

# 10-4524

---

---

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

---

In re ARAB BANK, PLC,

*Petitioner.*

---

FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK  
CASE NO. 04-CV-2799-NG-VVP AND RELATED CASES

---

***AMICUS CURIAE* BRIEF OF THE HASHEMITE KINGDOM OF JORDAN IN  
SUPPORT OF ARAB BANK, PLC'S PETITION FOR WRIT OF MANDAMUS**

---

Christopher M. Curran

Nicole E. Erb

**WHITE & CASE**<sup>LLP</sup>

701 Thirteenth Street, N.W.

Washington, D.C. 20005

Telephone: + 1 202 626 3600

Facsimile: + 1 202 639 9355

*Attorneys for Amicus Curiae*

*The Hashemite Kingdom of Jordan*

---

---

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

INTEREST OF *AMICUS CURIAE*.....1

SUMMARY OF THE KINGDOM’S POSITION.....1

DISCUSSION .....3

I. The Kingdom Enjoys Friendly Relations With The United States .....3

II. Arab Bank Is A Preeminent Financial Institution In The Kingdom  
And Surrounding Region.....5

III. The Sanctions Order Infringes On The Kingdom’s Sovereignty .....6

A. Banks Are Highly Regulated In The Kingdom.....6

B. Arab Bank Attempted To Comply With Both The Jordanian  
Banking Law And U.S. Discovery Rules.....9

C. Punishing Arab Bank For Complying With Jordanian Law Is  
An Affront To The Kingdom’s Sovereignty .....10

IV. The Sanctions Order Poses Grave Risks To The Region.....13

CONCLUSION .....15

**TABLE OF AUTHORITIES**

CASES

*Société Internationale Pour Participations Industrielles et Commerciales, S.A. v. Rogers*, 357 U.S. 197, 211 (1958).....11

*Société Nationale Industrielle Aérospatiale v. U.S. Dist. Ct.*, 482 U.S. 522 (1987) .....11

STATUTES AND RULES

15 U.S.C. § 6801(a) .....8

15 U.S.C. § 6802.....8

JORDANIAN LAW

Banking Law No. 28 of 2000..... 7-8

Penal Code No. 16 of 1960 .....4

OTHER AUTHORITIES

F.A. Mann, *The Doctrine of International Jurisdiction Revisited after Twenty Years*, Recueil des Cours, Vol. 186 (1984) .....11

*Oppenheim’s International Law* (Sir Robert Jennings & Sir Arthur Watts, eds., 9th ed. 1996).....11

*Restatement (Third) of the Foreign Relations Law of the United States* § 441 ..... 10-11

United Nations International Convention for the Suppression of the Financing of Terrorism, G.A. Res. 54/109 1, U.N. Doc. A/RES/54/109 (Dec. 9, 1999) .....12

United Nations Security Council Resolution 1373, S.C. Res. 1373, U.N. Doc. S/RES/1373 (Sept. 28, 2001) .....12

### **INTEREST OF *AMICUS CURIAE***

The Hashemite Kingdom of Jordan has enjoyed close relations with the United States for over six decades and has the utmost respect for the United States Judiciary. The circumstances of the litigation in the United States pending against Arab Bank, plc have become so serious that the Kingdom feels compelled to respectfully express its deep concerns to this Court, specifically regarding the District Court's July 12, 2010 Opinion and Order ("Sanctions Order").

The Sanctions Order implicates two paramount sovereign interests of the Kingdom: first, the Kingdom's vital interest in protecting its sovereignty and the integrity of its laws and legal system; and, second, the Kingdom's vital interest in protecting and promoting economic and political stability in Jordan, as well as in the surrounding region, which is one of the world's most volatile areas. Failure to vacate the Sanctions Order places both of these vital interests in peril.<sup>1</sup>

### **SUMMARY OF THE KINGDOM'S POSITION**

The Kingdom understands that the Sanctions Order permits the jury to infer that the Bank knowingly and purposefully provided financial services to terrorists and precludes the Bank from "making any argument or offering any evidence

