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INTERNATIONAL COMMERCIAL LAWYERS

**The QFC Civil and  
Commercial Court:  
The Essentials**

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**Summary**

This Guide to the Qatar Financial Centre (QFC) is an introduction to the QFC and the QFC Civil and Commercial Court (the Court): what the Court does, how it functions and how one commences, conducts or responds to claims.

This Guide also outlines the history of the QFC, its mission and genesis as well as the legal framework in which the QFC operates.

The QFC includes the QFC Authority, a Regulatory Authority, a Regulatory Tribunal and the Court. This Guide outlines the workings of each body and its members.

Special attention in this Guide is given to the Court, which is a Qatari court. The legal principles by which the Court works, its procedures and structure are explored in this Guide.

The previous cases of the Court are referred to as well as the basis for the Court's jurisdiction, operating as it does on an adversarial advocacy approach, as reflected in the English common law system.

This outline of the workings of the Court when processing a claim should assist anyone intending to commence or respond to a claim at the Court. The Guide takes into account the Regulations and Rules of Civil and Commercial Pleading Procedures of the Court (the Regulations), which outline the jurisdiction of the court, civil procedure of its cases and the Court's Constitution. We understand that the Regulations have been recently issued by the Council of Ministers in September 2010.

## **Introduction – Who’s Who**

### **The QFC**

- The QFC was founded in 2005 as a financial and business centre for international financial services. The QFC consists of the QFC Authority, the QFC Regulatory Authority, the Regulatory Tribunal and the Court.
- The QFC is an independent statutory regulatory body which authorizes and regulates financial service business in or from Qatar.

### **Legislative Underpinnings of the QFC**

- The QFC is established by Art 8 (3) of the *Qatar Financial Centre Law* (Law No.7 of 2005), as amended by Law No.2 of 2009<sup>1</sup>. According to Article 5 of this law, the objectives of the QFC are:
  1. to establish, develop and promote the QFC as a leading location for international finance and business designed to attract international banking, financial services, insurance businesses, corporate head office functions, as well as other business;
  2. to participate, in consultation with the Regulatory Authority and the Appeals Body as may be appropriate, in the establishment and maintenance of an appropriate legal and regulatory regime to govern the QFC and activities lawfully conducted within it or conducted outside it by persons, companies or entities established within it;
  3. to ensure the QFC, including without limitation the QFC Institutions, have adequate finance or are able to obtain adequate finance, so that they can finance their respective activities without undue difficulty, and are financially stable;
  4. to act in accordance with and promote international best practice and to eliminate bureaucracy to the maximum extent possible; and
  5. all other things reasonably considered by it to be necessary, desirable or appropriate to achieve, further or assist in relation to any of the above objectives.

### **The QFC Regulatory Authority**

- The QFCRA is an independent body which regulates financial business in or from Qatar. The regulations are based on international legal principles.
- Issues covered include banking, insurance, derivatives, securities and Islamic finance.

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<sup>1</sup> [http://www.complinet.com/qfcra/display/display.html?rbid=1557&element\\_id=2](http://www.complinet.com/qfcra/display/display.html?rbid=1557&element_id=2)

### **The QFC Regulatory Tribunal**

- The QFCRT decides appeals from the QFCRA decisions and from other QFC authorities.
- The members of the tribunal are<sup>2</sup>:
  - o Sir William Blair, chairman
  - o Michael Thomas QC
  - o Professor Francis Gianviti
  - o Michael McKenzie CB, QC
  - o Malik R. Dahlan (special advisor)
  - o Judge Eugene Cotran
  - o Clare McGuire

### **The Civil and Commercial Court**

- The Court was established by Article 8(3) of the Qatar Financial Centre Law (Law No. 7 of 2005), as amended by Law No. 2 of 2009 (“the Law”).
- In the *Silver Leaf* case 2009, an issue as to the requirement for gazetting the amended law was raised. Law No. 2 of 2009 had not been gazetted until 23 April 2009, with the result that the actual date on which the Court had jurisdiction was the 24 May 2009 (28 days after the law had been gazetted).
- The Court is not subject to appeal pursuant to the Law.
- The members of the Court are<sup>3</sup>:
  - o Lord Woolf of Barnes, President of the Court
  - o Justice Aziz Ahmadi
  - o Lord Cullen of Whitekirk
  - o Sir Peter Gibson
  - o Sir Philip Otton
  - o Barbara Dohmann QC
  - o Ronald Sackville
  - o Michael McKenzie CB, QC
  - o Malik R Dahlan (special advisor)
  - o Judge Eugene Cotran
  - o Clare McGuire

