imperial Hotel Apartments.

The agreed structure was to form a Holding Company owned 50% by Khalid Al Rajhi and 50% by Faisal Al Rajhi. This holding company will be 99% owner of the Operating Company while Faisal Al Rajhi will hold the remaining 1%.

Please kindly confirm that you are in agreement with us forming these companies so Eng. Mansour can proceed giving his greenlight.

Exhibit 3.13: E-mail from Tauber to Ahmed Al Rajhi, Tameer Owner/Partner, (Jul. 02, 2014, 9: 03 AM), <https://www.scribd.com/document/413403581/Exhibit-3-13-July-2-2014-email-from-Federico-Tauber-to-Ahmed-Al-Rajhi-confirming-establishing-new-company>.

<sup>74</sup> Exhibit 3.14: E-mail from Mansour Al Kharboush, Group CEO, Al Rajhi Holding, to Tauber and Ahmed Al Rajhi, Tameer Owner/Partner, (Jul. 15, 2014, 11: 21 AM) (Abu Sultan is Abdullah Al-Rajhi's Nickname) (emphasis added), <https://www.scribd.com/document/413403590/Exhibit-3-14-July-15-2015-email-from-Federico-Tauber-confirming-approval-by-Abdullah-Alrajhi>.

“Gentlemen,

FYI, Abu Sultan [Abdullah AlRajhi] has talked to me this morning and gave me his approval to proceed.

Federico, please send documents for processing.”

In this way a multi-brother structure was used to protect any one brother from direct exposure.

### ***Abu Dhabi – Tameer Towers and the 2022 Exit Plan to Defraud Individual Buyers***

Tameer Towers are an iconic development of 4 residential towers, one very high-end office building, one very high-end hotel, retail and commercial space, and a marina overlooking the Arabian Sea on Abu Dhabi’s famous Al Reem Island.

Documents show that the AlRajhi brothers and their lawyers created a “Tameer 2022 Exit Plan” that defined a strategy to settle with preconstruction purchasers, when construction of the units was not actually done for years, at 1/3 of the original 1.5 billion AED collected from off-plan sales and walk away with 1 billion AED of the amount collected through a “scorched earth” litigation strategy. While doing so, they would transfer all the assets to new companies, thus completely devaluing Ayesha’s shares. They would then lease the previously sold and now transferred units until 2022, at which point they would sell them for a further large profit. This plan is outlined in a Shareholder June 2013 presentation, “*On TT A&B we assume no sales and use it as rental asset till Dec 2022 when we sell it at 7.5% gross cap rate.*”<sup>75</sup> Furthermore, in an email to Abdullah and Ahmed AlRajhi, Tauber details the longer-term plan for Tameer Towers: “*We begin construction from April 2015. We assume no unit sales while we rent those units after completion and then finally sell it Dec 2022 as a rental income asset.*”<sup>76</sup>

In 2011 construction was suspended indefinitely and since then, many investors started arbitrations and litigation against Tameer over the units sold pre-construction. As of 2014, 172<sup>77</sup> of these customers had legal cases pending against Tameer. Despite this large number of cases, a downward trend in litigation was predicted by executives in a Tameer board report. This downward trend was expected by Tameer executives because customers were abandoning their cases after AlRajhi’s refusal to pay on judgments. These customers abandoned their cases because of their inability to successfully seek judicial enforcement of said judgments due to Tameer’s status as a limited liability

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<sup>75</sup> Exhibit 5.7: *Tameer Holding Investment LLC Management Report* (July 2013) at 1 (emphasis added), <https://www.scribd.com/document/413404215/Exhibit-5-7-July-2013-Management-report-with-plan-to-delay-paying-customers-back-and-confirm-2022-resale>.

<sup>76</sup> *Id.* (emphasis added).

<sup>77</sup> Exhibit 5.2: *Gemstone: Group presentation* (June 2014) at 4 (Creation of Gemstone to transfer Tameer Towers out of Tameer), <https://www.scribd.com/document/413404197/Exhibit-5-2-June-2014-Management-Presentation-Creation-of-Gemstone-to-transfer-Tameer-Towers-out-of-Tameer-pg-26>.

company. Once again, the inability or reluctance of the UAE courts to pierce the corporate veil in the case of fraud allowed this fraudulent action. This organizational structure, which shielded the AlRajhis' personal assets from any liability, along with the fact that Tameer's assets were siphoned out of the company, left these customers with no choice but to give up on judicial enforcement.

A second reason for the victims to abandon their cases was the cost of litigation and arbitration. A 2017 news article reported that Tameer Towers remained on hold and referenced smaller victims who bought units: "Buyers who paid hundreds of thousands of dirhams have been trying to claw back their money since work on Tameer Towers on Reem Island halted in 2011. An estimated 70 buyers said Tameer Holdings, owned by the AlRajhi Group of Saudi Arabia, owed them millions."<sup>78</sup>

In fact, documents disclose that the number of buyers who lost their down payments was 691 as of January 2013.<sup>79</sup> One victim was quoted saying, "they have refused to refund me my hard-earned money and are offering what is called the Tameer exit plan, a 50 percent refund only subject to higher management approval."<sup>80</sup> Another buyer, Joseph Carroll, an American, said he had spent years trying to get back the 1 million AED he spent.<sup>81</sup>

Another Emirati client sent an email to Ahmed AlRajhi begging him to refund the amounts he paid for a unit in Tameer Towers, stating that the amount he paid was a loan and that he had six children and thus could not afford such a loss.<sup>82</sup>

The leaked documents show that in 2013, Aasma Khan, Tameer in-house counsel, instructed that a maximum-delay litigation strategy be used to intentionally suspend the legal proceedings, wear down opposing parties, and ultimately drive down the number of potential settlements by increasing the legal costs necessary to engage in prolonged litigation. These were exorbitant costs that smaller investors and customers could not afford. The UAE legal system has yet to adequately address this strategy, in part because it has refused to view the actions of the AlRajhi's as part of a criminal enterprise.

In one email sent from Aasma Khan to Federico Tauber on March 26, 2013, she explained: "*In order to ensure that we are maximizing delay*, Tameer Legal Department will need to do the following; (i) continue to monitor Tameer Tower cases (litigation and arbitration) to ensure the lawyers are making the decisions to maximize the delay; (ii) ensure attendance; (iii) ensure minimum quality control is maintained." She also informed

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<sup>78</sup> Anwar Ahmed, *Investors installed Abu Dhabi project refuse 'half of money back offer'*, The National (Feb. 23, 2017) <https://www.thenational.ae/uae/investors-in-stalled-abu-dhabi-project-refuse-half-of-money-back-offer-1.14742>.

<sup>79</sup> Exhibit 5.1: *Tameer Towers: Analysis of 3 different options* (B2, C6, Imperial) (Jan. 2013) (Management report with a plan to shift customers from Tameer Towers to other projects at double market price (50% haircut)), <https://www.scribd.com/document/413404188/Exhibit-5-1-January-2013-Management-Report-with-a-plan-to-shift-customers-from-Tameer-Towers-to-other-projects-at-double-market-price-50-haircut>.

<sup>80</sup> The National, *supra* note 74.

<sup>81</sup> *Id.*

<sup>82</sup> Exhibit 5.14: Letter from "Man with 6 children" (name redacted for privacy) to ahmed Al Rajhi (Mar. 11, 2014, 12:07 PM), <https://www.scribd.com/document/413404475/Exhibit-5-14-Man-with-6-children>.

Tauber that Ahmed AlRajhi had asked her to “reduce the costs of Tameer Tower litigations in light of the projected high volume of litigation and arbitration expected in this coming year....”<sup>83</sup>

Such delays also appear to be part of an even larger strategy. Other documents show that the AlRajhis deliberately set out to ensure that any attempts by Tameer Towers’ investors to attach claims to the assets would fail. To achieve this, they transferred ownership of Tameer Towers to a newly created company owned by the AlRajhi family and claimed in a memo submitted to the court on January 16, 2019, in the Ayesh v AlRajhi case that they held the plots for Tameer Holding LLC as a trust to protect it.<sup>84</sup>

The documents demonstrate that there was no intention to turn over units to those who had already paid deposits. There was no intention to settle claims - as long as delay tactics worked and the legal system would not address the fraud or allow for veil piercing.

### ***Expropriating the Shares of Tameer Holding LLC in Tatweer UAQ***

The valuation of one of Tameer’s projects in the emirate of Umm al Quwain (“UAQ”) at the hands of Ahmed AlRajhi provides a prime illustration of a fraud intended to enrich Ahmed at the expense of others. In summary, Ahmed valued the project at 100 AED per square foot when valuing a project with the intent to sell to investors. However, several years later, when apparently intending to devalue Tameer and transfer control to himself, he effectively instructed staff to sell him shares that amounted to a value of less than 1 AED per square foot.

Tatweer Real Estate Development LLC (Tatweer), a company of Tameer’s group, was established in Umm Al Quwain, UAE and was owned 28% by the UAQ government, 36% by Ahmed AlRajhi, and 36% by Tameer Holding LLC. Alsalam City was a development project of Tatweer. Ahmed AlRajhi had instructed that a valuation exercise be done of Alsalam City at 100 AED per square foot<sup>85</sup>, which resulted in an overall valuation of 22 billion AED (USD 6 billion). 36% of that amount would be valued at just over USD 2 billion. As per the 2007 Sales & Purchase Agreement, all the shares of Ahmed AlRajhi in Tatweer were supposed to be transferred to Tameer Holding LLC. Instead, a board resolution was drafted by Aasma Khan and approved by both Ahmed and Ibrahim AlRajhi to transfer the shares owned by Tameer in Tatweer to Ahmed AlRajhi allegedly to pay back a debt owed

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<sup>83</sup> Exhibit 5.15: E-mail from Aasma Khan, Chief Legal Officer, Tameer, to Tauber, (Mar. 26, 2013, 6:50 PM, <https://www.scribd.com/document/413404581/Exhibit-5-15-March-26-2013-email-from-Aasma-Khan-to-Federico-Tauber-on-actions-in-light-of-projected-high-volume-of-litigation>).

<sup>84</sup> Exhibit 5.16: Memorandum submitted by Al Rajhi family to the Court in the Ayesh v Al Rajhi case 2017/127 (Jan. 16, 2019), <https://www.scribd.com/document/413404596/Exhibit-5-16-November-26-2018-memo-to-court-admitting-new-co-are-holding-plots-for-Tameer-Holding-LLC-as-a-trust-to-protect-it>.

<sup>85</sup> Exhibit 8.7: E-mail from Zubair to Masoud Khan (chief financial officer) on costing of Al Salam city land confirming it was the President and Chairman who instructed that he use 100 AED/SF, page 2 (May 12, 2007 6:14 PM) <https://www.scribd.com/document/423547991/Exhibit-8-7-Email-Discussing-Al-Salam-City-Costing-at-100-AED-SF-instruction-by-Ahmed-Al-Rajhi>

by the Tameer Group.<sup>86</sup> Ahmed AlRajhi instructed the Tameer board to sign the resolution to sell him the 36% share that Tameer owned in Tatweer at an extremely low value of USD \$86 million (USD \$1.9 billion below the original valuation).<sup>87</sup>

### ***Tameer and Mada***

In a further attempt to relieve Tameer of its assets, the AlRajhis and the management of Tameer transferred Tameer assets to Mada Group for Industrial and Commercial Investment, LLC ('Mada'), one of the AlRajhi Holding group of companies, and deposited the money generated by Tameer in the bank accounts of Mada. Then the management of Tameer signed an invoicing agreement with Mada, whereby Mada pays the invoices of Tameer and get the amounts paid back with interest.<sup>88</sup> The expert report in *Ayesh v AlRajhi* states that Aasma Khan denied having any relationship with or knowledge of Mada. During discovery in the case, however, it was determined that not only did she have knowledge of Mada, but she also had full power of attorney from Mada and thus acted as its legal counsel and the representative for the company to execute all transactions.<sup>89</sup> Thus, Khan lied to the court and had a conflict of interest in the case against the AlRajhis since she also represented Tameer.

### **Illegal Activity to Conceal the Fraud**

#### ***Abu Dhabi Royal Family Forgery***

The embezzlement at Tameer included illegal board restructuring and fraudulent licensing that was only possible due to the alleged collusion and aid of a member of the Abu Dhabi royal family who seemingly directed a government agency to change board members as well as renew operating certificates without shareholder's signatures or the federally required audited financials. Not only did the royal family member's correspondence violate the law, a letter was sent in his name while having no legal position in any of the companies Ayesh had established.

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<sup>86</sup> Exhibit 8.1: E-mail from Tauber to Ahmed Al Rajhi, *supra* note 29; Exhibit 8.3: E-mail from Federico Tauber, President and CEO, Tameer, to Ahmed Al Rajhi (June 27, 2013, 10:33 AM) (FT getting AR's approval to transfer shares for UAQ project from Tameer to AR), <https://www.scribd.com/document/414001195/Exhibit-8-3-Email-from-FT-to-AR-getting-his-approval-to-transfer-shares-for-UAQ-project-from-Tameer-to-AR>; Exhibit 8.6: *Minutes of a Meeting of the Board of Directors of Tameer Holding Investments LLC (the "Company") held at the Tameer Al Sharjah offices in Concord Tower, 8th Floor, Media City, Dubai, UAE on 10 December 2012 at 11:30 am* (Dec. 10, 2012) at 7, <https://www.scribd.com/document/414001202/Exhibit-8-6-THI-Board-Minutes-10-dec-2012-clean>.

<sup>87</sup> <https://www.scribd.com/document/414001195/Exhibit-8-3-Email-from-FT-to-AR-getting-his-approval-to-transfer-shares-for-UAQ-project-from-Tameer-to-AR>

<sup>88</sup> Exhibit 8.6: *Minutes of a Meeting of the Board of Directors of Tameer Holding Investments LLC*, (Dec. 10, 2012, 11:30 AM) at 4, <https://www.scribd.com/document/414001202/Exhibit-8-6-THI-Board-Minutes-10-dec-2012-clean>.

<sup>89</sup> Exhibit 1.8.1A, 1.8.1B: *Expert Opinion Conclusion in Ayesh v. Al Rajhi*, *supra* note 37, Part 1 Page 26, Page 57, Part 2 Page 10, Page 55.

Several emirates have set up “free zones” designed to allow for foreign ownership as well as mitigate duties that would otherwise apply to “on shore” companies. Omar Ayesh and Ahmed Suliman AlRajhi had registered Tameer in the Sharjah Airport International Free Zone Authority (SAIF) during 2006 to manage some of the company’s operations under license 02-04-03725.

AlRajhi and his officers orchestrated an unlawful reorganization and renewal of the company in the SAIF Zone, after Ayesh’s 2008 departure as president of the company, ostensibly by enlisting the support of Sheikh Saqr bin Muhammad Al Nahyan, a member of the Abu Dhabi ruling family. Documents appear to show Sheikh Saqr, on behalf of Ahmed AlRajhi, issued a letter from his office knowing that authorities would be apprehensive about rejecting his request. The SAIF Zone received a letter dated February 15th, 2015<sup>90</sup> stating the following.

We, the office of Sheikh Saqr bin Muhammad Al Nahyan, present you the best of greetings; and we hope your respected department will renew the following Tameer real estate licenses:

- 1) Tameer Real Estate
- 2) Tameer Real Estate International
- 3) Al Ameera Village Tameer Real Estate Company

And adding the Board of Directors as agreed by the partners as outlined in the Board decision, and we promise you the presentation of accounting records and financial statements of the companies immediately upon their completion and solving the financial problems of the company, in order to engage in the licensed activities.

You have our thanks and appreciation for your cooperation with us.”

The SAIF Zone executed the letter’s instructions despite claiming to have issued a letter requesting a Board resolution. This allowed the AlRajhis to make changes to the Board of Directors and replace Omar Ayesh with managers of their choosing, eventually appointing Frederico Tauber to the position of President of the three companies established in the SAIF Zone. Tauber was previously Vice President of Business Development at AlRajhi Investment Group (ARIG).

The allegations of an Emirati royal’s involvement came to light during an AlJazeera investigative documentary aired in early March 2020 called “*Dubai: The Investment Illusion*.”<sup>91</sup> The segment prompted the Sheikh involved to reject the claims and corresponded with the Global Justice Foundation with revelations that a former employee,

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<sup>90</sup> <https://www.scribd.com/document/446766302/Exhibit-2-1-3-English-Letter-From-Sheikh-Saqr-Bin-Muhammad-Al-Nahyan-to-SAIF-Zone-Requested-Change-of-Board-Members>

<sup>91</sup> Premiered online on the AlJazeera YouTube channel on March 8<sup>th</sup>, 2020 and March 21<sup>st</sup> with English subtitles: <https://youtu.be/vRxS9UYHD8I>

Yaser Alsattari, had forged his identity papers and signature. He submitted evidence showing the forged documents and correspondence with the SAIF Zone and Sharjah prosecution, which the GJF published on December 25<sup>th</sup>, 2020.<sup>92</sup> Sheikh AlNahyan has indicated he intends to pursue the matter in the courts against the fraudsters.

This collusion and ease with which the forgery took place and achieved its goals demonstrates that not only are there gaps in the UAE's legal structure, but also that the laws that do exist lack effective enforcement. The behavior of the SAIF Zone's employees and the AlRajhis severely undermines the credibility of UAE's legal system.

### ***Backdated and False Board Resolutions and Retroactively Appointed Members***

After completing the scheme, management directed the preparation of backdated board resolutions and appointed board members to assume responsibility for the decisions to sell the Tameer assets in order to make it more difficult to connect the decisions back to Ahmed AlRajhi and his brothers.<sup>93</sup> In 2014, resolutions were drafted to support all asset transfers with a back date of 2012 and 2013. Emails demonstrate that employees, who had no prior knowledge of the transactions, were arbitrarily selected from AlRajhi owned companies to serve as board members and sign the board resolutions. In some cases, the board members were appointed or dismissed without telling them beforehand and in other cases, the members received the pages needing signatures only, instead of the full resolution. For instance, a board resolution dated May 14, 2013, included a decision to appoint the new Tameer board of directors;<sup>94</sup> however, an email from Mona Agha on February 11, 2014, confirms that she had just found out that she was appointed as a board member upon receiving the first resolution to sign (in 2014).<sup>95</sup>

In this same email, Mona Agha explains to Federico Tauber that she has "received the attached board resolutions for my signature." While declaring her loyalty "till the end," she discussed certain reservations she held:

To be honest, reading the resolutions with 9-digit numbers and such major transactions made me uncomfortable. 1) *I am an HR person and have no commercial, financial or banking experience what so ever;* 2) *I have no real estate background at all;* 3) *I have no way or mean [sic] to verify or review anything in*

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<sup>92</sup> <https://www.gj.foundation/case-update-emirati-sheikh-alnahyan-implicates-employee-in-saudi-minister-corruption/>

<sup>93</sup> Exhibit 2.5.1: E-mail from Federico Tauber, President and CEO, Tameer, to Ahmed Al Rajhi, *supra* note 26.

<sup>94</sup> Exhibit 2.5.2: *Minutes of Extraordinary General Meeting of Tameer Holding Investment LLC (the "Company") held in Centria Building, 7th floor, Riyadh, Saudia Arabia on 14 May 2013 at 10:00 am* (May 14, 2013, 10:00 AM) (Draft board resolution to appoint board members), <https://www.scribd.com/document/413402211/Exhibit-2-5-2-May-14-2013-Draft-board-resolution-to-appoint-board-members>.

<sup>95</sup> Exhibit 2.9.1: Chain of E-mails between Mona Agha, former board member, Tameer, Federico Tauber, president & CEO, Tameer, and Ahmed Al Rajhi, Tameer Owner/Partner, (From Dec. 11, 2013, 12: 32PM to Feb. 11, 2014, 12:14 PM) (Chain of E-mails regarding the board resolutions Mona was asked to sign without prior knowledge in fear of criminal prosecution), <https://www.scribd.com/document/413403369/Exhibit-2-9-1-Chain-of-emails-between-Mona-Agha-Federico-Tauber-and-Ahmed-Al-Rajhi-regarding-the-board-resolutions-Mona-was-asked-to-sign-without-p>.

