

December 11, 2021

VIA COURIER AND ELECTRONIC MAIL

His Excellency Prime Minister Khalid bin Khalifa bin Abdulaziz Al
Thani
Prime Minister
Council of Ministers, Corniche Street, P.O. Box 636, Doha, Qatar

His Excellency Mr. Masoud bin Mohammed Al Ameri
Minister of Justice
Ministry of Justice, P.O. Box 917, Doha, Qatar

Re: **Notice of Claims Arising From Qatar’s Treatment of The Swifthold
Foundation’s Judgment Against Sheikh Fahad bin Ahmed bin Mohammad bin
Thani Al-Thani and Fast International Trading Group**

Dear Prime Minister Abdulaziz Al Thani:

We write on behalf of our client The Swifthold Foundation (“**Swifthold**”) to inform you of a dispute between Swifthold and the State of Qatar (“**Qatar**”). This dispute arises out of measures taken by the Government and Qatari courts to frustrate Swifthold’s efforts to recover on a nearly US\$ 6 billion judgment of the High Court of Justice in England (the “**UK Judgment**”) against a prominent member of the Al-Thani family and his wholly-owned Qatari company.¹

Qatar’s measures are in breach of the protections provided to Swifthold under the Agreement between the Government of the Republic of Panama and the Government of the State of Qatar for the Reciprocal Promotion and Protection of Investments (the “**BIT**”), and international law.

Specifically, Qatar’s measures are an affront to the international rule of law. Qatar and its nationals actively participate in the UK economy and enjoy the protections of English law as enforced by English courts. But Qatar’s actions suggest that its justice system will not respect the decisions of English courts when compliance proves inconvenient or embarrassing.

¹ *The Swifthold Foundation v. Fast International Trading Group and Sheikh Fahad Ahmed Bin Mohammed Al-Thani* [2018] EWHC 1578 (Ch).

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I. Background to the Parties and UK Judgment

Swifthold holds the UK Judgment against (1) Sheikh Fahad bin Ahmed bin Mohammad bin Thani Al-Thani (“**Sheikh Fahad Al-Thani**”), and (2) Fast International Trading Group (previously Fast Trading Group) (“**FTG**” and together with Sheikh Fahad Al-Thani, the “**Judgment Debtors**”). The judgment is in the amount of US\$ 5,996,390,356.

Swifthold is a foundation registered and established under the laws of the Republic of Panama.

Sheikh Fahad Al-Thani is a Qatari national and a prominent member of the ruling family of Qatar. We understand that Sheikh Fahad Al-Thani is involved in various aspects of Qatar’s economy. For example, he is understood to own a majority interest in SS International Engineering Company (“**SSIE**”), which is one of the subcontractors involved in the construction of the stadia for the upcoming Qatar 2022 World Cup. SSIE is also understood to have contracts for work at Al Udeid Air Base, located to the Southwest of Doha, where the U.S. Air Force has a significant presence.

FTG is a company registered with the Qatari Register of Companies, and is owned and controlled solely by Sheikh Fahad Al-Thani. We understand that the former President and Chief Executive Officer of FTG, Abdulsalam Al Hamri, was convicted in 2015 of money laundering in Spain and sentenced to two years in prison. FTG appears to be involved in managing food and beverage outlets in Qatar as well as several other activities. According to an LA Times investigative report,² another entity in the Fast Trading group of companies, Fast Trading & Contracting, (which is owned by Sheikh Fahad Al-Thani and his sons) has been involved in sales of equipment for military use to Saddam Hussein’s Iraq, in violation of UN sanctions.

The UK Judgment arises out of Swifthold’s investments in Qatar in the form of a US\$ 900 million bond transfer to FTG, as well as Swifthold’s rights under an Asset Enhancement Agreement dated June 29, 2009 between the parties (the “**AEA**”). It is pursuant to the AEA that Swifthold transferred a US\$ 900 million bond to FTG. FTG was to enhance the bond and reinvest the funds received from the bond issuance to generate further investment returns. FTG failed to perform. The UK Judgment held the Judgment Debtors responsible for breach of their obligations under the AEA.³ Swifthold made further investments in Qatar in an effort to enforce the UK Judgment against the Judgment Debtors in Qatar.