---

<sup>1</sup> Pursuant to Local Rule 29.1(b), the Kingdom discloses that its longtime U.S. litigation counsel, White & Case LLP, authored this *amicus curiae* brief in full. In addition to its representation of the Hashemite Kingdom of Jordan, White & Case recently has been engaged to represent Arab Bank in connection with these cases. The Kingdom alone (i.e., no party, party's counsel, or other person) funded the preparation and submission of the brief.

regarding its state of mind or any other issue that would find proof or refutation in withheld documents.” Sanctions Order at 32. The Kingdom further understands that these sanctions were imposed because Arab Bank did not produce, in pre-trial discovery, certain documents that it is prohibited from disclosing by the mandatory penal laws of the Kingdom that protect the confidentiality of banking records held in the Kingdom by banks located and regulated in the Kingdom.

The Kingdom respectfully submits that the District Court’s Sanctions Order infringes on the Kingdom’s sovereignty and is unduly severe in nature. First, the sanctions punish Arab Bank for not violating Jordanian law, which would have subjected the Bank to criminal penalties in its home jurisdiction. As a result, the sanctions violate well-established international legal principles that one State should not infringe upon the sovereign rights of another State to regulate matters taking place within that other State’s sovereign territory.

Second, the sanctions make it virtually inevitable that a jury will conclude that Arab Bank knowingly and purposefully supports terrorism. Arab Bank is the leading financial institution in the Kingdom and plays an enormous and uniquely significant role in the Jordanian and surrounding regional economies, in particular in the Palestinian Territories. The Kingdom understands that, given the over 6500 Plaintiffs in these cases and the treble damages potentially available to those claiming under the U.S. Anti-Terrorism Act, such an adverse jury verdict could

lead to a massive damages award against the Bank. Beyond the direct financial liability, such a result would cause severe reputational injury, would be unjustly ruinous to the Kingdom's premier financial institution, and could result in political instability and grave harm to the Jordanian and surrounding regional economies.

Therefore, the Kingdom, after considered evaluation and with the utmost respect for the United States and its courts, submits this *amicus curiae* brief in support of Arab Bank's Petition for Writ of Mandamus.

## **DISCUSSION**

### **I. THE KINGDOM ENJOYS FRIENDLY RELATIONS WITH THE UNITED STATES**

The Kingdom is a sovereign constitutional monarchy in the Middle East. It shares borders with Israel and the West Bank, as well as with Saudi Arabia, Iraq, and Syria. The geographical location of the Kingdom makes it a crucial ally of the United States. The Kingdom and the United States have signed numerous bilateral and multilateral accords, and have cooperated in many areas, including civil aviation, defense, extradition, science, investment, and trade.

The Kingdom has been and remains a steadfast ally of the United States in combating terrorism and terrorism financing. As His Majesty King Abdullah II declared on May 16, 2009: "Terrorism is the enemy of all of us and fighting it is a joint responsibility." *See* H.M. King Abdullah II, Interview with Director of Agence France-Presse, Randa Habib. The Kingdom's commitment to combating

terrorism is strengthened even further because the Kingdom and its citizens have themselves been victims of deadly terrorist attacks. As then-U.S. Secretary of State Condoleezza Rice stated:

The United States condemns the terrorist bombings in Jordan today. Such wanton acts of murder against innocent people violate every faith and creed. . . . The United States has had no closer ally than Jordan in the war on terror, and Jordan will find no better friend than the United States at this difficult hour.

Secretary Rice, Remarks on the Terrorist Bombings in Jordan (Nov. 9, 2005).

Domestically, the Jordanian Penal Code criminalizes acts of terrorism, including the financing of such acts and conspiracy to perpetrate them, in conformity with U.N. Security Council Resolution No. 1373 (Sept. 28, 2001). *See* Jordanian Penal Code No. 16 of 1960, as amended by Provisional Act No. 54 of 2001 (Oct. 8, 2001), arts. 147-49. The penalties for violating these provisions range between five years of hard labor and the death penalty. *See id.*, arts. 148-49.