*that document as I am not involved in Tameer operation and even if you shared all the documents with me, I will still probably need time and explanation to understand what is going on; 4) in the trail of emails, there is no approval from the shareholders on this transaction authorizing me or anyone else to sign... In the resolution itself I read that Ahmed and Ibrahim AIRajhi themselves have travel restrictions in UAE based on this case which is something I cannot afford at all... I just need to know 1) will I be at any point subject to such travel restrictions 2) what are the possible criminal charges that I may have (if any) 3) I request a confirmation from the shareholders that they approve those resolutions.<sup>96</sup>*

Ms. Agha then elaborates that *“I was assigned [as] a board member and only knew that when I got the first resolution to sign; I was never talked to and don’t know what is expected from me. I don’t mind taking some risk but I need to know what the risks are and be prepared.”<sup>97</sup>*

Later the same day in an email Tauber asks Ahmed AIRajhi “to confirm to Mona that the resolutions that we are asking her to sign are approved by you.”<sup>98</sup> Eventually Ms. Agha signed the board resolutions, that have been submitted to the Dubai courts in the case of Ayesha vs AIRajhi include her signature.<sup>99</sup>

Another board member, Philippe Akl, sent an email on February 2, 2014 to Ahmed AIRajhi informing him as follows.

*Today, I have received from the President of Tameer the minutes and resolutions to be signed. I will go ahead and sign as discussed, however I found it necessary to highlight and propose the following:*

*I received three sets of documents containing a resolution dd 14 March 2013, Board meeting MoM dd 4 March 2012, and Board meeting MoM dd 10 December 2012. The documents include approvals on transactions in millions of dirhams including bonuses, compensations, sales of assets and others. In light of the significance of the transactions and implications at stake, I thought it would be wise to get your official confirmation before I sign them in order to act responsibly towards you and myself. This can be achieved by getting your confirmation/initials on the documents/pages (I can scan and send if required) or by just signing the attached letter holding me harmless from any implications that may arise from signing these documents.”<sup>100</sup>*

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<sup>96</sup> *Id.*(emphasis added)

<sup>97</sup> *Id.*(emphasis added)

<sup>98</sup> *Id.*

<sup>99</sup> Exhibit 2.9.2: Written Resolution of the Board of Directors of Tameer Holding Investment LLC (Dec. 12, 2013), <https://www.scribd.com/document/427406972/Exhibit-2-9-2-Signed-board-resolution-by-the-board-members-including-Mona-Agha>.

<sup>100</sup> Exhibit 2.5.8: E-mail from Phillippe Akl, former board member and president, Tameer, to Ahmed Al Rajhi, Tameer Owner/Partner (Feb. 02, 2014, 3: 54 PM) (Phillippe AKL requests confirmation from Ahmed Al Rajhi that he should sign backdated board resolutions the contents of which he had no prior knowledge)(emphasis added),

He later resigned from his post as a board member due to his liability exposure with respect to Tameer business.<sup>101</sup>

While publicly Tameer and Gemstone are two independent companies, owned by Ahmed/Ibrahim AlRajhi and Khaled/Faisal AlRajhi respectively, documents show that Faisal appointed two out of three members of Tameer's board to have them sign resolutions concerning decisions to sell Tameer's assets to his company.<sup>102</sup>

Emails from some staff appointed to the board of Tameer were sent to Ahmed AlRajhi questioning the legitimacy, potential exposure to liability, and criminal action that could result from signing board resolutions such as those discussed above.<sup>103</sup> The AlRajhis issued letters purporting to indemnify board members with respect to any liability and confirming that the board members had no participation in these decisions.<sup>104</sup>

The AlRajhis and their executive team took significant precautions to cover up asset transfers from Tameer. When transferring the four plots located in Dubai, for instance, even though each company was owned by different brothers, the AlRajhis instructed management to pay a significant 13.7 million AED (USD \$3.7 million) in land transfer fees in order to support their fraudulent position that there had been a true arm's length sale.<sup>105</sup>

### ***Transferring the Employees of Tameer to Gemstone***

In an email dated June 9, 2013, to Ahmed AlRajhi, Tauber, President of Tameer, lists the employees to be transferred from Tameer to Gemstone, the employees to be laid off, and the date of each action stating that Tameer will be closed by the second quarter of 2015.<sup>106</sup>

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<https://www.scribd.com/document/413403002/Exhibit-2-5-8-February-2-2014-Phillip-AKL-requests-confirmation-from-Ahmed-Al-Rajhi-to-sign-board-resolutions-in-which-he-had-no-prior-knowledge-of>.

<sup>101</sup> Exhibit 2.5.7: E-mail from Tauber to Ahmed Al Rajhi, Tameer Owner/Partner, *supra* note 31.

<sup>102</sup> *Id.*

<sup>103</sup> Exhibit 2.5.4: Chain of E-mails between Aasma Khan, Chief Legal Officer, Tameer, Tauber, and Yousif Naji (Nov. 03, 2013, 12:07 PM to Nov. 13, 2013, 12:34 PM) (regarding indemnity letter to Mr. Saleh Ibrahim Alnwaier), <https://www.scribd.com/document/413402243/Exhibit-2-5-4-Chain-of-emails-between-Aasma-Khan-and-Federico-Tauber-regarding-Indemnity-letter-to-Mr-Saleh-Ibrahim-A-Alnwaier>.

<sup>104</sup> Exhibit 2.5.5: Letter from Ahmed Al Rajhi, Tameer Owner/Partner, Tameer, and Ibrahim Al Rajhi, Tameer Owner/Partner, Tameer, to Saleh Alnwaier, General Manager, Tameer(Nov. 04, 2013) (Confirming the indemnification policy), <https://www.scribd.com/document/413402949/Exhibit-2-5-5-Letter-to-Saleh-Alnwaier-confirming-the-Indemnification-Policy>; Exhibit 2.5.9: Letter from Ahmed Al Rajhi, Shareholder, Tameer, and Ibrahim Al Rajhi, Shareholder, Tameer, to Philippe Akl, former board member and president, Tameer, (Feb. 11, 2014) (Indemnification letter for Phillippe Akl), <https://www.scribd.com/document/413403026/Exhibit-2-5-9-Indemnification-letter-for-Phillip-AKL>.

<sup>105</sup> Exhibit 2.11.1: Letter from Federico Tauber, President and CEO, Tameer, to Abdullah Al Rajhi, Chairman of Al-Rajhi Bank/Al-Rajhi Holding, *supra* note 24.

<sup>106</sup> Exhibit 2.11.5: ;Exhibit 2.11.4: *Transfer Plan of Employees from Tameer to New Companies* (Jun. 9, 2013), <https://www.scribd.com/document/413398418/Exhibit-2-11-4-Transfer-Plan-of-Employees-from-Tameer-to-New-companies>.

Furthermore, in his email sent to Ahmed AlRajhi on October 5 2013<sup>107</sup>, Tauber wrote:

“Dear Eng. Ahmed,

Please find attached the following material for our coming meeting:

- 1) Monthly Presentation
- 2) Salaries of people to transfer to Gemstone comparing to current market
- 3) Update of Business Bay Project “

The excel sheet attached to the aforementioned email lists the employees to be transferred from Tameer to Gemstone and clearly indicates Q4 2015 as the closing date for Tameer.

In an August 26, 2013, email in which Tauber attaches a shareholder meeting agenda for Ahmed AlRajhi, he lists the final agenda item as “for all intended transfers to Gemstone, FT to present Salary, Market and Recommendations.”<sup>108</sup>

This illustrates the intertwined nature and treatment of these supposedly separate entities as one endemic to the AlRajhis’ scheme. In the US, this would be strong evidence that corporate veil piercing was appropriate.

### ***Fraudulent Financial Reports, Representations and Financial Manipulation***

From the time the AlRajhis took control of Tameer, there were no internal or external audits conducted of the company. In late 2013, AlRajhi’s legal counsel and executives recommended that the financial statements be altered and changed from Tameer’s customary reporting methods in order to depict the companies incorporated in the free zone and where Ayesh owns shares, as indebted to Tameer Holding Investment LLC, allowing them to file judicial claims against such companies for indebtedness. This was strategically done to create a weapon to be utilized against Ayesh, limit Ayesh’s access to information and make it difficult for Ayesh to succeed in litigation and show the extent to which he was damaged.<sup>109</sup>

In an August 2013 management presentation to the AlRajhis the following was presented:

- C. Is there a benefit to AAR (Ahmed Al-Rajhi) in consolidated financial statements?

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<sup>107</sup> Exhibit 2.11.5: E-mail from Aasma Khan to Mansour Al Kharboush, Abdullah al Rajhi, and Ahmed al Rajhi (Mar 06, 2014) [www.scribd.com/document/422696721/Exhibit-2-11-5-October-5-2013-Email-Regarding-Salary-Transfers-With-Employee-Timeline](http://www.scribd.com/document/422696721/Exhibit-2-11-5-October-5-2013-Email-Regarding-Salary-Transfers-With-Employee-Timeline)

<sup>108</sup> Exhibit 2.1.2: Tauber to Ahmed Al Rajhi, Tameer Owner/Partner, *supra* note 48.

<sup>109</sup> *Id.*

Answer: *No there is not. In fact, if we continue to do consolidated statements, because OA is a shareholder in some of the companies, we risk have every decision challenged of the last 5 years that THI has taken (particularly any asset divestitures).*

D. Is there benefit to AAR if separated financial statements?

Answer: *Yes, if we decided to sue sister companies and their assets. Also, OA has the risk to ask about the financial status of the FZCs and by separating them from the on-shore companies protects the on-shore companies from being questioned about OA. OA's information will then be piecemeal and it will restrict his ability to challenge.*

...

*It is in our interests to finalize statements on a non-consolidated basis and be ready for OA to challenge us in litigation where the FZ's are concerned. We can be proactive about this and sue the FZs for the balance of the funds that they have taken and owe to THI (and thereby take the assets)."<sup>110</sup>*

This makes clear that the failure to issue consolidated financial statements was a premeditated and important part of the AIRajhis' scheme to defraud Ayesh and hide that fraud.

As discussed below, this in some ways, parallels Enron's altering liabilities among interconnected companies to misrepresent the position of certain companies and misstate the actual position of Enron as a whole.<sup>111</sup>

### ***Evading Internal or External Audit of Tameer***

Furthermore, in early 2014, Abdullah AIRajhi instructed AIRajhi Holding Group's internal audit team to conduct its audit of Tameer but gave direction "not to dig into records prior to 2013."<sup>112</sup> The Group's Chief Internal Auditor, Dr. Abdur-Razzak Ladha, in his email on April 14, 2014, to Abdullah, Ahmed, Khaled AIRajhi, and Mansoor Al Kharboush stated that Tauber refused to do the internal audit because Tameer was operating on an ad hoc basis, had no checks and balances, and an audit "would affect the course of lawsuits" against the company.<sup>113</sup> As stated in the email:

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<sup>110</sup> *Id.* (emphasis added)

<sup>111</sup> See *infra* pp. 46-47.

<sup>112</sup> Exhibit 6.1: E-mail from Abdul R. Ladha, Chief Internal Auditor, Tameer, to Abdullah Al Rajhi, Chairman of Al-Rajhi Bank/Al-Rajhi Holding (Mar. 27, 2014, 1:07 PM GMT) (Chief Internal Auditor confirming Tameer audit scope), <https://www.scribd.com/document/413405127/Exhibit-6-1-April-14-2014-Email-from-the-Chief-Internal-Auditor-to-Abdullah-Al-Rajhi-confirming-Tameer-Audit-Scope>

<sup>113</sup> Exhibit 6.4: E-mail from Abdul R. Ladha, Internal Auditor, Tameer, to Abdullah Al Rajhi, Chairman, Al-Rajhi Bank/Al-Rajhi Holding (Apr. 14, 2014, 10:39 AM): <https://www.scribd.com/document/413405228/Exhibit-6-4-April-14-2014-Internal-Auditor-sends-an-email-to-Abdullah-Al-Rajhi-informing-him-that-Federico-Tauber-has-stopped-the-audit>

Respected Sir:

I had a call from Federico from Tameer. So far they have not confirmed the dates and plan for the Internal Audit of Tameer, which was initially scheduled to start on April 13; and then postponed until May 18 at the request of Federico.

Federico tried to explain that “***we shall not undertake any Internal Audit of Tameer***” since there are no processes to review and there are no controls, checks and balances, since lots of employees were released to save cost, and the operations have been managed on an ad-hoc basis.” Further, he pointed out that there are legal cases in the UAE Courts between ARHG and the Partner, which will be adversely affected if ARHG conduct an Internal Audit of Tameer. ... I have requested him to discuss this matter with you, since you know everything about the problems, history, current status and future plans for Tameer.

Shall greatly appreciate your guidance and further instructions in this matter.<sup>114</sup>

### ***Management noncompliance with audit access to IT systems***

The judge in the *Tameer* case ordered the AlRajhis to permit a court appointed IT expert to examine Tameer servers; however, the expert was denied access and the courts did not issue a sanction or contempt order as would almost certainly have been done in an American case.<sup>115</sup>

There was other evidence of obstruction of the experts’ access to actual truthful accounting records. In the experts’ report for case 2014/1023, for example, the experts expressed their concerns: “As the committee has previously noted, it was unable to review the company’s records after 2007 because of the reasons we have outlined and summarized as follows:

- Trial balance that are not balanced.
- The introduction of manipulated accounting books.”<sup>116</sup>

### ***Faulty PwC Report***

The AlRajhis relied heavily on a PwC report. That report, however, appears to be highly problematic as the court appointed experts found.

The last actual audited financial statement issued by Tameer Holding was for 2007 given by Ernst & Young. Since that audit, Tameer has refused to issue audited financial

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<sup>114</sup> [https://www.scribd.com/document/413405228/Exhibit-6-4-April-14-2014-Internal-Auditor-sends-an-email-to-Abdullah-Al-Rajhi-informing-him-that-Federico-Tauber-has-stopped-the-audit.\(Emphasis added\).](https://www.scribd.com/document/413405228/Exhibit-6-4-April-14-2014-Internal-Auditor-sends-an-email-to-Abdullah-Al-Rajhi-informing-him-that-Federico-Tauber-has-stopped-the-audit.(Emphasis%20added).)

<sup>115</sup> <https://www.scribd.com/document/446772225/Exhibit-1-7-6-Expert-Report-Submitted-to-the-court-in-Ayesh-vs-Tameer-1023-and-1027-of-2014-Financial-Statement-Review>

<sup>116</sup> *Id.*

statements.<sup>117</sup> However, in 2011, Ahmed AlRajhi commissioned PwC partner Gerard John Lagerberg, who has done much work for the AlRajhis, to prepare a controversial expert opinion report for the arbitration proceedings brought by Ayesh before the Dubai International Arbitration Centre (252/2009). He concludes that, “The current value of Tameer Group is nil and has been since before May 2008. Tameer Group has a portfolio of existing projects and plots of land,” but once offset by the value of liabilities, commitments, loans from Mr. AlRajhi and banks are taken into account, he argued the value was nil.<sup>118</sup> This is the essence of the AlRajhis’ defense in the UAE cases.

According to the court appointed experts, the report was not an audit, let alone a forensic audit, and was based on false assumptions, accepting as legitimate certain AlRajhi manipulations. The experts assigned by the courts in the two cases of *Ayesh vs Tameer* and *Ayesh vs AlRajhi* rejected PwC’s position. Those experts who looked at all the evidence determined values of USD five billion (US \$) or higher for Tameer, The PwC valuation approach was thus rejected as resulting in a gross undervaluation.<sup>119</sup> In direct contradiction to the PwC report, the Gulf International Bank (GIB), reported a valuation between AED 14 billion (USD \$3.8 billion) and AED 19 billion (USD \$5.2 billion) as of February 2008.<sup>120</sup>

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<sup>117</sup> Exhibit 1.5.1: Ernst & Young, Tameer Holding Investment LLC and Subsidiaries Consolidated Financial Statements (Dec. 31, 2007) at 5, <https://www.scribd.com/document/413406127/Exhibit-1-5-1-2007-EY-Consolidated-Statements>.

<sup>118</sup> Exhibit 1.6.1: Omar Ayesh & Ahmed Suleiman Al Rajhi, *Expert Report of John Lagerberg*, (Jul. 4, 2011) at 9, <https://www.scribd.com/document/412498402/Exhibit-1-6-1-Report-by-PriceWaterHouseCoopers-Gerard-John-Lagerberg>.

<sup>119</sup> Exhibit 1.2.3: Agreement for the Sale and Purchase of Shares and Land Portions and Assignment and Novation of Projects, *supra* note 39.

<sup>120</sup> Exhibit 1.4.3: Gulf International Bank, *supra* note 34 at 12. It must be noted that the GIB, in the current litigation has reversed its position and now asserts that its initial valuation was incorrect. Incorporated originally in Bahrain, the bank, not coincidentally, is now 97% owned by the Saudi government. <https://www.gib.com/en/shareholders#gib-shareholders>. This is a significant recent change. Indeed, the bank was only allowed to incorporate in Saudi in 2017. Its headquarters have moved Saudi Arabia where Ahmed Al Rajhi is the current Minister of Labor and head of the Chamber of Commerce. It is now a prominent Saudi financial institution. The bank gave a detailed explanation and justification of its first valuation in the prior *Ayesh v Tameer* litigation and testified that it was correct. Now, under pressure from the Al Rajhis, the bank has shifted position. It is reasonable to consider the current position a result of political pressures in Saudi Arabia. In the current litigation, the bank took a position contrary to its own interests, attempting to discredit its valuation with what appear to be unsubstantiated claims, undermining the financial institution’s own credibility.

During a January 7th, 2020 expert committee meeting, the bank’s attorney stated that Ayesh both appointed the bank as well as provided verbal information that led to the bank’s valuation, but the attorney failed to provide promised documentation of these facts. Nor was any substantiation provided to support the suspicious claim that a USD \$5 billion valuation was based on the verbal input of one shareholder. The attorney was not censured for failing to present the promised evidence or for making unsubstantiated claims. In this regard, it is worth noting that all records concerning the valuation had been destroyed by the bank. The bank’s attorney wrote: “The policy of the bank introduced in the claim is not to preserve any documents after the passing of 5 years after the end of the relationship between it and the customer [Tameer] wherein the documents are destroyed after the passing of 5 years.” “Response Memorandum on the List of Entrants that the Original Claimant Presented on January 16, 2019.” (undated memorandum).

Ayesh, on the other hand, presented evidence that the Al Rajhi’s Riyadh offices were directing Tameer management on the selection of a bank for an IPO offering; and the appointment of GIB was signed by the CEO of Tameer at the

GIB had reached its valuation after a yearlong review which considered projects then under development and potential growth of future projects.<sup>121</sup> Years later, however, PwC, in a matter of months, concluded that Tameer was then worth nothing because its liabilities exceeded the value of its assets – despite the AlRajhis having stopped issuing audited financial statements since 2007.<sup>122</sup> Meanwhile, Tameer had 16 plots and towers under construction in one of the world’s most economically vibrant cities and, as reflected in the audited financial statement of Ernst and Young for 2007, had only a reasonable amount of debt for a business of its size.<sup>123</sup>

On December 14, 2011 Lagerberg was cross-examined by the Dubai Arbitration Centre. During his questioning Lagerberg confirmed that his report is compromised because of a number of factors. For instance, it relied on information provided to him by Ahmed AlRajhi and his management team which overstated the shareholder loans account by 349.2 million AED due to double-dipping. He acknowledged that there were additional amounts of 23.91 million AED and 5 million AED that would require reversals in his analysis as well. 167 million AED were booked for assets that were incorrectly presumed by Lagerberg to have been transferred thus reducing the value of Tameer, but during the cross examination Lagerberg acknowledged that the assets were not transferred as of the date of the period being analyzed. Lagerberg also confirmed that multiple banks were willing to finance development projects for Tameer as of 2008 in the amount of 500 million AED.

Most importantly, Lagerberg acknowledged that he did not rely on or create audited financial statements and admitted that he did not audit the shareholder loans account. Lagerberg confirmed that, given that the assumptions and information given to him were inaccurate, the impact on his calculation of value was consequential, and the PwC quantifications would need to be recalculated.<sup>124</sup> This recalculation was never performed.