### **A Qatar Court**

- Proceedings before the court are in English and Arabic. The Court has emphasised in the *Silver Leaf* case that it is a Qatari institution, giving effect to Qatar and English law principles where applicable, and operating on the basis of best international practice. Its interpretation of the Qatari legislation takes into account the context in which the statutory language appears. The Court works with English translations of Arabic texts, giving special attention to legislative intent<sup>4</sup>.

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<sup>2</sup> <http://www.qfctribunal.com/members.php>

<sup>3</sup> <http://www.qfccourt.com/members.php>

<sup>4</sup> See *QFCA v Silver Leaf*: <http://www.qfccourt.com/resources/QFCJ%20Judgement%20-%20200001%202009%201%20June%20FINAL.pdf>

**Structure of the Court**

- The Court has two circuits, a first instance circuit and an appeal circuit. Each circuit comprises of three judges. Decisions of the appeal circuit of the Court will be final.
- The appeal circuit of the Court also operates as the appellate court for challenges to judgments of the Regulatory Tribunal.

**Previous Cases**

- The Court has so far dealt with two cases:
- The *Silver Leaf* case<sup>5</sup>: an application for winding up the *Silver Leaf Capital Partners* due to insolvency and irreconcilable differences among the directors.
- *Omara v Al Mal Bank* case<sup>6</sup>: it was found that Mr. Omara had been wrongfully dismissed by Al Mal Bank.
- Judgments of the Court can be found on the Court's website:  
<http://www.qfccourt.com/Judgement.php>

**An Adversarial Process**

- The method of litigation at the Court is adversarial, practised in common law systems such as England, India and the United States of America.
- Adversarial litigation means that each advocate represents each party by making written and oral submissions, while the court's role is to ensure proceedings are fair and to determine the decision on the competing arguments from the evidence brought before it. This is different from the inquisitorial system found in many civil law jurisdictions (such as France or Germany), in which the court is pro-actively engaged in the process of seeking evidence and investigating the facts. The non-QFC courts in Qatar operate on the inquisitorial basis given the fact that Qatar is rooted in the civil law tradition.

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<sup>5</sup> <http://www.qfccourt.com/resources/QFCJ%20Judgement%20-%200001%202009%201%20June%20FINAL.pdf>

<sup>6</sup> <http://www.qfccourt.com/resources/English%20Judgement%20-%20Case%20No%20001%202010.pdf>

## **Civil Procedure**

### **Sources of Procedure:**

- Parties wishing to bring a claim in the Court are advised to study the Court Regulations.

### **Jurisdiction of the Court**

- Under the QFC law No. 7 of 2005, Article 8<sup>7</sup> and under section 9 of the Regulations, the Court has jurisdiction over:
  - o Civil and commercial disputes arising from transactions, contracts, arrangements or incidences taking place in or from the QFC between the entities established in the QFC.
  - o Civil and commercial disputes arising between the QFC authorities or institutions and the entities established in the QFC.
  - o Civil and commercial disputes arising between entities established in the QFC and contractors and employees of such parties, unless the parties agree otherwise.
  - o Civil and commercial disputes arising from transactions, contracts or arrangements taking place between entities established within the QFC and residents of the State, or entities established in the State but outside the QFC, unless the parties agree otherwise.
- Hence it would appear that the Court has jurisdiction over any civil or commercial disputes involving a QFC licensed body, irrespective of the location of the party to the dispute, within or without Qatar provided they are dealing with a Qatari party.
- The Court will also take into account an expressed agreement of the parties that the Court is to have jurisdiction. Any issue over whether a dispute falls within the jurisdiction of the Court will be determined by the Court. There is no precedent on this self-governing competence yet, and it is unclear how far the Court will extend its jurisdiction.
- The jurisdiction of the Court is still in the process of being defined. The above considerations are likely to be supplemented and amended over time.