As part of the Kingdom's commitment to combating terrorism, the Governor of the Central Bank issued directives to banks operating within the Kingdom to adhere to and implement the provisions of the U.N. Security Council anti-terrorism resolutions, such as: freezing of funds, inspection of customer accounts, and methods to combat money laundering and other suspicious transactions. *See, e.g.*, Letter from the Permanent Representative of Jordan to the United Nations addressed to the Chairman of the Counter-Terrorism Committee (Mar. 24, 2006).

Internationally, the Kingdom has been actively involved with the U.N. Counter-Terrorism Committee and is party to at least ten international treaties relevant to combating terrorism and the financing of terrorism, including the U.N. International Convention for the Suppression of the Financing of Terrorism (1999). The Kingdom remains committed to continued cooperation among all States in international efforts to combat terrorism and the financing of terrorism.

In addition, the Kingdom is and has been a key U.S. ally in efforts to peacefully resolve the Palestinian-Israeli conflict since 1994 when the Kingdom signed a peace treaty with Israel. Recently in Amman, U.S. Secretary of State Hillary Rodham Clinton stated:

The United States values our strong, close relationship, our very important partnership with Jordan. It is rooted in respect and common purpose. . . . Jordan is a crucial partner working to end the Israeli-Palestinian conflict and bring a comprehensive peace to the Middle East. We were honored to host King Abdullah II in Washington as these talks got underway, and I want to publicly thank him, as I privately have, for his contributions both to the resumption of direct negotiations and to the constructive beginning that has occurred. Jordan's steadfast support for this process is essential.

Secretary Clinton, Remarks with Jordanian Foreign Minister Nasser Judeh (Sept. 16, 2010).

## **II. ARAB BANK IS A PREEMINENT FINANCIAL INSTITUTION IN THE KINGDOM AND SURROUNDING REGION**

Arab Bank is the leading financial institution in the Kingdom and plays an enormous and uniquely significant role in the Jordanian and surrounding regional



economies. In the Kingdom, Arab Bank is comparable in size and stature to Citibank, JPMorgan, Bank of America, Goldman Sachs and Morgan Stanley, possibly even combined. Its market capitalization of approximately JD 6.5 billion (or US\$ 9.1 billion) is equivalent to 33% of the total market capitalization, and 58% of the banking sector market capitalization, of the Amman Stock Exchange. In addition, the Jordanian Social Security Corporation, which is the pension fund for the majority of the Jordanian labor force, has an ownership stake of approximately 15% in Arab Bank. In the Palestinian Territories, Arab Bank maintains branches that provide some of the only safe, sophisticated, and transparent financial infrastructure — a measure of stability in a turbulent region.

It is against this background of mutual respect and cooperation between the Kingdom and the United States, and in recognition of the unique importance of Arab Bank to the Jordanian and surrounding regional economies, that the Kingdom expresses its serious concerns with respect to the Sanctions Order.

### **III. THE SANCTIONS ORDER INFRINGES ON THE KINGDOM'S SOVEREIGNTY**

#### **A. Banks Are Highly Regulated In The Kingdom**

The provision of banking and financial services is highly regulated within the Kingdom. The principal regulator of banks within the Kingdom is the Central Bank of Jordan. The Kingdom has established and enforces a robust system of

laws and regulations relating to banking, securities, debt, foreign currency control, anti-money laundering and combating the financing of terrorism.

The Kingdom's primary law regulating the provision of banking and financial services — the Banking Law, Law No. 28 of the Year 2000 (“Banking Law”) — imposes mandatory banking confidentiality requirements on banks operating within the Kingdom:

A bank shall observe full confidentiality regarding all accounts, deposits, trusts, and safe-deposit boxes of its customers. It shall be prohibited from providing directly or indirectly any information thereon except upon a written consent of the owner of such account, deposit, trust or the safe-deposit box, or an heir of his, upon a decision issued by a competent judicial authority in a current litigation, or due to one of the permissible situations pursuant to the provisions of this law.