All financial experts in the *Ayesh v Tameer* case concluded that there were no financial accounts for Tameer. Thus, the PwC report was, it seems, based on highly unreliable AlRajhi-provided estimates.<sup>125</sup>

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time, Ali Al Khudairi, not Ayesh, on September 4, 2006. Further evidence was presented that correspondence and financial data was exchanged among Tameer, the Al Rajhis and GIB staff on multiple occasions over a year with requisite diligence undertaken to prepare the valuation of February 2008 based on a discounted cashflow method.

<sup>121</sup> Jared Whitley, “Was PwC Mixed Up in the Middle East’s Worst Real Estate Swindle?”, *The Economic Standard* (Aug 20, 2019), <https://theeconomicstandard.com/was-pwc-mixed-up-in-the-middle-east-s-worst-real-estate-swindle>.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> See discussion of the Experts report below in the section titled “Expert Mohammad Saeed Al Shareef - Questionable Conclusion”

## ***Compensation for Executives***

Executives were well compensated for their role in the scheme. Tauber seems to refer to this in an email arguing for more compensation. After the scheme was completed in 2014, he requested his bonus be doubled from \$2M AED in 2013 to \$4M AED (one million US \$) in 2014. He justified this increase based on the fact that he had “been able to contribute very well to the success of the business, by taking care of ... Tameer.”<sup>126</sup>

Aasma Khan’s salary was also increased from 110 thousand AED to 140 thousand AED and her yearly bonus to a range between 6-12 month’s salary.<sup>127</sup>

## **Corrupting and Undermining Judicial Procedures**

### ***Threatening Potential Witnesses***

In their attempt to stop Ayesh from proving his case in court, Tameer management and the AIRajhis threatened potential witnesses. The ex-CEO of Tameer, Alex (Abdallah) Hageali, and the ex-CFO of Tameer, Masoud Khan, were both held in custody for non-honored checks they signed jointly on behalf of Tameer that were necessary to perform their duties. This followed a criminal complaint filed by Tameer against Ayesh.

As stated in his email below, Masoud Khan was threatened by Tauber to deter him from providing a witness statement in favor of Ayesh.<sup>128</sup> Khan explains in an email to Tauber later forwarded to Ayesh:

When I arrived in Dubai on Dec. 18, 2010, with my wife, I was detained by Dubai Police for more than 8 hours because of the subject case leading to mental torture for me as well as my wife, undue embarrassment to us despite being highly qualified, experienced, and honest professional (I have no record of civil or criminal offence whatsoever in my life).

After I was released, I came to Tameer’s office to meet the colleagues as well as you on Dec. 21, 2010 (I always try to meet the ex-colleagues whenever I am in Dubai). I requested Mahmood to ensure that no such situation arises in the future and during my meeting with you, I requested the same assurance. Instead of being regretful of the situation, which arose due to mismanagement and / or intentional engineering of the situation by you and your team members, you started discussion

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<sup>126</sup> Exhibit 7.1: E-mail from Tauber to Ahmed Al Rajhi, *supra* note 8.

<sup>127</sup> Exhibit 7.2: E-mail from Tauber to Ahmed Al Rajhi, (Mar. 22, 2014, 10:07 PM) (Tauber requests increase in salary for Aasma Khan from 110k AED to 140K AED and bonus equivalent to 6-12 months salary), <https://www.scribd.com/document/413398017/Exhibit-7-2-Federico-Tauber-requests-an-increase-in-salary-for-Aasma-Khan-from-110k-AED-to-140k-AED-and-bonus-equivalent-to-6-12-months-salary>.

<sup>128</sup> Exhibit 2.12.1: E-mail from Masoud Khan, ex-CFO, Tameer Group, to Ayesh, founder and ex-president, Tameer, (Dec. 23, 2010, 10:01 PM) (Al Rajhi and executives threatening and scaring court witnesses)(emphasis added), <https://www.scribd.com/document/413403422/Exhibit-2-12-1-Al-Rajhi-and-Executives-Threatening-and-scaring-court-witnesses>.

on cases (of various disputes) between Mr. Ahmed AlRajhi & Mr. Omar Ayesh and *threatened me* by falsely alleging me of giving testimony in favour of Mr. Omar Ayesh and having acted as per the instructions of Mr. Omar Ayesh and his lawyers. I wish to make this extremely clear to you, Tameer's shareholders as well as your other management and team members that I have always acted honestly & professionally and never took any sides during and after my employment.<sup>129</sup>

### ***Pressuring the Magistrate Judges Appointed by the Court***

In the UAE, cases such as Ayesh's are referred to a panel of experts who function essentially as fact finding magistrates. There are usually three appointed; however, the number of appointed experts is subject to the judge's discretion. They each provide an opinion to the court and the majority opinion of the three is generally accepted as the facts by the court with only minor, if any, changes at all. During the course of the appeal in *Ayesh v Tameer*, Tameer (AlRajhi) filed claims against one of the experts appointed by the court, Mr. Mohammad Al Thanhani.<sup>130</sup> Thanhani had taken positions in the litigation that agreed with Ayesh. The court found there was no basis for any of the claims and they were dismissed by the court.

Another similar attempt to pressure or remove an expert was more successful. This occurred in the ongoing case of *Ayesh v AlRajhi* 127/2017. One of the appointed experts in the case, Dr. Redha Al Rahma, as the chair of the expert committee, along with one other expert, submitted an expert report in favor of Ayesh's position. A third expert rejected or greatly diminished the Ayesh claims. The submission of the experts' reports was meant to mark the near conclusion of the case because the courts almost always accept the majority findings of the reports. Soon after the issuance of the report, Dr. Al Rahma, in February 2019, submitted a memo to the court requesting to be dismissed from his assignment, because, upon issuing the draft report, he was severely criticized in court filings and his reputation threatened by certain defendants on the AlRajhi side.<sup>131</sup> In their communication with the court and expert, the AlRajhis' attorneys emphasized that their client is a Saudi minister, a clear reference to a well-connected individual where such references imply the possibility of carrying out threats.

The court rejected the request at first. Ayesh's lawyers argued that if the request were granted, it would set a precedent that to remove an expert who decided unfavorably against a party, one only had to threaten said expert to have them removed. However,

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<sup>129</sup> *Id.*

<sup>130</sup> Exhibit 1.7.4: Al Rajhi Tameer Complaint Against Court Expert (February 23, 2018)

<https://www.scribd.com/document/42355518/Exhibit-1-7-4-Al-Rajhi-Tameer-Complaint-Against-Experts>

<sup>131</sup> Exhibit 2.12.2: Memorandum from Dr. Redha Darwish Al Rahma, Accounting Expert, to Judge Mohammed Al Sayyed Mohammed Awad Abdulkarim, Dubai Courts (January 2019),

<https://www.scribd.com/document/413403428/Exhibit-2-12-2-Saudi-Minister-Ahmed-Al-Rajhi-through-lawyers-threatening-court-experts>.

after repeated requests, the court granted the experts' request to withdraw.<sup>132</sup> The court probably should have sanctioned the AIRajhis and their attorneys making the threats and immediately referred the matter to prosecutors to investigate as would likely have been done in the United States.

Instead, the judge allowed the expert/magistrate to withdraw and another was appointed in his place. This had the effect, the AIRajhis argued, of making the original expert's opinion irrelevant.

The new expert, however, was chosen significantly out of turn on the rotation order for magistrates to be assigned to cases. There has been no explanation of why this was done. It violated court procedure. Nevertheless, even this replacement expert submitted his resignation a few months later.

In the United States, similar to most countries, including the UAE, threatening a magistrate judge is a serious offense. US Criminal Code 18 U.S.C. 1503 states:

Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate, in the discharge of his duty.

Violators are subject to imprisonment for not more than 10 years, a fine, or both. In this case the expert/magistrate took the matter seriously enough to vigorously and repeatedly seek to withdraw from the case.

### ***AIRajhi Legal Counsel, Asmaa Khan, Intentionally Misleads Court Experts***

On February 13, 2019 Asmaa Khan attended a meeting with the experts serving in the case of *Ayesh vs. AIRajhi*. In addition to the AIRajhis the case names other parties to the fraud including Khan herself. Khan acknowledged that she was the legal representative for Gemstone, Moonstone and Sunstone and the partners in these companies, Khaled and Faisal AIRajhi. She denied having any involvement with Tameer Holding or other companies including Mada Group for Industrial and Commercial Investment, a limited liability company incorporated in the Kingdom of Saudi Arabia. She refused to answer questions about Tameer citing no relationship to the company.

However, Tameer documents disclosed to the experts contradicted her position. They included invitations by the legal department she headed to the General Meeting of Tameer Holding Investment LLC on 6 April 2009, 29 April 2009, 4 April 2010, 29 April 2010, 24 November 2010, 21 December 2010, 3 April 2011, 28 April 2011, 28 August 2011, 22 September 2011, 26 February 2012 and 20 March 2012 confirming that she

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<sup>132</sup> Exhibit 2.12.3: Court Acceptance of Expert Resignation in *Ayesh v. Al Rajhi* No. 127/2017.

held the post of the Head of the Legal Affairs Department of Tameer Holding Investment LLC. The experts also identified a power of attorney issued by Tameer Holding Investment, LLC on 15 December 2016 whereby Khan was the designated authorized signatory and representative of Tameer Holding Investment LLC.

In relation to Mada, in a power of attorney dated 31 May 2018, Khan was authorized to act on behalf of Faisal Sulaimon Abdul Aziz AlRajhi, the administrative director of Mada Group.

Documents provide evidence that Aasma Khan orchestrated the misappropriation of assets and the alleged fraud in the shell company scheme. She was the legal representative of all companies involved in the scheme and executed the supposed purchases and sales of assets. As such, the experts concluded that Asma Khan was fully aware of the AlRajhi involvement and all the affairs of Tameer Holding and was in a position to answer the court's questions but refused to do so and attempted to mislead the court.<sup>133</sup> In the United States, such obstruction would result in sanctions and a contempt of court citation. As with other obstruction by the AlRajhis, an adverse inference would likely be taken in favor of the Plaintiff on related facts.

### ***Expert Mohammad Saeed Al Shareef - Questionable Conclusion***

Between the cases of Ayesh vs AlRajhi and Ayesh vs Tameer, seven out of eight experts concluded the compensation for the expropriated 25% shares for Ayesh to be worth between USD \$1.13 billion and USD \$1.8 billion, not including interest or projected return on investments. Mohammad Saeed Al Shareef, is the only expert who concluded that Ayesh was owed a significantly lower value of USD 100 million supported by what can only be called highly questionable and contradictory findings<sup>134</sup>:

- The movement of assets from Tameer Holding to shell companies owned by brothers of Ahmed AlRajhi were made intentionally at values well below market value. Al Shareef asserted this activity was simply a transfer of assets rather than a sale; however, were this the case, the assets would not have been significantly devalued during the transfer – a fact made by all other experts and self-evident in the documents presented. The transactions provide evidence that the plan was to create of Tameer a worthless entity, devoid of assets. This would have been done to defrauding its founder and twenty-five percent shareholder, Omar Ayesh, of the true value of his shares in the company.

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<sup>133</sup> Exhibit 1.8.1A: *Expert Opinion Conclusion in Ayesh v. Al Rajhi*, Dubai Court (Feb. 06, 2018) (U.A.E.) at 26, 57, <https://www.scribd.com/document/423550027/Exhibit-1-8-1A-Expert-Opinion-Conclusion-in-Dubai-Court-Ayesh-vs-Al-Rajhi>. Exhibit 1.8.1B: *Expert Opinion Conclusion in Ayesh v. Al Rajhi*, Dubai Court (Feb. 06, 2018) (U.A.E.) at 10, 55, <https://www.scribd.com/document/417557535/Exhibit-1-8-1B-Expert-Opinion-Conclusion-in-Dubai-Court-Ayesh-vs-Al-Rajhi>.

<sup>134</sup> Exhibit 1.8.1B: *Expert Opinion Conclusion in Ayesh v. Al Rajhi*, Dubai Court (Feb. 06, 2018) (U.A.E.) at 81, <https://www.scribd.com/document/417557535/Exhibit-1-8-1B-Expert-Opinion-Conclusion-in-Dubai-Court-Ayesh-vs-Al-Rajhi>.

- Al Shareef's report stated that there was no evidence that the transfer of the Tameer plots was detrimental to the minority shareholder. This conclusion is problematic, as just noted, because his report simply presents a defense of the AlRajhi position, contradicting all other experts as well as the evidence outlined above that the transfer/devaluation of assets did cause significant loss to the minority shareholder.
- He also took the position that not submitting the financial statements of Tameer doesn't necessarily mean that there are no accurate accounting books or internal controls for the company. Yet AlRajhi refused to submit financial statements to the court because, as evidenced by the earlier correspondence from the Chief Internal Auditor quoting the President and CEO, Tauber, they had refused to conduct an internal audit because a) there are no "controls, checks and balances," b) operations had been managed ad hoc basis and c) any audited reports could hurt the Rajhis in the ongoing UAE court cases. Despite this clear evidence in internal correspondence that their financial accounting was designed to defraud the founding partner, Al Shareef ignored that evidence and, in fact took the position that there was no evidence of a lack of proper accounting standards. Again, Al Shareef was the only appointed expert of 8 to have accepted these evidently fraudulent financial statements as valid, whereas all the others determined the reports were falsified.<sup>135</sup>

According to the evidence submitted to the courts, the AlRajhi brothers explicitly expressed intentions to steal the assets of Tameer through a scheme that would protect them from legal attack by Ayesh. Seven of eight experts concluded that Ayesh's shareholding value was valid, implicitly acknowledging the intention of the asset transfers was to misappropriate the assets away from the minority shareholder, Ayesh. For instance, the AlRajhi brothers and Tameer management prepared fake and back-dated board resolutions to make it appear that sales at prices that were 25% or less of market value were at full market value. The land transfer fees agreement with the Dubai government<sup>136</sup> included correspondence acknowledging that these were not, in their words, "real sales" but rather were designed to avoid millions in fees/taxes and impair Ayesh's ability to litigate the matter.

UAE law requires that financial statements be issued within three months following the fiscal year end. However, the AlRajhis had not issued financial statements for over 10 years during which major transactions took place. Although Al Shareef is supposedly a banking expert, he refused to recognize this gross violation of UAE law. Rather he

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<sup>135</sup> <https://www.scribd.com/document/446772225/Exhibit-1-7-6-Expert-Report-Submitted-to-the-court-in-Ayesh-vs-Tameer-1023-and-1027-of-2014-Financial-Statement-Review>.

<sup>136</sup> Exhibit 2.11.1: Fax from Federico Tauber to Ahmed Al Rajhi and Abdullah Al-Rajhi, (Sept. 27, 2013) (Executive recommendations to AL Rajhi to pay hefty transfer fees to avoid potential civil or criminal action), <https://www.scribd.com/document/412514329/Exhibit-2-11-1-Executive-recommendations-to-Al-Rajhi-to-pay-hefty-transfer-fees-to-avoid-potential-civil-or-criminal-action>.

recommended providing an additional lengthy period to allow the AIRajhis to prepare financial statements dating 10 years prior. This position, after 10 years of judicial proceedings in which Tameer and the AIRajhis had persistently refused to submit financial documents to the courts is hard to understand. In the United States such an obstructive pattern would likely result in an adverse reference being taken against the AIRajhis with respect to the actual financial position of the company.

Furthermore, Al Shareef's decision to treat the Gulf International Bank (GIB) valuation as an unreliable document contradicts the position of seven other experts. In fact, according to the GIB report and PwC report, GIB was appointed by Ahmed AIRajhi and his team to conduct the financial evaluation. The bank worked for over a year to issue its valuation of USD \$5 billion. Al Shareef's decision that the report cannot be relied on was made without any reasonable justification found in his report. Based on a review of the other expert opinions in the two cases, and the documentary evidence, Al Shareef's report appears highly questionable. In fact, his position, based on the evidence presented, appears negligent at best. Allowing an expert to draw such conclusions despite clear evidence to the contrary should have been called into question by the UAE court.

Under UAE law, the expert report is a confirmation of facts and evidence followed by the opinions of the experts. It is contrary to the expert's responsibility to issue unsupported conclusory opinions that contradict the evidence as Al Shareef did in the instant case.

It should be noted that after the resignation of the chair of the expert committee who was threatened by the AIRajhi legal team, Al Shareef became the chair of the expert committee. Soon after media reports began inquiries into his questionable behavior in the case, he resigned his position.

### ***AIRajhi's Audited Financial Statements Are Non-Compliant with International Accounting Standards (IAS)***

In 2018 Ahmad AIRajhi retained external auditor Ali Al Kaitoob to complete financial statements from 2008 to 2016. Al Kaitoob served on the expert oversight committee of the Dubai court which oversees and disciplines experts. His additional role as an external auditor testifying for a client currently in litigation in Dubai courts seems a serious conflict of interest that underscores the lack of integrity in the Ayesh case as well as demonstrating flaws in the Dubai Emirate's legal process. In the United States he would have had to recuse himself from any position that would imply he is a neutral party, given that he accepted taking on the Tameer/AIRajhi audits for the AIRajhis; yet neither did he do so nor did the Dubai courts question his involvement.<sup>137</sup>

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<sup>137</sup>There are reports prepared by external experts to whom Ayesh submitted the Al Kaitoob financial statements. The external experts reviewed the documents and their reports, with all their critiques, were submitted to the courts.

Al Kaitoob was also not properly appointed since the decision to retain him as a legitimately appointed external auditor did not include Ayesh, a 25% partner in Tameer Group of Companies as required by UAE law.

Even more alarming perhaps was the breakneck speed of preparation and issuance of reports for a dozen companies' financial records covering 9 years. Although Al Kaitoob was privy to expert reports decrying Tameer/AlRajhi noncompliance, as well as the summary of case 2014/1023 citing gross irregularities, the audited financial statements he prepared addressed none of the violations. This is not surprising given how quickly his firm issued the Tameer statements. This also raises the question of why Tameer would refuse to issue financial statements for over 10 years, claiming it was suffering heavy losses and the records were in disarray; and yet be able to issue financial statements within a matter of months when it suited their purposes to do so. The Al Kaitoob audited financial statements were issued on the following dates:

Financial Year	Date of Audit Submission	Days After Prior Report
2008	March 15, 2018	10 years
2009	July 15, 2018	123
2010	September 17, 2018	65
2011	November 22, 2018	67
2012	January 10, 2019	50
2013	February 3, 2019	25
2014	March 3, 2019	29
2015	March 21, 2019	19
2016	April 14, 2019	25

The following are key unsupported findings submitted to the court after Al Kaitoob's review of the financial statements:

- Al Kaitoob states Ayesh was a board member until 2012. In fact, Ayesh resigned from the board in 2009. Al Kaitoob's lack of knowledge as to who were the members of the board is evidence of a lack of due diligence and review of legal documents such as board resolutions related to Tameer.
- Al Kaitoob completed his review and creation of 9 years of audited financial statements within months. Considering Tameer Group consisted of 12 subsidiary companies it is impossible that Al Kaitoob completed a comprehensive audit of each year in that time. This raises doubts as to whether Al Kaitoob did an actual audit of the books.
- The trial balance Al Kaitoob used for Tameer's 2008 financial statement ending 12/31/2008 is not balanced, demonstrating that the balances used to prepare the audit reports were not accurate.

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Exhibit 1.7.5: Substantive Accounting Consultant Report, (Aug. 1, 2019) at 37 (Report on expert review of financial statements submitted by Tameer), <https://www.scribd.com/document/427434538/Exhibit-1-7-5-Report-on-Expert-Review-of-Financial-Statements-Submitted-by-Tameer>.