### **Rights of Audience**

- ***Case-by-Case Determination.*** The presiding judge of the Court has a discretion to decide who has rights of audience. Where no direction has been made, any qualified lawyer who is entitled to appear before the superior courts of Qatar or of any other jurisdiction has rights of audience.

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<sup>7</sup> [http://www.complinet.com/qfcra/display/display.html?rbid=1557&element\\_id=2](http://www.complinet.com/qfcra/display/display.html?rbid=1557&element_id=2)

### Applicable Law

- The Court will apply the QFC law and the QFC Regulations. Parties also may agree on the applicable law, which the court will accept unless this would be inconsistent with the public policy of Qatar. The Court will at all times apply all consumer protection provisions of the QFC Law and the QFC Regulations.

### Powers of the Court

- The Court has been invested with powers to determine the case, in particular it has the power to make orders to manage the case, require parties to take steps towards settlement, admit evidence in matters of fact and expert, receive evidence on oath or affirmation, require a party to produce an item or document, make orders as to costs, grant relief, damages, injunctions, specific performance, declaratory relief, restitution, disgorgement of profits, accounting and payment of interest.

### Sequence of Events

Under the Regulations the general sequence of events in a claim will be:

1. Issue of a claim form
2. Service of claim form on the Respondent
3. Service of a defence by the Respondent
4. Reply to the defence by the Claimant (optional)
5. Trial directions given by the Court
6. Disclosure
7. Witness statements
8. Experts' reports
9. Listing for trial
10. Trial
11. Judgment
12. Enforcement

### Bringing a Claim

- ***Giving Notice to the Court.*** To bring a claim to resolve a dispute, the party should give as much notification of this to the Registrar of the Court as is practical. The notification should be in writing (unless the application is so urgent that this is not possible), and should summarise the nature of all the matters that the party wishes the Court to resolve.
- ***Contacting the Registrar.*** The Registrar can be contacted as follows:

**Mr. Michael McKenzie QC**

**E-mail: registrar@qfcj.org.qa**

**Telephone: +974 4496 8360**

**Telephone: +974 4496 8359**

**Fax: +974 4496 8362**

**14th Floor, Qatar Financial Centre**

**West Bay, PO Box 22989, Doha, Qatar**

- ***The Claim Form.*** The claim form must be in writing. It should identify:
  - o The parties to the dispute;



- The nature of the dispute, any facts relied on and identifying any important documents which should be attached;
- The basis for the Court's jurisdiction (see above);
- The legal basis for the claim, especially any QFC legislation relied on, which can be found on the QFC's website<sup>8</sup>;
- The relief or remedy requested;
- A claim form is valid for service on the Respondents for 4 months from the date of stamping at the Registry.
- ***Serving the claim form on the Respondents.*** The claim form and any other document may be filed by recorded mail, personal service, fax or any method agreed between the parties or directed by the court. Electronic service is admissible only in addition to, and not instead of these methods of service. No permission is required to serve a claim form on a party outside of Qatar; however it is the Claimant's responsibility to ensure that the claim form is served in accordance with the rules for service applicable to the country concerned.

### Responding to a Claim

- ***Defence.*** Upon receiving notice of an application of a claim brought against oneself in the Court, one must respond to this **in writing within 28 days**. The Response should go out to the Registrar and to all parties to the application.
- ***Contents of the Defence.*** The defence should contain:
  - Any facts relied on, and any important documents relied on should be attached; and
  - A certificate signed by the respondent stating that the facts set out are true.
- ***Contesting the Jurisdiction of the Court.*** Alternatively, the Respondent may contest the jurisdiction of the court for the dispute. To do this, the Respondent must notify the Registry and the Claimant within 14 of service of the claim form in writing.

### Responding to the Defence

- A claimant may reply to the respondent's defence. Filing further statements of case requires permission from the Court.

### Filing Documents at the Registry

- Any document, such as notice contesting the jurisdiction of the Court, which is to be filed at the Registry of the Court must be filed by post, fax or in person. Electronic filing is allowed only in addition to, not instead of, filing a hard copy of the document.