Banking Law, art. 72. Thus, the Banking Law requires Arab Bank to protect confidentiality of banking information unless (i) authorized by its customers, (ii) authorized by a Jordanian court, or (iii) one of the permissible situations identified in the Banking Law applies. None of these exceptions applies here.

Banks and individuals who violate banking confidentiality “shall be punished with imprisonment for a period not less than six months, a fine not less than ten thousand Dinars and not more than fifty thousand Dinars, or with both penalties.” *Id.*, art. 75. The Governor of the Central Bank may impose additional penalties including, among other things, fining the bank, instructing the bank to suspend or dismiss from service any administrator or member of its board of

directors, removing the chairman or any member of the board of directors of the bank, dissolving the bank's board of directors and placing it under the management of the Central Bank, and revoking the license of the bank. *See id.*, art. 88.

The Kingdom understands that banks within the United States also are required to respect the privacy of their customers and to protect the security and confidentiality of those customers' banking records. *See* 15 U.S.C. § 6801(a) ("It is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information."). The Kingdom further understands that U.S. law — like Jordanian law — provides for a limited set of exceptions to these requirements, including when the customer consents to disclosure; to prevent fraud or unauthorized transactions; and to comply with applicable legal requirements as well as formal orders issued by competent and appropriate authorities. *See* 15 U.S.C. § 6802.

In this manner, the laws of both the Kingdom and the United States embody the principles that the Organization for Economic Cooperation and Development ("OECD") has acknowledged: "Bank secrecy is also a fundamental requirement of any sound banking system. Customers would be unlikely to entrust their money and financial affairs to banks if the confidentiality of their dealings with banks could not be ensured. . . . Thus, banks must guarantee a high degree of

confidentiality in order to do business.” *See* OECD, *Improving Access to Bank Information for Tax Purposes* 19 (2000). The OECD has also observed:

Bank secrecy is widely recognised as playing a legitimate role in protecting the confidentiality of the financial affairs of individuals and legal entities. It derives from the concept that the relationship between a banker and his customer obliges the bank to treat all the customer’s affairs as confidential. All countries provide, to a greater or lesser extent, the authority and obligation for banks to refuse to disclose customer information to ordinary third parties. Access to such information by ordinary third parties would jeopardise the right to privacy and potentially endanger the commercial and financial well-being of the accountholder.

*Id.* at 7. The OECD has further recognized that bank confidentiality stimulates the development of an active financial services industry and promotes confidence in — and is critical to the stability of — a country’s banking system. *Id.* at 19.

**B. Arab Bank Attempted To Comply With Both The Jordanian Banking Law And U.S. Discovery Rules**

The Kingdom understands that, mindful of the mandatory confidentiality obligations under Jordanian law and the laws of other jurisdictions, Arab Bank undertook exceptional efforts to produce documents in a manner that complied with those obligations. *See* Pet. at 6-7.

In addition, in 2005, Arab Bank requested and obtained permission from a court in the Kingdom to disclose information related to banking records held within the Kingdom. The relevant accountholder, however, promptly filed an appeal. The appellate court ultimately denied Arab Bank permission to disclose

the requested information because the requested disclosure concerned a dispute before a foreign court in which the accountholder was not a party, and observed that none of the permissible situations identified in the Banking Law.

Finally, in 2007, at Arab Bank's request, the U.S. Magistrate Judge issued a Letter of Request from the District Court seeking the assistance of the Jordanian authorities in ordering disclosure of documents. *See* Pet. at 8-9. The Minister of Justice and the Governor of the Central Bank both indicated that they were not authorized to permit Arab Bank to violate the banking confidentiality provisions of the Banking Law. The Minister of Justice also advised that "there is no convention between the Hashemite Kingdom of Jordan and the United States of America, regarding judicial proxies in civil suits." A12 at 4. The Governor further stated that any breach of the banking confidentiality provisions would expose Arab Bank to penalties, including fines, imprisonment, and legal actions seeking damages. *Id.* at 1-2.