- The 2008 opening balances did not match the 2007 closing balances prepared by Ernst & Young and signed by both Omar Ayesh and Ahmad Al Rajhi.
- Al Kaitoob issued his report without questioning the non-balanced trial balance and stated that Tameer keeps accurate books. In fact, there is strong evidence that the group created new accounts during 2008 to benefit the majority partner.
- No revenue was “recognized” for delivered projects, and a figure of 3 billion UAE dirhams was registered as liabilities rather than revenue, gross violations of IFRS 15.
- That there had been a transfer of plots and units owned by Tameer Holding to companies owned by related parties was not noted in Al Kaitoob’s financial reports in violation of International Financial Reporting Standards (IFRS) 24.<sup>138</sup>
- In violation of IFRS 10 related to subsequent events, Al Kaitoob chose to include a judgment from the commercial appeal 1023/2014 in favor of Tameer and against Ayesh by including AED 26 million in the shareholders account, despite the fact that the claim was dismissed by the Supreme Court.
- Al Kaitoob did not include in the statement’s shareholders account or provisions AED 127 million due to Ayesh. This was an amount the Dubai Supreme Court determined was owed to Ayesh.
- In violation of IFRS 10 Al Kaitoob treated down-payments of customers as liabilities and not as revenue thus enlarging the group’s losses. For example, deposits paid by customers for the Princess Tower in off plan sales should have been converted to income in 2012 when the tower was delivered, but instead the amounts remained as provisions until 2016 to inflate losses. Al Kaitoob maintained for the whole period of his analysis very significant provisions for liabilities and losses of more than AED 1 billion without revision from year to year. This was done in the face of changing circumstances and without explanation or investigation, in violation to IFRS 37.<sup>139</sup>
- Al Kaitoob removed Tatweer from the books effective in 2010 even though, as discussed above, the partnership agreement was still in force until 2018. This, as discussed above, removed substantial assets from Tameer’s books.
- Al Kaitoob stated the agreement with, and financial records of, Onyx (one of AlRajhi companies created to take Tameer’s projects in Abu Dhabi) occurred in 2016 even though the agreement was not signed until 2019. This amounted to the illegal back dating of ownership records as well as company value; and is evidence of a very serious (and probably criminal) collusion between the auditor – who is legally required to be independent and had an official role in the court’s proceeding – and his private client, the AlRajhis.

<sup>138</sup> <https://www.ifrs.org/issued-standards/list-of-standards/ias-24-related-party-disclosures/>

<sup>139</sup> <https://www.ifrs.org/issued-standards/list-of-standards/ias-37-provisions-contingent-liabilities-and-contingent-assets/>

- Al Kaitoob transferred the balance of the shareholder account for Ahmed AIRajhi from his shareholder account to a loan account in violation of IFRS 32.<sup>140</sup>

In addition to the IFRS violations experts acknowledged, Al Kaitoob has also committed a procedural infraction inconsistent with a finance professional.”<sup>141</sup>

A new financial expert had been appointed to the expert committee overseeing facts in the case, replacing Al Shareef who resigned. On June 16, 2020, Al Kaitoob sent a private text message to the new expert two days after his appointment, using the WhatsApp social media application; and included a draft copy of a memorandum penned in the name of Ahmed AIRajhi, with the subject: “Defendant’s lack of commitment to the approved work program; His repeated attempts to obstruct the work of experts and disrupting the issuance of the final report.” The document was unsigned.

This incident is problematic. First, Al Kaitoob is an independent auditor with no role in the case other than having been appointed by Tameer to produce financial statements. His unsolicited, private communication to a subject matter expert attempting to improperly influence him was improper and possibly criminal, akin to improperly attempting to influence a magistrate judge in the United States. Second, the expert committee had already clearly and in writing twice instructed all parties to communicate only through electronic mail; and when doing so, to include all experts and to only communicate specific, sanctioned subject matter. Al Kaitoob, who identifies himself as a “Board Member of Committee of Expert & Arbitration Panel” in the Dubai Courts,” and those he worked for presumably knew that his action was improper.

The new substituted expert reported the incident to the expert committee chairman, who, in turn, responded in writing on the same day to all parties rather than Al Kaitoob, instructing them to address all concerns to the committee as a whole; and giving them an opportunity to explain themselves “before taking the required procedure.” The AIRajhi team responded on June 17<sup>th</sup> with a written apology, calling it an “unintentional mistake” that did not affect the expert proceedings, and hence didn’t merit being elevated to the judge.

The apology was accepted and not pursued further. While elevating such incidents to a judge is subject to the discretion of a committee chairperson, the fact that Al Katoob attempted it is further evidence that violators of judicial proceeding rules and orders have confidence that their infractions will not be punished, even in high profile cases.

In conclusion, Al Kaitoob violated International Accounting Standards and regulations in preparing the financial statements. Furthermore, he states that he was able to complete independent audits when Tameer management confirmed that they had no internal

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<sup>140</sup> <https://www.ifrs.org/issued-standards/list-of-standards/ias-32-financial-instruments-presentation/>

<sup>141</sup> <https://www.intra.ae/about>

controls during the period in review.<sup>142</sup> The evidence indicates that his reports were biased in favor of the majority shareholder, reflected manipulated financial accounts, and misrepresented the actual financial position of Tameer.

Al Kaitoob's actions call into question his professional responsibility, his ethics and integrity as someone who serves in the court system. Since it was apparently in furtherance of a fraud it also should be investigated as a possible serious criminal offense. In the United States providing false testimony in furtherance of a fraud is punishable with imprisonment and/or serious fines. Ultimately, his conflict of interest and probable conspiracy with the AlRajhis are an embarrassment to and are an example of the problems undermining the reputation of the UAE courts and justice system.

## UAE Court Rulings

### Dubai Supreme Court Ruling: *Ayesh vs Tameer* Decided in Ayesh's Favor

On December 23, 2018, the *Ayesh v Tameer* civil case brought in 2009,<sup>143</sup> concluded. The final judgment of the Dubai Supreme Court affirmed the judgment of the Appeals Court, which held in Ayesh's favor. This is not to be confused with the ongoing *Ayesh v AlRajhi* case brought against individuals. While the defendants in each case differed, the factual issues in both cases largely overlapped.

On 25 March 2018, the Court of Appeals had decided to adopt the unanimous determination of the five experts in their report to the trial court. They concluded that Tameer was indebted to Ayesh for an amount of AED 125,852,757.97 (USD \$34 million) in addition to AED 4.132 billion (USD \$1.13 billion) representing the value of his 25% share in Tameer.<sup>144</sup> The Experts reached the following conclusions:

- The Experts requested to see Tameer's financial statements and any documents supporting its accounting entries. The experts also engaged an external auditor, based on an agreement of the two Parties, to review the financials according to an approved methodology. Ultimately, the Experts concluded that the auditing process could not be completed due to a refusal by Tameer to provide them with financial information on all land plots and projects, and Tameer refusing to provide objective and complete information.
- Tameer obstructed the Experts from moving freely in its premises and insisted, during the period before the issuance of the Preliminary Report, that there were no financial accounts for Tameer.

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<sup>142</sup> See section above on internal audit.

<sup>143</sup> *Ayesh v Tameer*, Case No 1341-1344/2009 Commercial Court

<sup>144</sup> Exhibit 1.8.1: Expert Opinion Conclusion in *Ayesh v. Al Rajhi*, Dubai Court (Feb. 06, 2018) (U.A.E.) at 81, <https://www.scribd.com/document/417557535/Exhibit-1-8-1-Expert-Opinion-Conclusion-in-Dubai-Court-Ayesh-vs-Al-Rajhi>.

- In examining the trial balances, accounts, books and documents presented by Tameer, the Experts made many material observations that called into question the regularity of these books and indicated that they do not meet auditing standards. Also observed by the Experts was the fact that there were newly-created accounting books; management failed to meet auditing requirements of their electronic information system; and the opening balances of 2008 and the closing balances of 2007, the latter done by Ernst & Young, were not identical.
- The Experts found that several of Tameer's transactions were suspicious and may fall within the scope of financial violations. Some of these transactions include the transfer of assets to companies owned by relatives of the controlling shareholders, and payment of interest, without grounds, to partner Ahmed AlRajhi. The Experts repeatedly requested Tameer provide the necessary supporting documents to verify the legality of these transactions, but Tameer did not do so. These findings should have been referred by the court to prosecutors as the matter most likely would have been in the United States.
- The Experts found that 4 land plots with a book value of AED 1,050,955,683, were transferred to two companies owned by the AlRajhi family, Moonstone Investments LLC and Sunstone Investments LLC, yet Tameer refused to provide any disclosures regarding these transfers or supporting documents to enable the Experts to verify their legality.
- There are complex and large transactions of around one billion Dirhams with Mada Company, a company under the AlRajhi Group family of companies. Tameer did not respond to requests for proof of the identity of this company, its ownership, or the nature of the transactions made with it, despite the magnitude and complexity of these transactions, as indicated by the Experts.
- Tameer submitted financial statements but the experts concluded that the auditor contradicted the requirements of International Accounting Standards, International Auditing Guidelines, and the Law Regulating the Auditing Profession. The court authorized the Expert Committee to assign an auditor to audit the financial statements. However, Tameer did not cooperate with the external auditor appointed by the Experts and refused to provide many substantiating documents required for verifying the transactions recorded in the trial balances. The experts concluded that the Tameer's auditor, Al Kaitoob, issued the financial reports in a manner that allowed for manipulation. Therefore, the Experts concluded that the financial statements submitted by the AlRajhis could not be relied upon as reflections of the company's business results and financial position.<sup>145</sup>

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<sup>145</sup> Exhibit 1.7.5: Substantive Accounting Consultant Report, (Aug. 1, 2019) at 37 (Report on expert review of financial statements submitted by Tameer), <https://www.scribd.com/document/427434538/Exhibit-1-7-5-Report-on-Expert-Review-of-Financial-Statements-Submitted-by-Tameer>.

## Dubai Court: The *Ayesh vs AIRajhi* Civil Case

In the other major case, Ayesh named Abdullah, Ibrahim, Ahmed, Faisal, and Khaled AIRajhi as defendants along with other AIRajhi related individuals, such as the former President and the in-house counsel of Tameer. The expert committee appointed by the court issued the draft of its report in December 2018. In the draft report, two of the three experts found similarly to the findings in the expert report issued by the three experts in the *Ayesh v Tameer* case discussed above. Two of the three experts concluded in Ayesh's favor with a valuation of his 25% share to be AED 6.8 billion UAE dirhams, (US\$ 1.8 billion).<sup>146</sup> The third expert, Mohammad Saeed Al Shareef, whose questionable report was discussed above, concluded Ayesh's 25% share was worth AED 368,750,000 (USD \$100,395,454).

In June 2020 Al Shareef submitted his resignation to the judge, who accepted it. This development will likely render his original, dissenting share value determination void.

The two major cases discussed above expose serious flaws in the UAE judicial system that diminish the effectiveness of experts and facilitate illegal acts in judicial proceedings. One flaw is the court's failure to hold parties accountable either for procedural improprieties or their violations of judges' orders, in particular in the discovery context.

Those representing AIRajhi in the case have been able to refuse to submit crucial documents ordered by the court to be produced and have created false or fraudulent documents throughout the case.<sup>147</sup> Yet they have neither been held in contempt nor were other sanctions imposed. Nor were assets in dispute ordered frozen in time to prevent their transfer. Documents were not ordered seized even after the AIRajhis routinely defied discovery orders. This, as found by the experts, allowed the AIRajhis enough time to create and submit false documents. The experts that had repeatedly sought access to Tameer's financial documents and technology servers were unable to enforce compliance because when the judge was asked to intervene, he refused to do so.

In some cases, experts have been allowed to commit fundamental professional and legal infractions without being held to account. The real estate expert in the case, Mustapha Al Sheryani, for example, accepted documents submitted by the AIRajhis at face value, without question. This includes their position that the value of all assets was included in the financial statements they submitted almost a decade after the dispute began, having refused to submit them previously. No breakdowns or supporting documents were submitted with these statements, rendering it impossible to determine from them the value of individual assets. In fact, while the Ayesh legal team submitted documents

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<sup>146</sup> Exhibit 1.8.1A Expert Opinion Conclusion in Dubai Court Ayesh vs. Al Rajhi

<https://www.scribd.com/document/423550027/Exhibit-1-8-1A-Expert-Opinion-Conclusion-in-Dubai-Court-Ayesh-vs-Al-Rajhi>

<sup>147</sup> Exhibit 1.8.2 <https://www.scribd.com/document/417557591/Exhibit-1-8-2-Tameer-Discussing-the-Whistleblower-Documents>

demonstrating Tameer was in possession of 52 assets at the time of Ayesh's departure, Al Sheryani only accepted valuations of a few of those plots. He initially accepted the AIRajhi position that the overall asset value in the financial statements they submitted represented a fair market value despite the fact that the financial statements did not show at what price or how the company's assets were disposed of.

The AlSheryani behavior would have immediately been referred for investigation in a jurisdiction with stringent procedural oversight. He had endorsed the expert committee's preliminary report in favor of Ayesh stating the financial statements were unreliable, that the transfer of assets was done at below fair market value, and agreed with his rights at 6.8 billion AED. Yet in the final report, he completely changed his position, now accepting the financial statements previously criticized and considering the asset transfer as commercially sound, despite the fact that no new evidence was introduced to justify the suspicious turnaround.

In addition, Al Sheryani's acceptance of AIRajhi documents is inconsistent with international norms in determining asset value and they didn't conform to the judge's instructions. For example, the parties in the case submitted several valuations for 6 plots for AlSheryani's review. He then accepted the AIRajhi's valuation prepared by the valuation company, Cluttons, as a fair value for the plots. However, he failed to comment on the fact that the valuation was based on a) an assumption of "special" circumstances of an emergency sale in 0 – 3 months. Normal valuations assume fair value to be determined by assuming a 9 – 12-month marketing period, and the judge had ordered that market value be used as the correct period for the valuations; and b) they used a Floor Area Ratio of 12 while the documents show zoning permissions of "unlimited" area.

Al Sheryani did not find either of these incorrect assumptions questionable even though Ayesh raised the issues. Despite, for example, the fact that the 3 month sale period (sometimes referred to as a "distress" or "forced" sale) violates the International Valuation Standards Council (IVSC) definition of Market Value as "the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion."<sup>148</sup> The IVSC further defines a willing seller as: "neither an overeager nor a forced seller prepared to sell at any price, nor one prepared to hold out for a price not considered reasonable in the current market. The willing seller is motivated to sell the asset at market terms for the best price attainable in the open market after proper marketing, whatever that price may be."<sup>149</sup>

Furthermore, the expert did not evaluate all the facts related to the valuations he accepted. For instance, AIRajhi had instructed the valuers of Business Bay plot 003 to

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<sup>148</sup>

<https://www.ivsc.org/files/file/view/id/646#:~:text=30.1..knowledgeably%2C%20prudently%20and%20without%20compulsion.>

<sup>149</sup> Ibid.

use a Floor Area Ratio (FAR) of 12 which reduced the asset value and which the expert accepted. Yet there is evidence that the AIRajhis obtained approval for a project currently under construction on the plot with a FAR of 22 – which was a reflection of plans included in an internal presentation sent to Ahmed and Abdallah AIRajhi. The project was under development by Gemstone, an AIRajhi owned company, to which they had transferred the plot's ownership from Tameer.<sup>150</sup><sup>151</sup> An objective and professional real estate expert would, given the facts of the AIRajhi's actual project under construction with a FAR of 22, have used a valuation undertaken at a FAR of at least 22.

Another cause for concern is the lack of censure imposed on the AIRajhi team who submitted a translated version of the Cluttons valuation that excluded an essential page containing key assumptions that qualified the nature of the assessment. It is common in the United Arab Emirates for valuations to be prepared in English; however, the language of the courts is Arabic, and all documents must be submitted in that language.

When the AIRajhi team submitted the valuations based on the real estate expert's request, they neglected to include the pages of the Cluttons report that defined the "special assumptions" Cluttons had been told to use in reaching their conclusions. As indicated earlier, these included essentially halving the Floor Area Ratio as well as the price per square foot used based on an expedited marketing period. These conditions contravene the judge's order to determine "fair market value"; however, the real estate expert would not have seen the missing information had objections not been raised by the Ayesha team.

Avoidance of such infractions would be better limited were censure, sanctions, or contempt proceedings the norm when intentional attempts to mislead court appointed officers is evident. However, tolerating such behavior hinders the equitable pursuit of justice.

In addition, a court-appointed real estate expert must consider all reliable evidence submitted by the parties and provide an opinion based on that evidence. Should there be suspicious activity or documents, it is incumbent upon the expert to bring this to the attention of the judge and report improprieties for further investigation by the public prosecutor. Yet, in the Tameer Towers Abu Dhabi project, for example, the complex plan to expropriate real estate out of Tameer to companies owned by the AIRajhi brothers was not only ignored with no referral to the judge or a prosecutor, the AIRajhi team were even allowed to submit new documents long after discovery/disclosure was concluded.

Ayesha submitted proof of the AIRajhi intent to take over the project, among others, as outlined earlier (see section: Abu Dhabi – Tameer Towers and the 2022 Exit Plan to Defraud Individual Buyers). The documents submitted on May 3, 2018 showed a plan

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<sup>150</sup> <https://www.scribd.com/document/413996529/Exhibit-2-10-2-Attachment-to-Email-from-FT-to-AR-with-Gemstone-Corporate-Profile>

<sup>151</sup> <https://www.scribd.com/document/413404197/Exhibit-5-2-June-2014-Management-Presentation-Creation-of-Gemstone-to-transfer-Tameer-Towers-out-of-Tameer-pg-26>

that included the creation of shell companies, New Co. 1 and New Co. 2, for the purpose of moving assets such as Tameer Towers out of Tameer.<sup>152</sup> Khaled and Faisal AlRajhi were to equally own New Co. 1 (which would be called Blue Onyx); and it in turn would own New Co. 2 (named Onyx Stone) with a 99% shareholding, with Faisal AlRajhi owning the remaining 1%. The evidence included slides from a June 2014 presentation prepared by Federico Tauber (CEO of the AlRajhi-owned Gemstone Investment LLC at the time).<sup>153</sup> In it, they lay out the plan to set up the new companies with different names to avoid the appearance that only one company has taken over many of the Tameer assets. Their plan leveraged the fact that since there is no legal relationship between Omar Ayesh and the two AlRajhi brothers, Khaled and Faisal, their ownership of the shell companies would make it difficult for Ayesh to pursue them legally. In its reply to these documents, the AlRajhi's submitted a memo on October 28<sup>th</sup>, 2018, stating that the brothers had established these new companies to hold the plots as a trust to protect them from being repossessed by the Master Developer, a claim which in itself deserves examination by fraud investigators.

Ayesh objected to the AlRajhi assertion that the company had only held the plots in trust as a commercial necessity, presenting evidence, as discussed above, that the actual intent was misappropriation. Yet the court neither took any investigative measures nor referred the evidence to the public prosecutor.

The inaction provided the AlRajhis an opportunity to create a tailored bailment agreement (dated January 10, 2019, but referring to an agreement in June 29, 2016, the authenticity of which cannot be verified) and submitted it along with other documents requested by the expert committee<sup>154</sup>.

The AlRajhis ignored the leaked email exchanges and presentations within Tameer that exposed the plan of expropriation, apparently confident they would not be held to account. For instance, the highly questionable agreement between Tameer Holding Investment LLC and Onyx Stone Real Estate Investment LLC (New Co. 2) was submitted to the expert committee on April 9<sup>th</sup>, 2020, well after the expert's reports had been submitted and all documents should have been submitted. The agreement is dated January 10<sup>th</sup>, 2019; and its content states that in June 2016 the signatories agreed that Onyx Stone Real Estate Investment LLC would pay the amounts due to the master developer on behalf of Tameer. It further stated that Onyx Stone Real Estate Investment LLC would hold the plot in trust for 3 years; and that Tameer must attempt to sell the plot during these 3 years in order to repay Onyx Stone Real Estate Investment LLC for the debt of settling with the master developer. The agreement stipulates that if Tameer was neither able to

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<sup>152</sup> Exhibit 10.1 <https://www.scribd.com/document/464234883/Exhibit-10-1-Email-Revealing-Shell-Company-Role-of-Blue-Onyx-Mada-Lapiz>

<sup>153</sup> Exhibit 5.2 <https://www.scribd.com/document/413404197/Exhibit-5-2-June-2014-Management-Presentation-Creation-of-Gemstone-to-transfer-Tameer-Towers-out-of-Tameer-pg-26>

<sup>154</sup> Exhibit 10.2 <https://www.scribd.com/document/464248184/Exhibit-10-2-Bailment-Agreement-Tameer-Holding-and-Onyx-Stone-Dated-1012016>

sell the plot nor repay the Onyx Stone Real Estate Investment LLC debt, Onyx Stone Real Estate Investment LLC would be entitled to sell the plot and use the proceeds to settle the debt. This provided a legal cover for Onyx Stone Real Estate Investment LLC to take over the plots from Tameer when Tameer ostensibly did not fulfill its alleged obligation to Onyx Stone Real Estate Investment LLC.