² See Los Angeles Times, *U.S. Dual-Use Devices Made Their Way to Iraq*, December 31, 2003, <https://www.latimes.com/archives/la-xpm-2003-dec-31-fg-cambridge31-story.html>.

³ Sheikh Fahad Al-Thani was added as a defendant to an initial judgment from the UK High Court of Justice against FTG, following the court’s determination that Sheikh Fahad Al-Thani was the sole proprietor of FTG and was at all material times personally responsible for payment of its debts.

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II. Recognition and Enforcement Proceedings in Qatar

In April 2019, after Sheikh Fahad Al-Thani ignored Qatar court proceedings of which he had been made aware, Swifthold successfully obtained a decision of the Court of First Instance recognizing and approving the enforcement of the UK Judgment in Qatar. However, on July 14, 2021, following an extraordinary decision of Qatar's highest court, the Court of Cassation, to remand the matter to the Qatari Court of Appeal, the Qatari Court of Appeal reversed course. It held that the UK Judgment should not be enforced in Qatar against the Judgment Debtors. The series of events leading to this outcome is as follows:

- (a) On April 28, 2019, the Qatari Court of First Instance issued a judgment approving recognition and enforcement of approximately US\$ 4 billion of the UK Judgment. It denied recognition of the interest portion of the UK Judgment.
- (b) On February 2, 2020, more than 10 months after the Court of First Instance issued its judgment, the Judgment Debtors filed Appeal No. 209/2020 with the Court of Appeal challenging the Court of First Instance's judgment. The court rejected this appeal on October 28, 2020.
- (c) On December 27, 2020, the Judgment Debtors filed Cassation Appeal No. 594/2020 with the Court of Cassation challenging the Court of Appeal's decision in Appeal No. 209/2020.
- (d) On March 2, 2021, the Court of Cassation issued its judgment remanding the case to the Court of Appeal for further decision. The remand was based on a novel interpretation of Qatari procedural law. The court held that Swifthold did not properly serve the first instance judgment on the Judgment Debtors, because Swifthold effected service by registered mail to a PO Box registered to Sheikh Fahad Al-Thani in his capacity as the owner of FTG. According to the court, a PO Box cannot constitute the Judgment Debtors' domicile for service purposes in the case of a default judgment. The court said that Sheikh Fahad Al-Thani should have been served at his registered address in a registry that had not even been established at the time—*i.e.*, through a mode of service that was legally and factually impossible. The court also did not acknowledge the long established practice of serving Qatari individuals and companies via a registered PO box.
- (e) On July 14, 2021, the Court of Appeal held that the UK judgment should not be enforced in Qatar against the Judgment Debtors. In reaching its decision, the court considered the enforcement case afresh, making numerous factual and legal determinations on the merits for the first time. Notably, the court held that Swifthold did not submit evidence of a treaty between the United Kingdom and Qatar on the

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enforcement of court judgments. Accordingly, the judgment could not be enforced in Qatar. Qatar's Civil and Commercial Code of Procedure sets out the requirements for enforcement of a foreign court judgment. But there is nothing in the Civil and Commercial Code of Procedure that says reciprocity can only be demonstrated by the existence of a treaty. Essentially, the court adopted the Judgment Debtors' arguments wholesale, and failed to consider Swifthold's arguments on the issue.

- (f) On September 8, 2021, Swifthold submitted an appeal to the Court of Cassation. The appeal has been briefed and the outcome is now pending.

In the intervening years between the Court of First Instance's judgment and the Court of Appeal's July 2021 judgment, Swifthold sought attachment and execution against the Judgment Debtors' assets in Qatar before the Qatari Enforcement Court:

- (a) On June 13, 2019, following issuance of the Court of First Instance's judgment, Swifthold initiated Case No. 1762/2019 in the Qatari Enforcement Court seeking attachment and execution against the Judgment Debtors' assets in Qatar.
- (b) On July 4, 2019, a hearing was held before the Enforcement Court. The Enforcement Court approved the attachment of the Judgment Debtors' assets to fulfill the Court of First Instance's judgment. Following this hearing, under the applicable procedural rules, the Enforcement Court should have issued letters to various Qatari bodies to identify and attach the Judgment Debtors' assets. The Judgment Debtors' assets should have been promptly attached thereafter.
- (c) On February 2, 2020, more than 8 months after Swifthold initiated proceedings before the Enforcement Court, the Judgment Debtors filed Case No. 18/2020 seeking a stay of proceedings and cancellation of the Enforcement Court's attachment approvals. The Enforcement Court rejected this challenge on August 18, 2020.
- (d) On August 24, 2020 the Judgment Debtors filed Appeal No. 711/2020 with the Court of Appeal challenging the Enforcement Court's dismissal of Case No. 18/2020, which sought to stay enforcement. The Court rejected this appeal on February 28, 2021.
- (e) On December 27, 2020, while the Court of Appeal's decision was pending, the Judgment Debtors requested the Court of Cassation in the context of Cassation Appeal No. 594/2020 to stay the proceedings before the Enforcement Court. The Court of Cassation rejected the Judgment Debtors' request on February 16, 2020.

Throughout this time, Swifthold repeatedly sought to engage the Enforcement Court to obtain attachment and execution against the Judgment Debtors' assets. These efforts were unavailing:

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- (a) On July 24, 2019, after the Enforcement Court initially approved attachment of the Judgment Debtors' assets, Swifthold applied to the Enforcement Court to attach certain real property in Qatar believed to be owned by Sheikh Fahad Al-Thani. The Enforcement Court accepted this application for implementation but the property was never attached.
- (b) On January 5, 2020, after a new judge was assigned to Case No. 1762/2019, Swifthold renewed its request that, *inter alia* (1) the Enforcement Court attach the real estate assets identified in its application of July 24, 2019, and (2) the Enforcement Court issue letters to various Qatari bodies to identify and attach the Judgment Debtors' assets. Both applications were approved by the Enforcement Court, but again, nothing happened.
- (c) On June 25, 2020, there having been no apparent progress on attachment and execution, Swifthold again requested the Enforcement Court to issue letters to Qatari bodies to identify and attach the Judgment Debtors' assets.
- (d) On August 8, 2020, Swifthold filed an application requesting the Enforcement Court to order the sale of assets belonging to Sheikh Fahad Al-Thani.
- (e) On August 14, 2020, Swifthold filed an application requesting the Enforcement Court to order the attachment of any and all assets belonging to Sheikh Fahad Al-Thani.
- (f) On August 25, 2020, Swifthold filed multiple applications requesting the Enforcement Court to attach and restrict the business activity of companies owned by Sheikh Fahad Al-Thani.
- (g) On September 3, 2020, Swifthold filed several applications requesting the Enforcement Court to order the sale of any and all assets of Sheikh Fahad Al-Thani and attachment of his bank accounts.
- (h) On September 5, 2020, Swifthold learned from a publicly available share registry that liens were put on Sheikh Fahad Al-Thani's shares in Asda Media and Publishing and Al-Deera Transport. Consequently, Swifthold promptly filed multiple applications to request the Enforcement Court to order the sale of these shares to satisfy Swifthold's judgment and the collection of any dividends paid on the shares until such time as they were sold.
- (i) On December 10, 2020, Swifthold filed a complaint with the Chief Judge of the Enforcement Court requesting that all possible actions be taken to expedite attachment and execution against the Judgment Debtors' assets. The complaint informed the Chief

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Judge that Swifthold had made multiple attempts to recover from the Judgment Debtors, and that all of the Judgment Debtors' attempts to resist attachment and execution against their assets had been rejected by the Qatari courts. Swifthold also notified the Chief Judge that although the Enforcement Court had approved its requests to issue letters of attachment to various Qatari bodies, Swifthold had not been able to confirm whether these letters were in fact issued.

In summary:

- (a) In April 2019, Swifthold obtained a court order recognizing and approving enforcement of the UK Judgment in Qatar. But in July 2021, following an extraordinary decision, the Qatari Court of Appeal reversed course. It held that the UK Judgment should not be enforced in Qatar against the Judgment Debtors.
- (b) In the intervening years, enforcement against the Judgment Debtor's assets was delayed and unsuccessful.⁴ Throughout this period, Swifthold's efforts to engage the Enforcement Court through applications and notifications were persistently ignored or resisted. To this day, Swifthold is not aware if the Enforcement Court even sent out orders to attach assets of the Judgment Debtors or if the recipients of the court's orders failed to comply. In all events, the system failed Swifthold.
- (c) Throughout this time, the Judgment Debtors were on actual notice of the judgments in Qatar against them, but remained able to transfer their assets freely. The Enforcement Court's failure—indeed, refusal—to act has allowed the Judgment Debtors time to hide and/or dissipate their assets to avoid seizure.