### Directions and Court Procedures

- ***Generally.*** Directions of a procedural nature may be given by a single Judge or by the Registrar. Upon the decision of the Court, directions can be dispensed with. Directions hearings can also be held by phone (as in the *Omara* case).
- The Court may order case management directions on the application of a party or of its own initiative. Such applications will normally allow parties to make representations in relation to these directions.

<sup>8</sup> <http://www.complinet.com/qfcra/display/index.html>

- **Other.** Before trial, many other motions and issues may arise, such as amendments, requests for further information, joinder of parties, interim applications for freezing injunctions, search orders, summary judgment, strike out, discontinuance, stay of procedure, interim payments or security for costs.

### Disclosure and Evidence

- **Generally.** Each party will be required to disclose to the other party all documents or classes of documents on which the party relies. Further, each party is entitled to request disclosure of all or any relevant and specified documents or classes of documents from any other party.
- **Directions.** The Court may order specific directions for certain documents to be disclosed, that certain documents need not be disclosed and/or set a timetable for disclosure.
- **Privilege.** The Court's Regulations do not derogate any rights relating to privilege.
- **Experts' Reports.** Scientific and technical issues may require an expert. Calling an expert witness must be permitted by the Court. The Court may appoint an expert or assessor to assist in its determination of the case. An expert's paramount duty is to assist the Court on matters within his own expertise.

### Pre-Trial and Trial

- **Listing for Trial.** The parties will be notified by the Registrar as to when and where any hearing will take place. At least 14 days' notice will be given.
- **Directions.** The Court may give directions as to venue, language, length, timing, extent of written and/or oral submissions or adjournment. The Court may dispense with the oral hearing of any submission.
- **Trial.** The purpose of a trial is to determine a dispute between the parties. Trial bundles containing all relevant documents must be prepared and given to the judges, skeleton arguments and reading lists must be drawn up and supplied. Witnesses must be given notice and if reluctant to attend may be summoned to the Court. Some witnesses may give evidence by deposition or video link.

### Documents for Trial

- **Skeleton Arguments.** This is a summary of each party's arguments in the case with references to documents, evidence, witnesses and legal provisions. This should be provided to the Court in advance. They should not exceed 50 pages.
- **List of Issues.** This should be drawn up by the parties and agreed during the pre-trial review with the Court. This is a list of contentious points which the parties require the Court to decide.

### Settlements and Judgments

- **Settlement.** Very commonly, civil claims are settled amicably between the parties before a judgment or even trial is reached. The parties must record their settlement so that it can be enforced by the Court.

- **Judgments.** These are the decisions reached by the Court and are handed down in English and in Arabic. They outline the conclusions reached and the reasons for the decision.
- **Judgment Orders.** A judgment may include an order for a party to do or not do something. This can be enforced by the Court.
- **Money Judgment.** A judgment for the payment of money must be complied with within 14 days of the judgment unless the Court sets a specific date.
- **Enforcement.** The Court's judgment is enforced like any other judgment in Qatar. All relevant and competent authorities in Qatar will give effect to a judgment of the Court. The Court can also enforce the judgment by levying a fine, making an order and/or referring the matter to another agency of the state.
- **Failure to Comply.** A party is in contravention of judgment if he without excuse fails to comply with an order or decision of the Court, fails to attend a hearing having been required to be present, hinders another person from doing so or engages in conduct that is intended to obstruct the Court, specifically by destroying documents, giving false or misleading information or influencing witnesses or judges.

### **Appeals**

- If an appeal is sought, written notice must be filed with the Registry with 60 days of the date of judgment. For an appeal there must be substantial grounds for considering that a judgment or decision is erroneous and there is a significant risk that it will result in serious injustice. An appeal is a review of a decision, not a rehearing of a case.

### **Costs**

- The Court will order costs as it thinks fit. The general rule is that the unsuccessful party will bear the other party's costs.

### **For further information contact:**

**Office@mcnairchambers.com**

**Tel: 00-974-6612-6620**

This Guide is not intended to provide legal advice. Any party concerned with proceedings before the Court should check with the QFC Court Registrar to ensure that they are aware of the latest practice and procedure.