These agreements were made without the consent of Ayesh who remains a shareholder in Tameer. For such agreements to be allowed in an ongoing dispute over shareholding rights in a development firm highlights the apparent inability or unwillingness of the UAE courts to take seriously well evidenced allegations of fraud. The court should have prevented such ongoing transfers of assets and maintained the status quo.

The Dubai courts are evolving to improve transparency and expediency to some degree, as demonstrated in the expert committee's rigorous adherence to scheduling during 2020 as well as the now standardized practice of video recording all proceedings in the Ayesh vs. AIRajhi case. It is also commendable that that expert committee permitted Ayesh to submit both an audiovisual recorded testimony as well as participate in a live discussion via video feed.

On November 25<sup>th</sup>, 2020, the Dubai Court of First Instance issued its verdict in the case, finding in favor of Omar Ayesh.<sup>155</sup> The judgment confirmed his shareholding rights as well as dues and damages amounting to \$600 million, based on their reduced asset value assessment (relying on figures from a firm, REIDIN, that the Land Department has given market data access to) by 62%. The amount would appear to be excessive given that REIDIN's own reports on the Dubai market show the property values did not fall by such dramatic levels since monitoring of transactions began. In fact, damages in cases where impropriety has been proven as in this case, the award would normally determine the highest value of the victim's dues rather than underestimate them. Nevertheless, the experts still confirmed that "the Claimant: Ahmed AIRajhi sold some of Tameer Holding Investment LLC's assets against a value that was less than their actual value, and that he created encumbrances on such Company, i.e., loans obtained from banks and deposited into his personal account. Moreover, the Claimant committed other errors as to the Company management, causing damage to the interests of his partner in the shell joint venture, i.e., Omar Ayesh."<sup>156</sup>

As the case progressed through the appeals process, lawyers of Ahmed AIRajhi and his brothers successfully manipulated Dubai Court proceedings by forcing the judge's hand, resulting in the sudden replacement of the expert committee on April 20<sup>th</sup>, 2021.

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<sup>155</sup> <https://gulfnews.com/business/property/dubai-court-orders-whopping-dh16b-compensation-to-founder-of-tameer-real-estate-company-1.1606384056501>

<sup>156</sup> <https://www.gj.foundation/wp-content/uploads/2020/12/157907.pdf>

This development, in a matter where 25 court-appointed experts in seven committees have already reviewed the case, demonstrates that manipulating loopholes in judicial procedures allows the perversion of justice. In fact, despite consistently facing obstacles discussed above, successive panels issued three reports in favor of Ayesh with awards of 4.2 billion, 6.8 billion and, the most recent in November 2020, amounting to over 2.2 billion UAE dirhams in dues and damages. The bad faith tactics AlRajhi lawyers have successfully employed to exhaust both their victims and the judiciary are a cause for concern. The US State Department's Mission UAE highlighted the issue, noting: "Some firms might feel compelled to exit the UAE market as they are unable to sustain the pursuit of legal or dispute-resolution mechanisms that can take months or even years to reach resolution."<sup>157</sup>

The AlRajhi tactics were built on strategies Aasma Khan, Tameer's Chief Legal Officer, devised based on gaps in Dubai's legal system. As discussed above, leaked communications demonstrate how Khan facilitated a "Tameer is intended to die" plan; and she advised success was predicated on complicating proceedings.<sup>158</sup> A March 26, 2013, email discussing customer claims against the company, five years after Ayesh's ouster, for example, outlined her steps "...to ensure that we are maximizing delay."<sup>159</sup> These tactics constitute the basis of the AlRajhi legal team's standard three-pronged approach to avoid culpability as outlined above and revisited here.

**First, deliberate contempt without accountability.** Four of the seven expert committees reported to the judge that they could not complete their tasks because the AlRajhis refused access to financial records, hard drives, and email servers. They, however, were neither held in contempt nor penalized.<sup>160</sup> In addition, a leaked internal email even reveals that Tameer held no compunction about flouting UAE commercial laws that require annual audits with their own auditor declaring "we shall not undertake any Internal Audit of Tameer... [because] there are legal cases in the UAE Courts between ARJH and the Partner, which will be adversely effected if ARHG conduct an internal Audit of Tameer."<sup>161</sup> Such behavior by both lawyers and staff demonstrates limited fear of being held to account for improper or illegal activity.

**Second, unchallenged witness and expert intimidation.** AlRajhi representatives resorted to a series of tactics aimed at deterring witnesses and experts from reporting impartially. For example, Frederico Tauber warned Tameer's former CFO against

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<sup>157</sup> <https://www.state.gov/reports/2020-investment-climate-statements/united-arab-emirates/>

<sup>158</sup> <https://www.scribd.com/document/412499327/Exhibit-2-1-1-Tameer-is-Intended-to-Die-email-confirmation-by-Chief-Legal-Officer-Aasma-A-Khan>

<sup>159</sup> <https://www.scribd.com/document/413404581/Exhibit-5-15-March-26-2013-email-from-Aasma-Khan-to-Federico-Tauber-on-actions-in-light-of-projected-high-volume-of-litigation>

<sup>160</sup> <https://www.scribd.com/document/446772225/Exhibit-1-7-6-Expert-Report-Submitted-to-the-court-in-Ayesh-vs-Tameer-1023-and-1027-of-2014-Financial-Statement-Review>

<sup>161</sup> <https://www.scribd.com/document/413405228/Exhibit-6-4-April-14-2014-Internal-Auditor-sends-an-email-to-Abdullah-Al-Rajhi-informing-him-that-Federico-Tauber-has-stopped-the-audit>

cooperating with the authorities, and several court-appointed experts resigned in apparent fear of retribution.<sup>162</sup> These include Dr. Redha Al Rahma, who concluded Ayesb was due 6.8 billion dirhams, then documented his concerns to the judge at being threatened by AlRajhi lawyers who emphasized that their client is a minister – an incident that was not investigated yet which in the United States could result in fines and the incarceration of perpetrators.<sup>163</sup>

**Third, fabricated procedural conflict & discovery abuse.** Attorneys in the case 127/2017 sued expert panel members immediately after the Court of First Instance award, and then appealed the verdict – a tactic they similarly employed against previous experts. Once before the appeals court, they flooded the judge with documents in support of their claim in a move designed to overwhelm him and ensure he would refer a review of the appeal to the expert committee. Yet once this took place, the AlRajhi lawyers objected indicating that a conflict of interest existed because of their litigation against the experts. This bizarre procedural loophole allows for any party to simply orchestrate a dispute to derail a ruling, sending proceedings into an almost never-ending cycle. This is an abuse of process, an intentional tort to alter the course of the case, which would result in lawyers being subject to discipline and punishment in the United States, but which remains a significant issue in Dubai’s judicial procedures.<sup>164</sup>

The AlRajhi team’s tactics rely on fundamental flaws in Dubai Court procedures. There is rarely accountability for contempt of court such as denying access to information, ignoring judges’ instructions, or intentionally overwhelming the courts. Nor do investigations take place when experts are bullied or threatened as a matter of procedure. Furthermore, the strategy of employing lawsuits against experts, even if frivolous, is permitted in Dubai’s judicial procedures, and has thus far ensured experts whose loyalty the AlRajhis question are ineligible for appointment. The approach has found the courts facing difficulties identifying eligible experts, and even once selected, being met by a slew of resignations – four out of four experts excused themselves within just one week of the appeals process. The loopholes in the Dubai Court system have helped the AlRajhis effectively control the course of justice by manipulating the proceedings and whittling away the list of experts that may be appointed, either due to their fear of threats or having been sued. The judge ultimately had little choice but to refer review of facts in the case to the Dubai Ruler’s Court in May 2021.

The case continues under the appeals process as of submission of this report; and in the initial verdict the courts did not take any of the evidence of corruption into consideration. While the legal system is improving, the established procedures continue to facilitate

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<sup>162</sup> <https://www.scribd.com/document/413403422/Exhibit-2-12-1-Al-Rajhi-and-Executives-Threatening-and-scaring-court-witnesses>

<sup>163</sup> <https://www.scribd.com/document/413403428/Exhibit-2-12-2-Saudi-Minister-Ahmed-Al-Rajhi-through-lawyers-threatened-court-experts>

<sup>164</sup> <https://abuseofprocess.uslegal.com/abuse-of-process-overview/>

corrupt practices, given that there are few checks and balances in place to monitor the integrity and impartiality of court appointed experts, subject matter experts, clerks, and others. This in addition to the cumbersome steps required to hear proceedings enable parties with deep pockets to stretch cases out over long enough periods of time to undermine the judicial process.

As outlined further below, similar patterns of fraud in the US have resulted in prompt criminal investigation and criminal convictions of a very serious nature. Furthermore, fraud upon a civil court, is covered by the same criminal statute discussed above concerning the corruption of a magistrate (the expert serves much the same function as the magistrate judge in US law).

### **Qatar Scheme: Bridgehouse Capital (“BHC”)**

BHC is an Anglo-American, London-based hedge fund. This matter of alleged<sup>165</sup> fraud is unrelated to Ayesh but is included to illustrate a similar pattern in the AIRajhi’s real estate practice of fraud seen in the Tameer and BHC cases. In this instance, the AIRajhi’s real estate fraud occurred in Qatar.

### ***The Pearl Island Case***

In Doha, the two main allegations of fraud by the AIRajhis center around the Pearl-Qatar, a multi-billion-dollar (USD) mixed-use urban development project owned and developed by United Development Company Q.S.C. (“UDC”). Two AIRajhi affiliated companies sought to develop a project on this master development: Al Arrab Trading and Construction (“AAC”) as a contractor and The Land,” the developer intending to develop and build 13 towers on Pearl Island.<sup>166</sup> Both AAC and The Land are companies established by Said Bahjat, who, like Ayesh, accepted the AIRajhis as shareholders in his companies; and was eventually forced out with the AIRajhis taking over his shareholding rights. In this instance, we see the AIRajhi’s enterprise branching out into bank fraud.

The Land sold several towers to BHC for which they received a total of USD \$145 million as a deposit. The Land, however, never completed construction of the towers for which they had obtained loans. In fact, after billions in USD loans were raised and after the main partner, Bridgehouse, paid a USD \$145 million deposit, the AIRajhi brothers began to dissolve “The Land” company and delay construction.

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<sup>165</sup> The Bridgehouse matters have not been fully litigated but documents provided by the whistleblower provide evidence of the fraud.

<sup>166</sup> Staff Writer, *Emirates NBD to Raise \$550m ACC Loan*, *Emirates 24|7* (Jun. 17, 2008), <https://www.emirates247.com/eb247/banking-finance/finance/emirates-nbd-to-raise-550m-acc-loan-2008-06-17-1.220945>.

Buyers of units had contracts breached. Banks were left with largely worthless assets as collateral. BHC's investment was also left largely worthless. As in the Tameer case, assets were moved by the AIRajhis into a complex structure of shell companies.

Early in 2007 the relationship between BHC and the AIRajhis began, and they eventually agreed "The Land" and ACC were to deliver income producing assets. As part of the signed agreements, several penthouses were given to BHC partners Andrew (Andy) Ruhan and Phil Barton. Andrew Ruhan was the founder of BHC. Barton, a partner in BHC, managed this deal. BHC paid a deposit of USD \$145 million. The guarantee for the deposit was in the form of a performance bond.<sup>167</sup>

AAC terminated contracts on the project in July 2013. Despite AAC's deliberate attempts to hide this news from BHC, BHC found out from sources within UDC, the master developer of The Pearl Project in Doha. Knowing the contract cancellations were in breach of the terms of the agreement, leaked documents show the developer, UDC, expressed concern to AAC regarding the legal implications of the contract cancellations as well as concern that the projects would be delayed by litigation.

In 2014, the AIRajhis began executing their strategy to dissolve AAC, "The Land", and effectively, BHC's investment. They did this through an asset restructuring model designed to:<sup>168</sup>

- minimize business disruption from potential litigations;
- create segregation through asset restructuring to create a corporate shield around the individual liabilities and assets of each tower development;
- minimize exposure to the brothers from customer litigation or criminal charges.

When BHC and the AIRajhis entered arbitration, the AIRajhis appear to have threatened and blackmailed Bridgehouse executives. They attempted character assassination through allegations of bribery.<sup>169</sup> In March 2014 in an email to lawyer Danny Rifaat, a founding partner with Al Misnad & Rifaat in Qatar, the representative of the AIRajhis, Donald Jordan of Bridgehouse wrote: "Your clients have deliberately hidden certain facts...such as they accepted deposits of \$145 million and signed contracts related to certain plots on the Pearl...those contracts were terminated in July 2013."<sup>170</sup> Jordan concluded about the AIRajhi's conduct: "The most generous assessment is breach of contract."

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<sup>167</sup> Exhibit 9.13: Chain of E-mails between Donald Jordan, Danny Rifaat, Khalifa Al Misnad, and Aasma Khan (Mar 04, 2014), [www.scribd.com/document/421732374/Exhibit-9-13-March-4-2014-Donald-Jordan-Contacts-the-Land-on-Behalf-of-BT](http://www.scribd.com/document/421732374/Exhibit-9-13-March-4-2014-Donald-Jordan-Contacts-the-Land-on-Behalf-of-BT)

<sup>168</sup> Exhibit 9.17: *Proposed Qatar Corporate Restructuring: Preliminary Presentation* (Feb. 13, 2014), <https://www.scribd.com/document/417573667/Exhibit-9-17-BHC-Scheme-Proposed-Qatar-Corporate-Restructuring>.

<sup>169</sup> *Id.*

<sup>170</sup> Exhibit 9.13: Chain of E-mails between Donald Jordan, Danny Rifaat, Khalifa Al Misnad, and Aasma Khan, *supra* note 145.

Negotiation of a resolution was further complicated by the fact that a Bridgehouse employee, Philip Barton, had accepted a penthouse from the AIRajhis as an incentive for making the initial investment in the development. When Mr. Barton declined the offer of a USD \$20 million settlement and began to pursue arbitration for the full USD \$300 million owed to Bridgehouse based on their assessment of the market value and profits, he was threatened by a senior executive in the AIRajhi organization with the revelation of the penthouse matter.<sup>171</sup>

In an email sent on March 6, 2014, Aasma Khan, the AIRajhi's counsel, wrote: "Please note that Phil accepted a penthouse for free. He is a cheat and/or bribe taker...I wonder how Bridge investors would feel if they knew Phil personally benefited..."<sup>172</sup> Both Abdullah and Ahmed AIRajhi were recipients of Ms. Khan's email, along with Mansour Karboush, CEO of AIRajhi Holdings.

The AIRajhis eventually signed an agreement with a Bridgehouse executive newer to the process to settle for 15% of their claim conditioned on the AIRajhis not revealing the penthouse deal to the original Bridgehouse partners. That executive, Gerald Smith, reportedly has a history of unethical business practices.<sup>173</sup> The arbitration was concluded without the involvement or knowledge of other Bridgehouse claimants.

### ***Bank Fraud to Finance Tower Development ("The Land")***

The AIRajhis were approved for construction financing from a consortium of banks but primarily from Emirates National Bank of Dubai (ENBD) and Qatar International Bank (QIB). Bank payments were to be made in installments based on the percent of construction completed. After receiving funding for its first tower, AAC began to submit fabricated reports that additional towers were under construction using documentation from the first tower.<sup>174</sup> Documents provide evidence that using a false financial construction progress report prepared by executives for the AIRajhis, they were able to withdraw QAR 1.7 billion in financing for the equivalent of QAR 600 million in construction completion.<sup>175</sup>

The AIRajhis walked away with off-plan unit sales, of over QAR 1 billion (USD \$274 million) in bank loans, and millions in breached investment contracts.

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<sup>171</sup> Exhibit 9.14: Email from Aasma Khan to Mansour Al Kharboush, Abdullah Al Rajhi, and Ahmed al Rajhi (Mar 06, 2014), [www.scribd.com/document/421732342/Exhibit-9-14-March-6-2014-Aasma-Khan-Accuses-BT-of-Being-Cheats-and-Threatens-to-Expose-Them](http://www.scribd.com/document/421732342/Exhibit-9-14-March-6-2014-Aasma-Khan-Accuses-BT-of-Being-Cheats-and-Threatens-to-Expose-Them).

<sup>172</sup> *Id.*

<sup>173</sup> Martin Bentham, *Time Running Out for Fraudster who Owes the Taxman £64m*, Evening Standard (Dec. 18, 2017), <https://www.standard.co.uk/news/uk/time-running-out-for-fraudster-who-owes-taxman-64m-a3722181.html>.

<sup>174</sup> Exhibit 9.18: The Land, *QNB Reporting vs. Actual cont.* (Apr. 18, 2011) (Table illustrating amounts reported to the bank compared to actual construction completion for each of the QNB Towers), <https://www.scribd.com/document/417573855/Exhibit-9-18-AI-Rajhi-false-reporting-to-bank-on-construction-completion>.

<sup>175</sup> *Id.*

### ***Piercing the Corporate Veil in Qatar***

The AlRajhis were advised by their legal counsel to address the risk of Qatar courts “piercing the corporate veil” - referring to courts putting aside limited liability and holding Ahmed AlRajhi - now a Saudi Cabinet Minister - personally liable as the owner for the AAC’s actions.<sup>176</sup> This mirrored the Tameer scheme Aasma Khan devised to deflect accountability for the embezzlement of company assets to companies owned by the AlRajhi brothers while avoiding accountability for the expropriation.

In other words, the AlRajhis were intent on re-structuring “The Land” so that if Qatari courts were to allow claimants, like Bridgehouse, to push past the constraints of limited liability, “it would not impact the other brothers thereby maximizing stability.” It would, however, leave the original company – which sold the properties – with no remaining assets to be taken by “successful” litigants.

One document notes: “Whilst there are a number of situations where the corporate veil can be pierced in Qatar, the situations are very specific and therefore it is possible to mitigate the parent’s potential exposure.”<sup>177</sup>

The escalation of the legal wrangling between Bridgehouse and the AlRajhis is just one of the reasons why the AlRajhi family’s legal advisors devised a plan to insulate the towers and their development schedules from one another. According to that plan: “The main aim of the restructure is to create segregation through legal structuring to prevent the individual liabilities of each development (caused by multiple customer litigations) from impacting the entire business operations.”<sup>178</sup>

Essentially, the plan created three separate holding companies, each personally controlled by one of the AlRajhi brothers. Ownership of the towers developed by The Land was to be allocated between them with an eye to “stagger the launch of projects by six months to one year.”<sup>179</sup> According to the document, “the alternating launch structure will minimize delay in a single project impacting the next project or tying it up in litigation.”<sup>180</sup>

Ultimately, they implemented a multi-brother structure which offered more protection if a single brother was investigated, as it would not impact other family members. The 13 assets were transferred to shell companies personally owned by Faisal and Khalid AlRajhi, a mirror strategy to that employed with respect to Tameer Holding. “The Land”, to which the banks had loaned capital, was left with no assets registered under its name.<sup>181</sup>

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<sup>176</sup> Exhibit 9.17: *Proposed Qatar Corporate Restructuring: Preliminary Presentation* (Feb. 13, 2014), <https://www.scribd.com/document/417573667/Exhibit-9-17-BHC-Scheme-Proposed-Qatar-Corporate-Restructuring>.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

The AlRajhis would appear to have walked away with hundreds of millions of US dollars by not honoring contracts with BHC, bank loan agreements, and customers.