**C. Punishing Arab Bank For Complying With Jordanian Law Is An Affront To The Kingdom's Sovereignty**

In the Kingdom's view, the Sanctions Order punishes Arab Bank for not disclosing confidential customer information in direct violation of Jordanian law and court order. Such a punishment severely infringes upon Jordanian sovereignty and violates the established principle of international law, recognized by U.S. courts, that "a state may not require a person [] to do an act in another state that is

prohibited by the law of the state . . . .” Restatement (Third) of the Foreign Relations Law of the United States § 441.<sup>2</sup>

Moreover, the Sanctions Order could drive banks to defy the laws of their primary regulators rather than face unusually harsh sanctions in civil litigation in the United States. Such coercion would hold grave consequences for a region in critical need of secure and reliable financial infrastructure, and would run against the respect sovereigns typically afford each other’s important sovereign interests.

That private civil plaintiffs raise allegations of terrorism financing does not diminish the Kingdom’s strong sovereign interest in regulating banking confidentiality within its sovereign territory. The Kingdom should not be forced to

---

<sup>2</sup> See also *Société Nationale v. U.S. Dist. Ct.*, 482 U.S. 522, 546 (1987) (“American courts should therefore take care to demonstrate due respect for any special problem confronted by the foreign litigant on account of its nationality or the location of its operations, and for any sovereign interest expressed by a foreign state.”); *Société Internationale v. Rogers*, 357 U.S. 197, 211 (1958) (“It is hardly debatable that fear of criminal prosecution constitutes a weighty excuse for nonproduction, and this excuse is not weakened because the laws preventing compliance are those of a foreign sovereign.”); F.A. Mann, *The Doctrine of International Jurisdiction Revisited after Twenty Years*, *Recueil des Cours*, Vol. 186 (1984), at 45 (“[A]s a matter of international law derived from the practice of States and general principles of law, no State is in general entitled to require the commission of a criminal offence or an illegality within the territory of another State.”); *Oppenheim’s International Law* 477 (Sir Robert Jennings & Sir Arthur Watts, eds., 9th ed. 1996) (“Even where a court has undoubted jurisdiction over a foreign defendant, . . . its orders to the defendant to pursue a certain course of conduct in a foreign state or to produce documents held there may be open to challenge if they involve an infringement of the foreign state’s jurisdictional sovereignty, including a breach of its criminal laws relating to conduct on its territory.”).

subordinate its sovereign interests in regulating bank confidentiality within its territory in favor of the interests of private plaintiffs in civil litigation abroad.

The Kingdom, like the United States, is a signatory of the U.N. International Convention for the Suppression of the Financing of Terrorism, which provides that signatory nations “shall afford one another the greatest measure of assistance in connection with *criminal* investigations or *criminal* or extradition proceedings in respect of the [financing or support of terrorist acts], including assistance in obtaining evidence in their possession necessary for the proceedings.” *See* U.N. International Convention for the Suppression of the Financing of Terrorism (1999), art. 12(1) (emphases added) (incorporated into Jordanian law under Provisional Law No. 83 of 2003); *see also* U.N. Security Council Resolution 1373 (2001), para. 2(f) (deciding States shall “[a]fford one another the greatest measure of assistance in connection with *criminal* investigations or *criminal* proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings”) (emphases added). The Convention also provides that signatory nations “may not refuse a request for mutual legal assistance on the ground of bank secrecy.” *Id.*, art. 12(2).

Thus, through the Convention, the international community (including the Kingdom and the United States) recognized a narrow exception to otherwise applicable domestic bank confidentiality laws in the specific context of official

state-to-state requests for inter-state cooperation in pending *criminal* investigations or proceedings related to terrorism financing. The Kingdom has cooperated with several such requests by the United States. The Convention does *not* establish any exception to otherwise applicable domestic bank confidentiality laws for requests made by ordinary, private third parties in foreign civil litigation.