III. Qatar's Breaches of the BIT

Qatar's actions in relation to the UK Judgment constitute clear breaches of its obligations under the BIT, which have caused loss and/or damage to Swifthold and its investments in Qatar, including (but not limited to) the following obligations:

⁴ On March 4, 2021 and April 1, 2021, Swifthold's counsel in Qatar received checks from the Enforcement Court in the amounts of QAR 245,370 (approximately US\$ 67,000) and QAR 1,100.87 (approximately US\$ 300) respectively, demonstrating that the enforcement process resulted in only a token recovery of the debt owed to Swifthold.

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- (a) To compensate Swifthold as a result of an unlawful indirect expropriation of its investment.⁵
- (b) To treat Swifthold's investments in accordance with the customary international law minimum standard of treatment of aliens, including fair and equitable treatment ("**FET**") and full protection and security ("**FPS**").⁶ In particular, Qatar's actions are, *inter alia*, arbitrary, inconsistent, disproportionate, discriminatory, not transparent, in breach of Swifthold's legitimate expectations, and threaten the legal security of Swifthold's investments. Moreover, Qatar's actions effected a denial of justice on Swifthold.
- (c) To accord Swifthold and its investment treatment no less favorable than it accords to its own investors, including Sheikh Fahad Al-Thani and FTG, and their investments ("**National Treatment Protection**").⁷
- (d) To accord Swifthold and its investments treatment no less favorable than it accords to investors of third States and their investments, including in respect of the treatment of judgments obtained by other investors from foreign jurisdictions ("**Most-Favored Nation**" or "**MFN**" protection).⁸ Applying the MFN provision of the BIT, Swifthold invokes any alleged more favorable protections contained in other investment treaties entered into by Qatar.

Qatar's breaches of the BIT have resulted in substantial damage to Swifthold given that the Judgment Debtors' is likely to have hidden substantial assets which, as a senior member of the ruling family, he must have in Qatar.

Swifthold reserves all of its rights with respect to the facts and events described herein,⁹ including the right to submit this dispute to international arbitration for resolution. In this regard, Swifthold hereby gives notice of the existence of this dispute, accepts the Government's offer to arbitrate contained in Article 8 of the BIT, and requests consultations

⁵ BIT, Article 5(1) (providing that neither Party to the BIT may expropriate an investment either directly or indirectly except "(a) for a public purpose; (b) in a non-discriminatory manner; (c) on payment of prompt, adequate and effective compensation; and (d) in accordance with due process of law").

⁶ BIT, Article 3(2).

⁷ BIT, Articles 4(1) and 4(2).

⁸ BIT, Articles 4(1) and 4(2).

⁹ Nothing in this letter should be interpreted as limiting the factual or legal bases on which Swifthold may rely before an arbitral tribunal or in any other forum.

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and negotiations with Qatar as contemplated in Article 8(1) of the BIT. Failing an amicable resolution, Swifthold intends to claim from Qatar an amount up to the full amount of the UK Judgment of approximately \$6 billion, plus interest.

Swifthold intends to commence international arbitration under the BIT should this dispute not be resolved favorably to it within the 6-month amicable settlement period under Articles 8(1) and 8(2) of the BIT.¹⁰

Swifthold intends to comply with the amicable settlement period under the BIT in good faith. To this end, Swifthold requests a meeting with you, or appropriate representatives of Qatar. Please let us know when you are available to engage in these discussions, and we would be pleased to facilitate such a meeting. In advance of any such meeting, please let us know if you require any additional information with respect to the claims raised by Swifthold in order to facilitate discussions.

We look forward to hearing from you regarding this very important matter.

Sincerely,



Rahim Mooloo

CC:

Ambassador Yousef Ali Al-Khater, Ambassador of Qatar to the United Kingdom
Ambassador Saad bin Mubarak Al Nuaimi, Ambassador of Qatar to Panama

¹⁰ See BIT, Article 8(2) (“If such disputes cannot be settled according to the provisions of paragraph (1) of this Article within six months from the date request in writing for settlement, either party to the dispute may submit the dispute to [international arbitration].”).