## **Criminal Liability Under US Law**

### ***In the US the AlRajhis Would Not be Protected by Their Corporate Structures***

A corporate principal may be held liable where the principal was "using [the corporation] as his 'alter ego' and thus, was abusing the corporate form in order to advance his own personal interests."<sup>182</sup> In a leading case, the Third Circuit established eight non-conjunctive and nonexclusive factors to be considered in veil piercing, according to the alter ego doctrine: (1) failure to observe corporate formalities; (2) nonpayment of dividends; (3) insolvency of the debtor corporation; (4) siphoning of funds from the corporation by the dominant shareholders; (5) non-functioning of their officers and directors; (6) absence of corporate records; (7) the corporation is a mere facade for the operation of the dominant shareholder or shareholders; and (8) gross undercapitalization.<sup>183</sup> In the AlRajhis case, as discussed above, all eight factors are present.

The court in another leading Third Circuit case, *Galgay*,<sup>184</sup> acknowledged that, "there must exist specific, unusual circumstances for the alter ego doctrine to apply" and that mere allegations that the corporations in question shared assets and employees was not sufficient evidence of an alter ego relationship to survive a motion to dismiss.<sup>185</sup> On the other hand, the Third Circuit explained that while the situation must present an element of injustice or fundamental unfairness, to pierce the corporate veil, a number of the factors can be sufficient to show unfairness.<sup>186</sup> Again, here all factors are present and there is a fundamental unfairness in the way the AlRajhis manipulated corporations and wiped out the value of the minority shareholder's portion of the company's equity.

*United States v Cohen*<sup>187</sup> illustrates the fact that an individual outside the US can violate US law. In that case the Second Circuit held that the president of a company which operated an off-shore internet gambling site was in a position to cause the company's continued violation of the Wire Fraud Act. Similarly, the US Foreign Corrupt Practices Act<sup>188</sup> and the parallel British law have very broad extraterritorial reach. Thus, even

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<sup>182</sup> Tsai, 230 B.R. at 42 (quoting *Walensky v. Jonathan Royce Int'l*, 264 N.J. Super. 276, 282, 624 A.2d 613 (App. Div. 1993))

<sup>183</sup> *U.S. v. Pisani*, 646 F.2d 83, 88 (3d Cir. 1981)

<sup>184</sup> *Galgay v. Gangloff*, 677 F. Supp. 295 at 299 (M.D. Pa. 1987).

<sup>185</sup> *Id.* at 300.

<sup>186</sup> *Pisani*, 646 F.2d at 87; see also *Galgay*, 677 F. Supp. at 299.

<sup>187</sup> *United States v. Cohen*, 260 F.3d 68, 77-8 (2d Cir. 2001).

<sup>188</sup> See, the U.S. Foreign Corrupt Practices Act 1977 (FCPA), 15 U.S.C. §§ 78dd-1, et seq. which asserts worldwide jurisdiction over bribery of foreign government officials even if conducted by foreign persons or individuals, provided

though some of the AlRajhis reside in Saudi Arabia, they would still be amenable to prosecution in the US if they had committed or caused similar acts in the US or by US companies elsewhere.

### ***Corporations Liable***

As discussed above, in appropriate criminal and civil cases the corporate veil may be pierced. Furthermore, as a general matter, in the US, “[c]orporations may be held liable for the specific intent offenses based on the ‘knowledge and intent’ of their employees.”<sup>189</sup> Thus under federal law, corporations and most other legal entities, even de facto organizations, such as the Mafia, may be criminally liable for the crimes of their employees, officers, directors, and agents.<sup>190</sup> This is true in the case of most economic offenses such as the type of frauds the AlRajhis and their companies participated in. In general, the rule extends to those instances when the employee or agent acted, or acquired knowledge, within the scope of his or her employment, seeking, at least in part, to benefit the corporation.<sup>191</sup> The AlRajhi enterprise and the various companies used by the AlRajhis to perpetuate their crimes benefited in part by receiving assets and having their agents, officers, and directors do the criminal activities within the scope of their corporate responsibilities.

Criminal liability in the United States extends also to the individuals who committed or aided or abetted the commission of crimes. For instance, persons such as the AlRajhis, Federico Tauber, the Tameer President, and Aasma Khan, the general counsel. In the United States all of the involved officers would be liable as principals. “Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal. (b) Whoever willfully causes an act to be done which, if directly performed by him or another, would be an offense against the United States, is punishable as a principal.”<sup>192</sup>

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there are at least minimal connections to the US (e.g., a relevant email). See Bruce J. Casino & Scott Maberry, FCPA, Due Process, and Jurisdictional Overreach by the DOJ and SEC, ABA (June 12 2013), <https://www.americanbar.org/groups/litigation/committees/criminal/articles/2013/spring2013-0613-fcpa-due-process-jurisdictional-overreach-doj-sec/>.

<sup>189</sup> United States v. Philip Morris USA, Inc., 566 F.3d 1095, 1118 (D.C.Cir. 2009), citing, N.Y. Central & Hudson River R.R. Co. v. United States, 212 U.S. 481, 495 (1909), and United States v. A & P Trucking Co., 358 U.S. 121, 125 (1958).

<sup>190</sup> United States v. Agosto-Vega, 617 F.3d 541, 552-53 (1st Cir. 2010).

<sup>191</sup> United States v. LaGroup Distribution Systems, 466 F.3d at 591.

<sup>192</sup> <https://www.justice.gov/archives/jm/criminal-resource-manual-2471-18-usc-2>

### ***Fraud, Misappropriation, Criminal Breach of Trust***

The major US federal fraud statutes, the mail and wire fraud statutes, would clearly be implicated in the case of the AlRajhis had their alleged crimes been committed in the United States. For instance, the wire fraud statute provides as follows:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire [this includes the internet], radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both ....<sup>193</sup>

As discussed above, the AlRajhis and their confederates regularly used email (i.e., wires) to advance their schemes.

Misappropriation is the intentional, illegal use of the property, ideas, or funds of another person for one's own use or other unauthorized purpose, especially by a public official, a trustee of a trust, an executor or administrator of a dead person's estate or by any person with a fiduciary duty to care for and protect another's assets.<sup>194</sup>

### **Case Study Fraud: Enron**

Enron Corporation was an American energy, commodities, and services company based in Houston, Texas. It was founded in 1985 as a merger between Houston Natural Gas and InterNorth, both relatively small regional companies. Before its bankruptcy on December 3, 2001, Enron employed approximately 29,000 persons and was a major electricity, natural gas, communications, and pulp and paper company, with claimed revenues of nearly \$101 billion during 2000. Fortune named Enron "America's Most Innovative Company" for six consecutive years.

At the end of 2001, it was revealed that Enron's reported financial condition was sustained by institutionalized, systematic, and creatively planned accounting fraud. Enron has since become a well-known example of willful corporate fraud and corruption. The scandal also brought into question the accounting practices and activities of many corporations in the United States and was a factor in the enactment of the Sarbanes–Oxley Act of 2002 which further regulated the public reporting practices of US publicly traded corporations. The scandal also affected the greater business world by causing the dissolution of the Arthur Andersen accounting firm, which had been Enron's main auditor for years.

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<sup>193</sup> 18 USC sec. 1343. See also mail fraud statute 18 U.S.C. sec.1341.

<sup>194</sup> US Legal Dictionary. See *James v United States*, 366 US213 (1961) (misappropriation of union funds).

In 1990, Enron's Chief Operating Officer Jeffrey Skilling hired Andrew Fastow, who was well acquainted with the burgeoning deregulated energy market that Skilling wanted to exploit. In 1993, Fastow began establishing numerous limited liability special purpose entities. While a common business practice in the energy industry, it also allowed Enron to transfer liabilities so that they would not appear in its accounts.

As was later discovered, many of Enron's recorded assets and profits were inflated or even wholly fraudulent and nonexistent. One example of fraudulent records was a 1999 commitment to repay Merrill Lynch & Co.'s investment with interest in order to show a profit on Enron's books. Debts and losses were put into entities formed offshore that were not included in the company's financial statements. Other sophisticated and arcane financial transactions between Enron and related companies were used to eliminate unprofitable entities from the company's books.

In 1999, Fastow created two limited offshore partnerships to transfer poorly performing assets from Enron's books. This the facts ultimately showed, resulted in a \$1.2 billion decrease in net shareholder equity.<sup>195</sup>

But when a company's success is measured by undocumented financial statements, actual balance sheets are inconvenient. Indeed, Enron's unscrupulous actions were often gambles to keep the deception going and to increase the stock price. An advancing price meant a continued infusion of investor capital on which debt-ridden Enron in large part subsisted, much like a financial "pyramid" or "Ponzi scheme." Attempting to maintain the illusion, Skilling verbally attacked Wall Street Analyst Richard Grubman,<sup>196</sup> who questioned Enron's unusual accounting practices. Grubman complained that Enron was the only public company that did not release a balance sheet along with its earnings statements.<sup>197</sup>

The Enron charges included wire fraud – four wires to offshore entities known as “Raptors” – and online false statements to employee/shareholders, securities fraud, false statements to auditors, and false statements to banks.<sup>198</sup> Lay died before sentencing, Skilling got 24 years and 4 months and a \$45 million penalty (later reduced). Fastow was sentenced to six years of jail time.

Aside from securities fraud, (as Tameer was not publicly traded), an investigation could result in similar counts being brought against the AIRajhis and their associates. As in the Enron case, Tameer had no balance sheet or financial statements from 2008 onwards,

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<sup>195</sup> Mary Flood, “Testimony Focuses on Enron’s Crash Point”, Houston Chronicle (Feb 14, 2006), [https://www.chron.com/business/enron/article/Testimony-focuses-on-Enron-s-crash-point-1499269.php?utm\\_campaign=premiumchron&utm\\_source=sitesearch&utm\\_medium=result](https://www.chron.com/business/enron/article/Testimony-focuses-on-Enron-s-crash-point-1499269.php?utm_campaign=premiumchron&utm_source=sitesearch&utm_medium=result).

<sup>196</sup> Andrew Clark, ‘Enron Defendant Accuses Analyst’, The Guardian (Apr 14, 2006), <https://www.theguardian.com/business/2006/apr/14/corporatefraud.enron>.

<sup>197</sup> Reuters, ‘Enron CEO Uses Vulgarly in Attack on Fund Manager’, Fox News (Apr 18, 2001), <https://www.foxnews.com/story/enron-ceo-uses-vulgarity-in-attack-on-fund-manager>.

<sup>198</sup> Diana Henriques & Jack Healy, ‘Madoff Goes to Jail After Guilty Pleas’, New York Times, Mar 12, 2009, <https://www.nytimes.com/2009/03/13/business/13madoff.html>.

and for the same deceitful reasons. Enron also used a variety of deceptive, convoluted, and fraudulent accounting practices and tactics to cover its fraud in reporting Enron's financial information. Special purpose entities were created to mask significant liabilities from Enron's financial statements. These entities made Enron seem more profitable than it actually was. In contrast, the AIRajhis used the same type of special purpose companies and fraudulent accounting practices to loot Tameer, transfer assets and profits out of Tameer, and make Tameer appear worthless, in order to defraud Ayesha and the other victims.

### **Case Reference: Abraaj Group**

Prosecution of the Abraaj Capital case<sup>199</sup> and its founder, Arif Naqvi, stands in stark contrast to that of *Ayesh vs. Tameer* and *Ayesh vs. AIRajhi*, insofar as justice was pursued and perpetrators incarcerated within 24 months as opposed to the Ayesh case that has been ongoing for over a decade. The case that brought about the Naqvi group's downfall involved the \$1 billion Abraaj Growth Markets Health Fund, which included among its high-profile investors the Bill and Melinda Gates Foundation.

Authorities in the United Kingdom and United States of America were able to quickly indict and arrest executives of the now defunct Abraaj Group, which once managed assets valued at \$14 billion. In addition, prosecutors in the United Arab Emirates issued a jail sentence to Naqvi in absentia in early 2019 for his role in allegedly defrauding a partially government-owned airline. The involvement of major western governments is a major difference with the AIRajhi case, where criminal proceedings have yet to be pursued by the public prosecutor.

Authorities in the Emirates should consider the implications this case has on their legal system as well as the national economy. A relatively swift resolution is ongoing because the UK and USA have enforcement mechanisms in support of the law. Trust in the region's regulatory systems, however, is at risk.

The Abraaj case also underscores the culpability of auditing firms, including global brands. Even after the scandal broke the Abraaj auditor, KPMG, exonerated their client. KPMG, however, had a conflict of interest with several executives having vested interests in Abraaj.<sup>200</sup> The depth of corruption was revealed by the company's liquidator, PwC (PwC in the UK and Middle East are among those accused of collusion with AIRajhi in the *Ayesh vs. Tameer* and *Ayesh vs. AIRajhi* cases).

Given that the United Arab Emirates (UAE) ratified the United Nations Convention against Corruption (the UNCAC) pursuant to Federal Decree No. 8 of 2006 and is a cosignatory to the Arab Convention to Fight Corruption signed on 21 December 2010, it is incumbent

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<sup>199</sup> <https://www.wsj.com/articles/abraaj-founder-arif-naqvi-accused-of-misappropriating-more-than-250-million-in-new-indictment-11560458572>

<sup>200</sup> <https://www.ft.com/content/c31e6040-78b0-11e9-b0ec-7dff87b9a4a2>

on the Dubai authorities to investigate and put a stop to procedural and financial irregularities taking place in the emirate, regardless of how wealthy or influential parties involved are, so that entrepreneurs and investors retain their confidence in the UAE as a financial hub.

### **Case Study Fraud: Madoff**

The Madoff investment scandal was a major case of stock and securities fraud discovered in late 2008. In December of that year, Bernard Madoff, the former NASDAQ Chairman and founder of the Wall Street firm Bernard L. Madoff Investment Securities LLC, admitted that the wealth management arm of his business was an elaborate Ponzi scheme.

Madoff plead guilty to securities fraud, investment adviser fraud, mail fraud, wire fraud, money laundering, false statements, perjury, making false filings to the SEC, and theft from an employee benefit plan.<sup>201</sup> Most of these charges would be appropriate for the AlRajhi brothers for their financial manipulations.

On June 29, 2009, Madoff was sentenced to 150 years in prison with \$US 170 billion in restitution ordered. According to the original federal charges, Madoff said that his firm had "liabilities of approximately US \$50 billion."<sup>202</sup> As in other fraud cases, Madoff's assets were immediately frozen.<sup>203</sup>

Had the AlRajhi matter arisen in the US, the AlRajhi assets would almost certainly have been frozen by the government (at least to the extent of the amount of fraud allegedly perpetrated by the AlRajhis). As with Madoff, the AlRajhis would have faced charges of investment fraud, mail fraud, wire fraud, money laundering, and possibly false statements (depending on filings made with the government which are beyond the scope of this article).

### ***Conspiracy***

18 U.S.C. § 371, is the general federal conspiracy statute, which provides that:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object

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<sup>201</sup> United States v Madoff, "US Opposition to Madoff Motion for a Stay and Reinstatement of Bail Pending Sentencing," Dkt. No. 09-1025-cr (2d Cir. Mar. 17, 2009).

<sup>202</sup> "SEC Charges Bernard L. Madoff for Multi-Billion Dollar Ponzi Scheme." U.S. Securities and Exchange Commission. Press Release, December 11, 2008.

<sup>203</sup> SEC v Madoff, Order of Consent Imposing Preliminary Injunction and Freezing Assets, 08 Civ. 10791 (LLS) (SDNY 12/18/08).

of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

18 U.S.C. § 371. Conspiracy is, in essence, the agreement of two or more persons to commit some other federal crime such as fraud. A conspiracy conviction under § 371 requires proof of three essential elements: (1) an agreement among two or more persons, the object of which is an offense against the United States; (2) the defendant's knowing and willful joinder in that conspiracy; and (3) commission of an overt act in furtherance of the conspiracy by at least one of the alleged co-conspirators.<sup>204</sup>

The AlRajhi brothers agreed together and with confederates such as Tauber and Khan, to take Ayesh's 25% share of Tameer and would likely be charged with conspiracy, so that each would be criminally liable for the crimes of the others.

## ***RICO***

The Racketeer Influenced and Corrupt Organizations Act,<sup>205</sup> commonly referred to as the RICO Act or simply RICO, is a United States federal law that provides for extended criminal penalties and a civil cause of action for acts performed as part of an ongoing criminal organization.<sup>206</sup> It seems uniquely applicable to a situation like the AlRajhis' continuous pattern of fraud. While its original use in the 1970s was to prosecute the Mafia as well as others who were actively engaged in organized crime, its later application has been more widespread. 33 states have adopted state RICO laws to be able to prosecute similar conduct.

Racketeering activity under the statute include the following applicable to the AlRajhis: bribery, theft, embezzlement, fraud, money laundering, and many other offenses covered under the Federal criminal code and relevant state laws as covered by RICO.

A pattern of racketeering activity requires at least two acts of racketeering activity, the last of which occurred within ten years after the commission of a prior act of racketeering activity. The US Supreme Court has instructed federal courts to follow the continuity-plus-relationship test in order to determine whether the facts of a specific case give rise to an established pattern. Predicate acts are related if they "have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by

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<sup>204</sup> See, e.g., *United States v. Pinckney*, 85 F.3d 4, 8 (2d Cir. 1996) (citing *United States v. Montour*, 944 F.2d 1019, 1024 (2d Cir. 1991)); see also 2 Wayne R. LaFare, *Substantive Criminal Law* § 12.2 (2d ed. 2003); 1 L. Sand et al., *Modern Federal Jury Instructions* 19-3 ("that the defendant knowingly and willfully became a member of the conspiracy").

<sup>205</sup> 18 U.S.C. § 1964 (1970).

<sup>206</sup> The US Federal Sentencing Guidelines corporation section begins with the premise that a totally corrupt corporation or entity should be fined out of existence, if the statutory maximum permits. A corporation operated for criminal purposes or by criminal means should be fined at a level sufficient to strip it of all of its assets. In other cases, the Guidelines recommend fines and other sentencing features that reflect the nature and seriousness of the crime of conviction and the level of corporate culpability. In this case, Al Rajhi Holdings and the Al Rajhi organization seemed to have operated largely as type of criminal, Mafia-like organization.

distinguishing characteristics and are not isolated events." <sup>207</sup> Continuity is both a closed and open-ended concept, referring to either a closed period of conduct, or to past conduct that by its nature projects into the future with a threat of repetition.<sup>208</sup> As described above, both patterns are present in the AIRajhi case.

The RICO statute contains a provision that allows for the commencement of a civil action by a private party to recover treble damages sustained as a result of the commission of a RICO predicate offense.<sup>209</sup>

Had the crimes been committed in the US, this statutory provision might have been used by Ayesh along with the civil versions of the criminal violations discussed in this article. The predicate acts in the RICO statute include those of the type committed by the AIRajhis and there is a clear pattern (not simply a single instance) of racketeering activity.

### **RICO Case Study: Michael Milken**

On March 29, 1989, American financier Michael Milken was indicted on 98 counts of racketeering and fraud relating to an investigation into an allegation of insider trading and other offenses. Milken was accused of using a wide-ranging network of contacts to manipulate stock and bond prices. It was one of the first occasions that a RICO indictment was brought against an individual with no ties to organized crime. Milken pleaded guilty to six lesser felonies of securities fraud and tax evasion rather than risk spending the rest of his life in prison and ended up serving 22 months in prison instead. Milken was also ordered banned for life from the securities industry.<sup>210</sup>

On September 7, 1988, Milken's employer, Drexel Burnham Lambert, was threatened with RICO charges under the *respondeat superior* doctrine, the legal doctrine that corporations are responsible for their employees' crimes. Drexel avoided RICO charges by entering an Alford plea to lesser felonies of stock parking and stock manipulation. In a carefully worded plea, Drexel said it was "not in a position to dispute the allegations" made by the Government. If Drexel had been indicted under RICO statutes, it would have had to post a performance bond of up to \$1 billion to avoid having its assets frozen. This would have taken precedence over all the firm's other obligations—including the loans that provided 96 percent of its capital base. If the bond ever had to be paid, its shareholders would have been practically wiped out. Since banks will not extend credit to a firm indicted under RICO, an indictment would have likely put Drexel out of business.<sup>211</sup>

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<sup>207</sup> H.J. Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229, 230 (1989).