#### **IV. THE SANCTIONS ORDER POSES GRAVE RISKS TO THE REGION**

The Kingdom understands that one of the critical elements to prove liability under the claims asserted against Arab Bank is knowledge and intent. *See, e.g.*, Sanctions Order at 4. By allowing the jury to infer that Arab Bank knowingly and purposefully provided financial services to terrorists and precluding the Bank from introducing evidence of its state of mind, including evidence beyond the withheld documents, the Sanctions Order makes it virtually impossible for Arab Bank to defend itself and likely will lead to an inevitable jury verdict that the Bank knowingly and purposefully supports terrorism.

The resulting economic harm to the Bank, while impossible to predict, could be devastating. Besides the damage to the Bank's ongoing business, nearly five hundred plaintiffs are seeking treble damages against the Bank under the Anti-Terrorism Act and over six thousand more seek relief under the Alien Tort Statute. Thus, an adverse jury verdict could lead to enormous damages.



Liability for knowingly and purposefully supporting terrorism also would cause great reputational harm and would unavoidably stigmatize the Bank in the international banking community and the global capital markets. Arab Bank's correspondent banks and other critical counter-party financial institutions could cease doing business with it. The damage to Arab Bank's reputation as a sound and reliable financial institution also could threaten the Bank's important customer relationships, as well as its role as a premier wholesale bank for top global businesses and an important depository institution for many corporate and individual clients with ties to the region.

Given Arab Bank's prominence, severe reputational and economic harm to Arab Bank also could destabilize the economies of the Kingdom, the Palestinian Authority and the surrounding region. In addition, serious harm to Arab Bank could precipitate political instability in the region, which at the very least, could disrupt the mutual efforts of the Kingdom and the United States to broker peace in the Middle East and resolve the Palestinian-Israeli conflict.

Such harm also could seriously undermine the international community's anti-money laundering and anti-terrorism efforts in the region. Arab Bank is an industry and regional leader in building and strengthening anti-money laundering and anti-terrorism compliance. Through these efforts Arab Bank deters criminal and terrorist activity, and plays a pivotal role in promoting economic development

throughout the region, particularly in the Palestinian Territories. If Arab Bank was to disregard the bank confidentiality laws of the Kingdom and other jurisdictions due to the Sanctions Order, customers could lose confidence in the Bank and withdraw from formal banking services in favor of unregulated, informal, and opaque funds-transfer systems, with potentially calamitous consequences for the region.

### **CONCLUSION**

Accordingly, with the highest respect for the United States and the U.S. judicial system, and for the foregoing reasons, the Kingdom urges the Court to grant Arab Bank's Petition for Writ of Mandamus and vacate the Sanctions Order. In filing this brief as *amicus curiae*, the Kingdom does not waive, and expressly reserves, any and all available privileges, immunities, rights and defenses that may be available to it, including but not limited to its sovereign immunity.

Dated: November 5, 2010  
Washington, D.C.

Respectfully submitted,

/s/ Christopher M. Curran

Christopher M. Curran

Nicole E. Erb

**WHITE & CASE** LLP

701 Thirteenth Street, N.W.

Washington, D.C. 20005

Telephone: + 1 202 626 3600

Facsimile: + 1 202 639 9355

*Attorneys for Amicus Curiae*

*The Hashemite Kingdom of Jordan*

**CERTIFICATE OF COMPLIANCE**

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 3600 words (as calculated by the automatic word count function of Microsoft Word), excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman, 14 point font.

I certify that the information on this form is true and correct to the best of my knowledge and belief formed after a reasonable inquiry.

Dated: November 5, 2010  
Washington, D.C.

/s/ Nicole E. Erb

Nicole E. Erb

**WHITE & CASE** LLP

701 Thirteenth Street, N.W.

Washington, D.C. 20005

Telephone: + 1 202 626 3600

Facsimile: + 1 202 639 9355

*Attorney for Amicus Curiae*

*The Hashemite Kingdom of Jordan*