<sup>208</sup> *Id.*

<sup>209</sup> The Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1964(c) (1970).

<sup>210</sup> Gerber, Jurg; Jensen, Eric L. (2007). Encyclopedia of White-collar Crime. Greenwood Publishing Group.

<sup>211</sup> Stone, Dan G. (1990). April Fools: An Insider's Account of the Rise and Collapse of Drexel Burnham. New York City: Donald I. Fine. By at least one estimate, a RICO indictment would have destroyed the firm within a month. Stewart, James B Den of Thieves (reprint ed.) (1992), Simon and Schuster. p. 517.

There are obvious parallels with the AIRajhis' economic crimes. The AIRajhis, like Milken, would likely have faced racketeering, fraud, and tax fraud charges had they operated in the US as they did in the UAE and Qatar. Their AIRajhi holding company would also have faced charges.

### ***Accessory Liability***

Misprision of a felony and liability as an accessory after the fact focus on conduct committed after the commission of the underlying substantive offense could also be used regarding certain individuals.<sup>212</sup> Misprision requires proof that the defendant knew of the commission of a federal felony by another, and that she not only failed to report the offense to authorities but affirmatively acted to conceal it.<sup>213</sup> "Misprision of a felony in violation of 18 U.S.C. §4 requires the government to establish: (1) the commission and completion of a felony by a third party, (2) the defendant's knowledge of the felony, 3) the defendant's failure to notify the authorities, and (4) that the defendant took an affirmative step to conceal the crime."<sup>214</sup>

An accessory after the fact charge requires proof that the defendant knew of the commission of a federal offense by another and assisted the other to avoid arrest, trial, or punishment.<sup>215</sup> Under this law, the accountants, attorneys and others who worked on the cover up of the fraud perpetrated by the AIRajhis could be responsible criminally.

### ***Bank Fraud***

With a similar set of facts, the defrauding of the Emirati and Qatari banks by the AIRajhis could be prosecuted in the United States under state bank fraud laws and the federal Bank Fraud statute. 18 U.S.C. sec 1344.<sup>216</sup>

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<sup>212</sup> Misprision of felony, 18 U.S.C. § 4 (2006); Accessory After the Fact 18 U.S.C. § 3 (2006).

<sup>213</sup> United States v. White Eagle, 721 F.3d 1108, 1119 (9th Cir. 2013).

<sup>214</sup> *Id.*

<sup>215</sup> United States v. Boyd, 640 F.3d at 662.

<sup>216</sup> Section 1344 states:

Whoever knowingly executes, or attempts to execute, a scheme or artifice— (1) to defraud a financial institution; or (2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises; shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

## ***Money Laundering***

The elaborate moves by the AlRajhis to transfer the proceeds of their fraud to hide it would violate US anti-money laundering laws.<sup>217</sup> It would also lead to the freezing of those transferred funds.

## ***Embezzlement***

The taking of Ayesh's assets by those who were the trustees he entrusted with his shares fall squarely under the definition of embezzlement. Embezzlement is defined as the fraudulent taking of personal property with which one has been entrusted, especially as a fiduciary.<sup>218</sup> In the US, unless there is a federal connection, it is a violation of state law. However, it is a predicate crime under the federal RICO Act. There are numerous other specific US federal and state laws that may also apply to AlRajhi type activities.<sup>219</sup>

## **Suggestions for Reform in the UAE**

### ***UAE's Reputation***

The UAE has a reputation as relatively good on anti-corruption. It has been recognized as one of the least corrupt nations in the Arab world. For instance, Transparency International's 2019 Corruption Perceptions Index ranks the UAE as number 21 of 180 nations.<sup>220</sup> On that index the lower the score, the less corrupt is the nation. This places the UAE as significantly less corrupt than all its Middle East neighbors. It also ranks the UAE as less corrupt than the United States, France, Spain, Portugal, and Italy. The case examined herein strongly suggests that the UAE's reputation, while improving, continues to need legislation and enforcement mechanisms that protect investors, whether small or large, from predatory practices. In fact, in the Association of Certified Fraud Examiner's

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<sup>217</sup> The Money Laundering Control Act of 1986 consists of two sections, 18 U.S.C. § 1956 and 18 U.S.C. § 1957. Section 1956 prohibits individuals from engaging in a financial transaction with proceeds that were generated from certain specific crimes, known as "specified unlawful activities" (SUAs). Additionally, the law requires that an individual specifically intend in making the transaction to conceal the source, ownership or control of the funds. There is no minimum threshold of money, nor is there the requirement that the transaction succeed in actually disguising the money. Moreover, a "financial transaction" has been broadly defined, and need not involve a financial institution, or even a business. Merely passing money from one person to another, so long as it is done with the intent to disguise the source, ownership, location or control of the money, has been deemed a financial transaction under the law. Section 1957 prohibits spending in excess of \$10,000 derived from an SUA, regardless of whether the individual wishes to disguise it. This carries a lesser penalty than money laundering, and unlike the money laundering statute, requires that the money pass through a financial institution. The Al Rajhis would have violated both sections of the law.

<sup>218</sup> *Embezzlement*, Black's Law Dictionary (11th ed. 2019).

<sup>219</sup> For instance, Interstate Land Sales Full Disclosure Act, 15 U.S.C.S. § 1701 et seq., State law violations such as common law fraud, theft, and specific state laws related to real estate sales, see e.g. Florida Uniform Land Sales Practices Law, Fla. Stat. ch. 498, and the various state Racketeer Influenced and Corrupt Organizations Acts, see, e.g., Fla. Stat. ch. 895 (1985).

<sup>220</sup> <https://www.transparency.org/en/countries/united-arab-emirates>

Report of the Nations, the UAE has the highest number of fraud-related cases in the region.<sup>221</sup>

### ***Corruption in the UAE***

In the UAE there are numerous anti-corruption provisions in the law. The problem seems to be in the realm of procedural flaws and enforcement which is both an issue of will and the amount and quality of enforcement resources available. The Carnegie Endowment for International Peace recently published a report outlining “Dubai’s Role in Facilitating Corruption and Global Illicit Financial Flows, pointed out that “[o]ther major challenges are the emirate’s highly personalized institutions and lack of mechanisms to hold elites accountable.”<sup>222</sup>

Articles 233 to 239 of the Penal Code contain several provisions relating to bribery of domestic public officials for instance but are seldom used. Other law that is relevant to the bribery of domestic public officials includes: The Human Resources Law (Federal Decree Law No. 11 of 2008) and the Dubai Recovery of Public Funds Law. The UAE has also ratified the United Nations Convention against Corruption (the UNCAC).

Both Dubai and Abu Dhabi also have their own penal codes, the Dubai Penal Code of 1970 and Abu Dhabi Penal Code (AD Law 1 of 1970) respectively. These also contain specific bribery and corruption offences. The Dubai Penal Code and the Abu Dhabi Penal Code apply to the extent that they do not conflict with the UAE Penal Code.

A significant move by the government and courts in the right direction was the October 30th, 2019, issuance of Decision Number (37), titled: “With reference to the establishment of a digital commercial justice platform.” The government established this department within the courts. It is comprised of 3 judges and a treasurer. Its remit is to preside over cases valued at USD \$13.5 million (AED 50 million) and above.<sup>223</sup> This development demonstrates an acknowledgement in the Dubai legal system that cases such as Tameer, Abraaj Capital, and others require greater forensic examination and transparency; and yet the effort will be rendered useless if corrupt experts or others continue to operate without fear of accountability.

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<sup>221</sup> Page 69 of the report shows the UAE has 46 cases related to white collar fraud with Saudi Arabia the next greatest in number at 23. Cyprus comes in at 11 as the 3<sup>rd</sup> on the list. <https://www.acfe.com/report-to-the-nations/2020/>. Of course, this may be a positive sign of transparency and the pursuit of cases.

<sup>222</sup> <https://carnegieendowment.org/2020/07/07/dubai-s-role-in-facilitating-corruption-and-global-illicit-financial-flows-pub-82180>

<sup>223</sup> <https://dc.gov.ae/PublicServices/NewsDetail.aspx?NewsId=4555>

### ***Lack of Vigorous Criminal Enforcement***

The AlRajhis practices investigated in this article have exposed a major vulnerability not addressed by the UAE's recent financial or legal reforms. Elaborate legal schemes were implemented by the AlRajhis in several UAE jurisdictions (and Qatar) to prevent those with legal claims to assets from gaining access to them.

Ayesh took his concerns to prosecutors in Dubai and initiated civil proceedings in 2009. After repeated attempts to raise the matter with prosecutors, his counsel wrote the Dubai Police in May 2015 and again requested a criminal investigation be undertaken.<sup>224</sup> The attorney attached the various whistleblower documents, the decisions of the Court of Appeals and the experts in the *Ayesh v Tameer* case, and other documents which seemed, as discussed above, to lay out a substantial case for an investigation of the matter. But police simply asked for an opinion from the prosecutor, not to open a criminal investigation.

After some months Ayesh's representatives finally met with the Dubai First Head of Prosecution. Without examining the evidence presented the public prosecutor closed the case, while "preserving the file" meaning that the matter would be shelved indefinitely<sup>225</sup> despite a large amount of evidence indicating fraud.<sup>226</sup> This gave the AlRajhis plenty of breathing room over the next several years to engage in more crimes. A lack of criminal investigation is a dangerous matter, as crimes will continue without deterrence by the state, evidence will become unavailable, and criminal statutes of limitations will expire over the course of time. Ayesh's case against the Rajhis has been in litigation for 12 years, now entering the thirteenth.<sup>227</sup> The UAE has struggled in dealing with such complicated criminal schemes. US or UK prosecutors, as seen in the cases above, would not expect that civil litigants should lead the way where there is suspected criminal activity. Indeed, cases often proceed along parallel tracks in those nations or the criminal case leads. Nor would it be likely that they would not open an investigation where there was substantial evidence of criminal activity.

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<sup>224</sup> Correspondence from Al Shamsi, counsel to Ayesh, at the time, to Dubai police, May 15, 2015 (Subject: "Criminal notification list with charges of fraud and breach of trust in accordance with Clauses 44, 45, 399, and 404 of the Union (Emirates) Penal Code of 1987."); <https://www.scribd.com/document/474562925/Criminal-Notification-List-With-Charges-of-Fraud-and-Breach-of-Trust-May-15-2015>; See also June 21, 2015 letter Al Shamsi to the Head of Dubai Police; <https://www.scribd.com/document/474562292/Request-to-File-Case-Number-2015-156001041973-Request-to-Initiate-Legal-Proceedings-Against-the-Accused-and-Issuing-a-Warrant-and-Referring-the-Case>

<sup>225</sup> See correspondence from Dubai Public Prosecutor to Head of Dubai Police, Sept. 3, 2015 (Subject Complaint Number 2015/1629 Memorandum of Opinion, Filed by Omar Jamal Ayesh Against: Ahmed Suleiman [Al Rajhi] and Partners); <https://www.scribd.com/document/474563395/Letter-From-the-Dubai-Public-Prosecution-to-the-Head-of-Dubai-Police-September-3-2015>

<sup>227</sup> See e.g. Saifur Rahman, *United Arab Emirates: Dubai Court Freezes Dh4b of Tameer Funds*, Gulf News, (Nov. 5, 2009), <https://www.pressreader.com/uae/gulf-news/20091104/283983238422871> (Ayesh obtains a temporary precautionary attachment in a Dubai court against Ahmed Al Rajhi re Tameer).

There are some promising signs, but progress is slow. The UAE and certain Emirates, such as Abu Dhabi and Dubai, have aggressively promoted the reform of their legal systems to inspire confidence in investors seeking vigorous enforcement of the laws against criminal financial crimes, transparency, accountability, speed of resolution and legal recourse. One encouraging development was the establishment in 2015 by the Abu Dhabi Executive Council of a new anti-corruption unit within the Abu Dhabi Accountability Authority. However, the pace of anti-corruption legislative reform in this area has been criticized.<sup>228</sup>

“Despite the surfacing of several prominent cases, the [anti-corruption] regulations ... still remain wholly foreign to many businesses operating in the Emirates... This overwhelming lack of awareness has continued” even though numerous new laws have been enacted.

### ***Refusing to Comply with the Court’s Discovery and Other Orders Without Consequences: Lessons for the UAE Legal System***

The obstruction of court proceedings seen in the Tameer/AlRajhi cases are, from the author’s perspective, remarkable for their brazenness, openly defying court and subject matter expert/magistrate mandates and allowing for corrupt auditing to be introduced as evidence. The proceedings demonstrate how high profile or moneyed offenders can eschew professional standards, manipulate judicial procedures, and ignore court orders where enforcement is absent, and tamper with experts without fear of consequences in Dubai and the UAE.

As previously discussed, and as discussed further below, in numerous Ayesh-related cases between 2008 and 2020 specific to financial information – the issue at the core of the dispute being Tameer’s value and the minority shareholder’s rights therein – the Dubai courts adopted no substantive measures to enforce compliance with their own orders, especially discovery orders, or international accounting standards. This case illustrates significant flaws in the judicial review of violations of the court’s own orders.

### **Cases Finding Financial Discovery Irregularities**

#### *Relevant to Financial Procedural Irregularities*

Case	Parties	Experts	Report Date
2016/213:	Ayesh vs. Ahmed AlRajhi, Tameer Real Estate FZC, Frederico Tauber (as Manager)	<ul style="list-style-type: none"> <li>▪ Muhammad Al Khidr &amp; Ali Al Marzouqi (accounting)</li> <li>▪ Muhammad Ali Balqees (real estate)</li> </ul>	2017/5/22 Preliminary 2017/11/5 Final
2016/255:	Ayesh vs. Ahmed AlRajhi, AlAmeera Village FZC, Frederico Tauber (as Manager)	<ul style="list-style-type: none"> <li>▪ Yusuf Al Khaja &amp; Dr. Aqeel Hadi (accounting)</li> <li>▪ Ihsan Al Qintar (real estate)</li> </ul>	2017/6/14
2016/297:	Emirates General Trading LLC represented by Omar Ayesh vs. Tameer Holding Investments	<ul style="list-style-type: none"> <li>▪ Bassam Ajoul &amp; Ali Al Marzouqi (accounting)</li> <li>▪ Amjad Al Khayyat (engineering)</li> </ul>	2017/5/16.

<sup>228</sup> Adam Vause et al, *The UAE: An Anti-Corruption Update*, Expert Guides (Mar. 15, 2016), <https://www.expertguides.com/articles/the-uae-an-anti-corruption-update/ARBPCQVH>.

2016/521:	Ayesh vs. Ahmed AlRajhi and Tameer Holding Investments	<ul style="list-style-type: none"> <li>▪ Saeed Shokor (accounting: ruler's court)</li> <li>▪ Muhammad Shaykhouni (engineering)</li> </ul>	2018/1/9.
2014/1023:	Ayesh vs. Tameer Holding Investments	<ul style="list-style-type: none"> <li>▪ Abdallah Haider &amp; Muhammad AlThanhani (accounting)</li> <li>▪ Rashid AlJenaibi (information technology)</li> <li>▪ Ahmed Lootah (banking)</li> <li>▪ Ali Al Mehairi (real estate)</li> </ul>	2018/2/12.

The table above outlines only the case files related to Tameer and associated parties that involve financial experts prior to the current case. Several issues present themselves upon review of the cases and the process by which they were conducted.

Looking at these cases as a whole, the AlRajhis intentionally prevented 15 experts, 9 of whom were finance-related, from performing their duties, knowing that the Dubai courts – including the Royal Court of His Highness Sheikh Muhammad bin Rashed Al Maktoum – had no enforcement mechanism to force their compliance. For instance, although UAE law mandates all companies must issue audit reports 3 months after the end of each fiscal year, Tameer/AlRajhis refused to acknowledge the existence of these reports or submit them as ordered by courts and the courts did not hold them in contempt or otherwise sanction them for these infractions.

Each of the first five reports above concluded that the experts were unable to perform their duties; and that defendants – AlRajhis – were impeding the process. All asked a higher authority to enforce compliance, which none did for over a decade despite the experts' and court's finding that obstruction existed.

In the experts' report for case 2014/1023, for example, the experts expressed their concerns:

As the committee has previously noted, it was unable to review the company's records after 2007 because of the reasons we have outlined and summarized as follows:

- a) lack of a balanced audit statement
- b) the introduction of updated [i.e., manipulated] accounting books
- c) management noncompliance with audit access to IT systems
  - a. [note: the judge ordered AlRajhi to permit the IT expert to examine servers on their premises; however, the expert was denied access and the courts did not issue a contempt order or other sanction]
- d) a 2008 opening balance that did not match the 2007 closing balance
  - a. [note: the latter was the last undisputed audited financial statement issued by Ernst & Young, who refused to endorse the 2008 report]
- e) the presence of numerous questionable transactions that could be classified as financial irregularities relative to assets.

These kinds of obstructive behavior would certainly be reduced if the courts were allowed and encouraged to hold parties in contempt and impose other sanctions if they undermined discovery or other court orders.

### ***Lack of Transparency***

Some needed transparency with respect to financial crimes is slowly developing. Abu Dhabi, for instance, reported that it had investigated 50 financial crimes (including bribery crimes) during 2017-2018.<sup>229</sup> However, there does not seem to have been a release of information on the substance of actual prosecutions or convictions, nor are the figures on investigations categorized by law allegedly violated. The U.S. State Department comments regarding the anti-money laundering (“AML”) area are true of all economic crimes in the UAE: “The UAE should release annual numbers of AML/CFT prosecutions and convictions so as to better gauge the effectiveness of its regime.”<sup>230</sup> In the area of financial crime enforcement “the UAE should increase the capacity and resources it devotes to investigating... both federally... and at emirate-level law enforcement.”<sup>231</sup> The availability of such additional resources might have made a difference in the AIRajhi case.

### ***Lack of Trained Investigators***

Moreover, the manipulations and schemes by the AIRajhis, as seen in this article, were complex and thus required investigators with a background in forensic business and accounting. This has long been identified as a problem in the UAE and may have been part of the problem in prosecutor’s willingness or ability to take up the AIRajhi case. Then director general of the Ministry of the Interior, Maj. Gen. Nassar Al Naimi, said more than a decade ago in announcing new police training in financial crimes: “It is financial crimes that are the big challenge ahead... Financial crimes should be our obsession...”<sup>232</sup> Unfortunately, not enough has been done in this regard since this urgent call was sounded in 2009.

### ***Lack of Power of Investigators and Prosecutors***

While a new police team was established to focus on financial crimes, it clearly does not have the teeth of, for instance, the UK’s Serious Fraud Office (SFO) which is a

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<sup>229</sup> Anwar Ahmad, *Abu Dhabi records 50 financial crimes, bribery in 22 months*, Gulf News (Nov. 1, 2018), <https://gulfnews.com/uae/crime/abu-dhabi-records-50-financial-crimes-bribery-in-22-months-1.2296684>.

<sup>230</sup> U.S. Dep’t Of State, 2016 International Narcotics Control Strategy Report (INCSR): Countries/Jurisdictions of Primary Concern – United Arab Emirates (2016), <https://2009-2017.state.gov/j/inl/rls/nrcrpt/2016/vol2/253437.htm> (Last visited Jul. 10, 2019).

<sup>231</sup> *Id.* (referencing money laundering but it would seem, applicable to all economic crimes).

<sup>232</sup> Andy Sambidge, *New Police Team to Probe UAE Financial Crimes*, Arabian Business (Oct. 14, 2009), <https://www.arabianbusiness.com/new-police-team-probe-uae-financial-crimes-11809.html>.

government department accountable to the Attorney General for England and Wales. It has had major success in bringing cases against some of the largest companies in the world. One example is the Euro 991 million January 2020 settlement with Airbus -- part of a Euro 3.6 billion plus global settlement. In this case the SFO worked closely with its French counterpart, the Parquet National Financier (PNF) another example of a serious frauds focused national level office. The SFO was established in 1987 after a series of financial scandals destroyed public trust in the way serious or complex frauds were handled. The UAE would benefit from such an office, provided it had the kind of teeth and political or, in the case of the UAE, monarchical support the SFO has.

### ***Lack of Standards and Enforcement Against Judges and Experts/Magistrates***

The actions of the courts and expert in *Ayesh v AlRajhi* in the expert resigning after being denounced by the AlRajhis deserves a criminal investigation of whether corruption, intimidation or negligence was involved.

As the entity charged with ensuring justice is done and rights enforced, an impartial and incorrupt judiciary is essential to the good governance and development of any nation. A flawed judiciary may negatively impact all sectors of a nation by stunting trade, economic growth, and human development, as well as by depriving citizens of justice.

A clear and actively enforced code of judicial conduct, which provides a model for ethical judicial behavior, is essential to reform as is a mechanism to monitor legal infractions by judges, government employees and court appointed experts. The most widely used ethics code internationally is the 2002 Bangalore Principles of Judicial Conduct.<sup>233</sup>

Holding judicial officers accountable for their conduct is a necessary prerequisite to an efficient and effective justice system. Accountability requires not only strict adherence to codes of conduct and ethics but also appropriate punishment for breaches of those ethics. Article 11 of the UN Convention Against Corruption of which the UAE is a signatory, emphasizes the importance of judicial accountability.<sup>234</sup>

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<sup>233</sup> USAID Office of Democracy Governance, USAID Program Brief, Reducing Corruption in the Judiciary (June 2009), at 12, available at [http://pdf.usaid.gov/pdf\\_docs/PNADQ106.pdf](http://pdf.usaid.gov/pdf_docs/PNADQ106.pdf). The Bangalore Principles present six values essential to the proper performance of judicial office and to the maintenance of high standards of judicial conduct. U.N. Office on Drugs & Crime, The Bangalore Principles of Judicial Conduct, Round Table Meeting of Chief Justices, The Hague, (Nov. 25–26, 2002), available at [www.unodc.org/pdf/crime/corruption/judicial\\_group/Bangalore\\_principles.pdf](http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf). These values include (1) independence, (2) impartiality, (3) integrity, (4) propriety, (5) equality, and (6) competence and diligence.

<sup>234</sup> U.N. Office on Drugs & Crime, United Nations Convention Against Corruption, New York, ch. 2, art. 11, at 13 (2004), available at [www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf).

### ***Fear of Taking on Politically Powerful and High Net Worth Individuals***

In the UAE there may also have been a fear of taking on such a large complex case against such influential figures. The Abraaj Capital and NMC cases along with the AIRajhi matter are recent fraud matters that have reached the billion-dollar mark. They are forcing prosecutors to step up their efforts. Until these recent cases, the largest fraud cases brought were considerably smaller as the value of the claims in the largest of these earlier cases had not exceeded USD \$ 122 million.<sup>235</sup> These new, larger, cases require better training, more resources, a national anti-fraud office, and the resolve necessary to take on cases of this size.

The willingness to take on major crimes starts, of course, at the top. The UAE needs to move in the direction of taking on prominent, wealthy persons such as the AIRajhis where the evidence indicates it is appropriate.<sup>236</sup> The sort of justice – justice only for those with influence, deep pockets, a willingness to engage in unethical practices, and limitless resources – which seems to be part of the problem in the AIRajhi case – sends the wrong message to foreign investors. To increase trust and investment in the UAE and the region this needs to end.

### ***Restrictions on Foreign Investment***

One of the underlying UAE legal complications in the AIRajhi case was the requirement that 100% of Ayesh's investment in Tameer had to be done by way of a trust or other nominee or beneficial ownership arrangement. This was because UAE law requires that majority ownership of investment in onshore entities in the UAE must be made by a UAE national or certain other Gulf nationals (such as Saudis). In the event a GCC national is

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<sup>235</sup> The most prominent of the cases include: the Former Minister of Finance of the UAE - Mohammed bin Kharbash: See Tamara Walid, *Former UAE Minister Charged with Embezzlement*, Reuters (Apr. 9, 2009), <https://www.reuters.com/article/emirates-corruption/former-uae-minister-charged-with-embezzlement-idUSL86269420090409> ; Omar bin Sulaiman, former head of Dubai's financial services centre: Richard Spencer, *Dubai Arrests Former Financial Service Centre Chief Omar bin Sulaiman*, The Telegraph (Mar. 25, 2010) <https://www.telegraph.co.uk/finance/financialcrisis/7513158/Dubai-arrests-former-financial-service-centre-chief-Omar-bin-Sulaiman.html> (detained on allegations of financial wrongdoing); Saad Abdul Razak, executive and former president of Dubai Islamic Bank: Tamara Walid, *Dubai Tamweel Execs Get Jail Terms in Corruption Probe*, Reuters (May 30, 2010, 4:18 AM) <https://www.reuters.com/article/us-tamweel-jail/dubai-tamweel-execs-get-jail-terms-in-corruption-probe-idUSTRE64T0OP20100530> ; (found guilty of squandering funds); Adel al-Shirawi, former Tamweel Chief Executive: *Id.* (Found guilty of accepting bribes); and Zack Shahin, former chief executive of Deyaar: Salam Al Amir, *Fugitive US Businessman Zack Shahin Returned to UAE, Says Spokesman*, The National UAE (May. 29, 2016), <https://www.thenational.ae/uae/former-deyaar-real-estate-boss-jailed-for-dh56m-theft-and-fraud-1.645075> (sentenced to 15 years in prison for theft and fraud valued at more than Dh56 million in relation to a land deal in 2007).

<sup>236</sup> See e.g., U.S. Dep't Justice, Report on the Investigation into Russian Interference in the 2016 Presidential Election (2019) (Independent special counsel Robert Mueller in the US investigated President Trump) and prosecutions of Paul Manafort and others related to the facts uncovered. Of course, actions such as President Trump's commutation of Roger Stone's sentence in July 2020 and the refusal of the US Senate to remove President Trump who had been impeached, from office, reflect a turn in the direction of corruption by the President and his cronies.

the majority owner, as is permissible in the UAE, no other foreign party can be a joint owner if no UAE national is included in the partnership. Ayesh is a citizen of Canada. This law, of course, restricts foreign investment in the UAE, contrary to the UAE's current efforts to attract more foreign investment.

Fortunately, a law which went into effect in September 2018, allows for the lifting of the restriction, at least with respect to the real estate and certain other sectors. This will encourage foreign investment in line with the UAE's general policy to diversify and develop the UAE economy by increasing foreign investment. Under the law, the UAE cabinet will issue a resolution determining the sectors and activities which are open to higher levels of investment. This will be known as the Positive List and will include the real estate sector. The Negative List has already been published and real estate is not one of the sectors on the list where the ownership restrictions will remain in force. The AlRajhi case demonstrates why the new law is so important, since the old law forced Ayesh to use a trust arrangement which was misused by the trustee, one of the AlRajhis. This restriction and such misuses have made foreign investors reluctant to invest.

### **Problems with Saudi Anti-Corruption Reforms**

This case also suggests problems with Saudi financial reforms. Since January 2018, Saudi Arabia has held itself out as conducting an anti-corruption purge. Saudi Minister of Commerce and Investment, Majid al-Qasabi, explained that the crackdown means "eliminating corruption [but] also means greater transparency and greater security for investors."<sup>237</sup> Yet the AlRajhis, a leading family within the Saudi business elite -- whose members include a central member of the Saudi government cabinet appointed by Saudi ruler Mohamad bin Salman Al Saud (known as MBS), as well as the Chair of Saudi Arabia's largest bank -- face allegations of corrupt and fraudulent business practices in the UAE.

Some of these fraudulent practices were committed in Saudi Arabia, where AlRajhi Holdings was incorporated, and where relevant emails, phone calls, books and accounting records, and meetings occurred. And, of course, the five most prominent of those implicated -- the AlRajhi brothers -- are Saudi citizens. The United States would have the ability, based on these facts, to assert jurisdiction over this matter had it been their citizens who committed the frauds.<sup>238</sup> Indeed, if Saudi Arabia had laws and a commitment to following the evidence wherever it leads similar to the US and UK and

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<sup>237</sup> Rosie Perper, *Saudi Arabia Reportedly Used Physical Abuse to Extract Billions from its Corruption Crackdown*, Business Insider (Mar. 12, 2018, 11:38 PM), <https://www.businessinsider.com/saudi-arabia-abuse-corruption-crackdown-2018-3>.

<sup>238</sup> See, e.g., the U.S. Foreign Corrupt Practices Act 1977 (FCPA), 15 U.S.C. §§ 78dd-1, et seq. which asserts worldwide jurisdiction over bribery of foreign government officials even if conducted by foreign persons or individuals, provided there are at least minimal connections to the US (e.g., a relevant email). See B. Casino, FCPA Article: Bruce J. Casino & Scott Maberry, *FCPA, Due Process, and Jurisdictional Overreach by the DOJ and SEC*, ABA (June 12 2013), <https://www.americanbar.org/groups/litigation/committees/criminal/articles/2013/spring2013-0613-fcpa-due-process-jurisdictional-overreach-doj-sec/>

their prosecutors, criminal prosecution and civil cases could and would have ensued.<sup>239</sup> Yet there has been no indication of a Saudi investigation of the matter despite the Saudi individuals and corporations involvement. Like the UAE, Saudi Arabia cannot expect to be an international financial center when it turns a blind eye to facts such as those in this matter.

## **Conclusion**

The documents and testimony reviewed in this report indicate the AIRajhi brothers have committed one of the largest billion-dollar frauds in Middle East history. Had their actions occurred in the United States, they and their accomplices would likely have been prosecuted under numerous criminal statutes. Yet to date no investigation has taken place in the UAE.

The issues at hand are troubling not simply because leaked documents reveal a complex conspiracy to defraud a shareholder and investors. Rather, the integrity of Dubai's entire legal landscape is at risk given that a litigant can exhaust his or her opponents by exploiting loopholes in the judicial process. This environment encourages disingenuous parties to manipulate proceedings and alter evidence while evading answerability.

The Tameer case highlights multiple gaps in the judicial process that require remedy, including the ability of fraudsters to alter evidence even after fraudulent case filings are exposed. One example discussed above is Ayesh's submission of proof the AIRajhis intended to move assets to shell companies wholly controlled by the brothers – evidence which their lawyers acknowledged but attempted to render inconsequential by labeling "internal communication." This was ignored by authorities and the AIRajhis were even permitted to submit a bailment agreement after the fact in the Tameer Towers transaction to explain away illegitimate actions. A second example is the refusal to cooperate with court experts on financial disclosure, giving Tameer ample opportunity to dispose of assets without the courts freezing said assets until the matter reached resolution. Furthermore, an auditor was appointed to audit financials from 2008 – 2016 only when it was convenient to do so in 2018 rather than when the procedure complied with the law, i.e., completed annually per entity. Even then the report contained disturbing infractions of multiple International Financial Reporting Standards (10, 15, 24, 32 and 37); and yet with each objection Tameer was allowed to alter financial statements to become compliant with the breaches without reproach, actions which US authorities would immediately investigate and likely prosecute.

Despite the AIRajhis manipulating the process, three expert committee reports debunked the Tameer financial statements while finding that Ayesh is owed dues and compensation, with the Court of First Instance finally ratifying the most recent analysis in

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<sup>239</sup> Indeed, given the AI Rajhi's, BHC's and PwC's connections with the US and UK, cases might still be brought in those nations.

2020. During appeal, Tameer asked that the court appoint an auditor to inspect them and their alleged substantial losses. This disingenuous delay tactic has been used throughout the suit's belabored history. The files' track record attests to their fraudulent nature and by any professional standard would no longer be deemed admissible let alone worthy of further inspection.

Alarming, the court has effectively acceded to the AlRajhi tactics, returning the case to square one after 13 years in litigation, i.e., it has referred the matter to an eighth expert committee, now in the Dubai Ruler's court.

The leaked documents analyzed in this report reveal that the AlRajhi team successfully set up sibling-owned shell companies to move assets out of Tameer, a scheme they pulled off without impediment despite ongoing litigation. Such skillful white-collar criminality can easily conceal financial fraud; and a review of significantly altered financial statements over a decade after the fact detracts from the fundamentals – that the company was intentionally devalued with assets embezzled, denying shareholding and investor rights in the process.

In the United States, Ayesh would have successfully sued for “treble damages” using Section 1964(c) of the RICO statute which states: “Any person injured in his business or property by reason of a [RICO] violation . . . may sue . . . and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.”<sup>240</sup> Yet when he attempted to submit evidence of fraud, the documents were shelved on technicalities; and in the ongoing case, the AlRajhi tactics continue to be considered valid. Accepting a review of statements doctored to look legitimate without questioning the history of abuse of process, forgery, and fraud associated with the financials is a significant miscarriage of justice.

The matter now before the Dubai Ruler's Court could still be considered one of financial dispute rather than shareholder rights in a mismanaged company. If faith in the UAE as a significant destination for foreign investments is to be assured, prosecutorial resources need to be increased and expanded to include forensic experts in complex financial crimes. The highest levels of government in the UAE need to ensure that white-collar crimes involving prominent persons such as the AlRajhis will be pursued vigorously. His Highness Sheikh Mohammed's 8 principles that emphasize “justice delayed is justice denied” are certainly a clear declaration of the emirate's goals of equity.<sup>241</sup> However, the reality is that Dubai's judicial process is open to abuse with limited mechanisms of expediency and accountability. The courts' ability to mete out justice fairly and quickly is hampered by the scheming of those with deep pockets and influential ties who know how to leverage gaps in the system. Unless justice is swift and delay tactics are punished, efforts to strengthen Dubai's reputation of equity will suffer.

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<sup>240</sup> <https://www.justice.gov/sites/default/files/usam/legacy/2014/10/17/civrico.pdf>

<sup>241</sup> <https://sheikhmohammed.ae/en-us/news/details?nid=26409&cid=>

## APPENDIX: Summary of Omar Ayesh vs. Ahmed AIRajhi et. al. Cases and Conclusions

Case	Details	Parties	Experts	Outcome	Date
1343/2009 & 1344/2009	<ul style="list-style-type: none"> <li>Claim 46 million AED deducted unlawfully from Omar Ayesh shareholder's account.</li> <li>OA expanded his requests to include full accounting on Tameer Holding and its subsidiaries to determine the value of his share.</li> </ul>	Ayesh vs. Tameer Holding Investments	<ul style="list-style-type: none"> <li>Ammar al Nasr (accounting)</li> <li>Referred to Ruler's Court: Mohammed Younes (accounting)</li> </ul>	Court of First Instance rejected case	05/06/2014
1023 & 1027/2014	<ul style="list-style-type: none"> <li>Appeal of Court of First Instance rejection</li> <li>The court referred the file to a committee of 5 experts.</li> </ul>	Ayesh vs. Tameer Holding Investments	<ul style="list-style-type: none"> <li>Ahmed al Maqtari (accounting – deceased)</li> <li>Abdallah Haider &amp; Muhammad AlThanhani (accounting)</li> <li>Rashid AlJenaibi (information technology)</li> <li>Ahmed Lootah (banking)</li> <li>Ali Al Mehairi (real estate)</li> </ul>	<ul style="list-style-type: none"> <li>Expert committee report submitted <b>final report</b> on 12/2/2018 &amp; concluded OA is a legitimate shareholder entitled to <b>4.2 billion AED</b> and rejected all the Tameer claims.</li> <li>Ahmed AIRajhi (AAR) filed a complaint and case (1426/2017) against Expert AlThanhani</li> <li>AAR filed other complaints against both Thanhani and Haidar after the issuance of the expert report.</li> </ul>	02/05/2018
650/2018	Tameer appealed judgment issued in case 1023 & 1027/2014	Tameer Holding LLC vs Omar Ayesh	N/A	<ul style="list-style-type: none"> <li>Claim was rejected and previous finding was approved</li> <li>NOTE: Cases 1343 &amp; 1344/2009 (Commercial, First Instance), 1023 &amp; 1027/2014 Commercial Appeal, 650/ 2018 Cassation – <b>began on 26/10/2009 and ended on 23/12/2018</b>)</li> </ul>	23/12/2018
213/2016	Determine the value of OA share in Tameer Real Estate FZE.	Ayesh vs. Ahmed AIRajhi, Tameer Real Estate FZC, Frederico Tauber (as Manager)	<ul style="list-style-type: none"> <li>Muhammad Al Khidr &amp; Ali Al Marzouqi (accounting)</li> <li>Muhammad Ali Balqees (real estate)</li> </ul>	In both preliminary and final reports, <b>the experts stated that they could not complete their tasks because Ahmad AIRajhi and Tameer refused to submit the financial statements for the years 2008 - to 2016. The parties were not held in contempt.</b>	Preliminary report: 22/05/2017 Final report: 05/11/2017.
255/2016	Determine the value of OA share in AlAmeera Village FZC.	Ayesh vs. Ahmed AIRajhi,	<ul style="list-style-type: none"> <li>Yusuf Al Khaja &amp; Dr. Aqeel Hadi (accounting)</li> </ul>	The experts stated that <b>AAR et. al. refused to submit the required</b>	14/06/2017

		AlAmeera Village FZC, Frederico Tauber (as Manager)	<ul style="list-style-type: none"> <li>Ihsan Al Qintar (real estate)</li> </ul>	<b>documents. The parties were not held in contempt.</b> They still determined that OA is entitled to 114,604,835.50 dhs against his share in the company, based only on one project.	
297/2016	Determine the value of OA share in projects owned by Emirates General Trading LLC.	Emirates General Trading LLC represented by Omar Ayesh vs. Tameer Holding Investments	<ul style="list-style-type: none"> <li>Bassam Ajoul &amp; Ali Al Marzouqi (accounting)</li> <li>Amjad Al Khayyat (engineering)</li> </ul>	The experts stated that <b>AAR et. al. refused to submit the required documents.</b> They were unable to reach a conclusion as a result. <b>The parties were not held in contempt.</b>	16/05/2016
521/2016	Determine the value of OA share in projects owned by Omar Ayesh	Ayesh vs. Ahmed AlRajhi and Tameer Holding Investments	<ul style="list-style-type: none"> <li>Saeed Shokor (accounting: ruler's court)</li> <li>Muhammad Shaykhouni (engineering)</li> </ul>	The experts stated that <b>AAR et. al. refused to submit the required documents.</b> They were unable to reach a conclusion as a result. <b>The parties were not held in contempt.</b>	09/01/2018
127/2017	<ul style="list-style-type: none"> <li>Ahmad AlRajhi case requesting enforcement of 2007 Sales &amp; Purchase Agreement and the transfer of Omar Ayesh shares in free zone companies to AAR.</li> <li>OA filed a counterclaim requesting the same requests of case 1023/2014 and added all the parties suspected of involvement in Tameer devaluation/ expropriation plan</li> </ul>	OA vs AAR, Tameer Holding Investments, et. al.	<ul style="list-style-type: none"> <li>Redha Al Rahma (accounting - <b>resigned</b>)</li> <li>Mohammed Saeed Shareef (banking - <b>resigned</b>)</li> <li>Mohammed Al Marzouqi (engineering)</li> <li>Meshal Al Zarooni (accounting)</li> <li>Mostafa Al Sheryani (real estate – <b>requested resignation</b>)</li> <li>Mohammad Ayran (banking)</li> </ul>	<ul style="list-style-type: none"> <li>Court referred the matter to a 3-panel expert committee. The <b>preliminary report awarded OA 6.8 billion AED</b> (expert Al Rahma and Al Shiryani)</li> <li><b>Ahmed alRajhi threatened Al Rahma forcing him to resign. The judge did not investigate, accepted the resignation and re-formed a new committee which began analysis at square one.</b></li> <li>The new committee <b>rejected the financial statements submitted by THI as irregular and awarded OA 2.2 billion dhs</b> (1.6 plus penalties).</li> </ul>	Initial Committee 19/12/2018  Re-formed Committee 13/10/2020
3107 & 3134/2020	Appeal of judgment issued in first instance case 127/2017.	OA vs AAR, Tameer Holding Investments, et. al.	<b><u>Judge referred case to an expert panel at the Dubai Ruler's Court in May 2021</u></b>	<b><u>Pending</u></b>	