

Not-so-Bleak House: The Qatar Financial Centre Courts revisited



The improvement in relations between Qatar and other Arab states has seen greater interest in cross-border commercial dispute resolution. At the same time, GCC parties negotiating dispute resolution clauses in agreements with Qatari counterparties are again considering making those agreements subject to the common law courts of the Qatari Financial Centre ('the QFC'), namely the Qatar International Court and Dispute Resolution Centre ('QICDRC'), also known as the QFC Courts. In this article, we take a look at the QFC Courts and their background and development over the past few years.

Overview

By way of a recap, the QFC was founded in 2005 as a business and financial centre located in Doha, providing legal and business infrastructure for financial services. As with the Dubai International Finance Centre and the Abu Dhabi Global Market, the QFC has a financial Regulatory Authority and a Regulatory Tribunal alongside the QFC Courts.

The Courts themselves have two tiers, the First Instance and Appellate Circuits, which hear civil and commercial disputes falling within their jurisdictions. There is no dedicated small claims track for disputes

but the Employment Standards Office ('the ESO') administers QFC employment law and regulates and supervises all aspects of employment within the QFC, including investigation of any contravention of the law and its enforcement. The ESO is supervised by the Regulatory Tribunal, itself an independent judicial body. In *Abdulla Jassim Al Tamimi v Qatar Financial Centre Authority, Qatar Finance and Business Academy and Employment Standards Office* [2018] QIC (A) 3, inter alia the QFC Appellate Circuit declined permission to appeal a first instance decision on the Courts' jurisdiction and found an employment claim in the Courts was barred on the grounds of abuse because the claimant brought a complaint in the ESO and Tribunal before a similar claim in the First Instance Circuit.

Proceedings are adversarial rather than inquisitorial, but unlike the ADGM and DIFC Courts, the QFC First Instance Circuit has three judges for every case. The QFC Court bench is drawn from very distinguished jurists not only from Qatar and the traditional common law powerhouses like England and Singapore, but also from Kuwait and Cyprus; the current President of the Court is the former Lord Chief Justice of England and Wales, the Rt. Hon. The Lord Thomas of Cwmgiedd.

The QFC Court Rules are short and succinct; they broadly follow the English Civil Procedures Rules like the DIFC and ADGM. There are key differences, however. For instance, the QFC Court Rules make no express provision for judgment in default of a defence or acknowledgment of service but claimants can apply for summary judgment at that stage instead.

Unlike the DIFC and ADGM Courts, which operate solely in English, the QFC Courts expressly provide in rule 3.2 of the QFC Court Rules that parties shall be entitled to conduct proceedings in Arabic if they wish to do so. In *John and Wiedeman LLC v Trimoo Parks LLC and ors* [2021] QIC (F) 5, the Court rejected the defendants' contention that the use of the English language in the claimant's pleadings and filed documents rendered the proceedings null and void, and even went so far as to rule that each party was entitled to conduct its case in either English or Arabic as it chooses.

The QFC Court makes ample provision for remote or online hearings and has a developed IT infrastructure and appropriate procedural rules.

The Court also has all the advantages of a common law court as a seat of arbitration, and the QICDRC offers facilities for dispute resolution. There is no dedicated arbitral institution akin to the DIFC-LCIA or the ADGM-ICC. The QFC Court can operate under its own arbitration law, QFC Arbitration Resolution Regulation (QFC Regulation No. 8), or the law applicable in Qatar (Law No. 2 of 2017 Promulgating the Civil and Commercial Arbitration Law), which closely follows the UNCITRAL Model Law.

Governing law, jurisdiction and enforcement

The QFC has its own domestic civil and commercial law that overlaps and dovetails with the Constitution of the State of Qatar, the Qatar Central Bank Law, the Qatar Financial Centre Law and the QFC Regulations and Rules. The QFC Regulations establish the practical legal framework and provide a suite of governing laws, for example governing Financial Services, Companies, Anti-Money Laundering, Contract, Insolvency, Data Protection, Limited Liability Partnerships, Arbitration, the Regulatory Authority, and Employment. The jurisdiction of the QFC Court is established by QFC Law No. 7 of 2005 ('the QFC Law'), Article 8 of which, at subsection 3(c), establishes that the First Instance Circuit has jurisdiction to hear civil and commercial disputes in the following circumstances:

1. arising from transactions, contracts, arrangements or incidences taking place in or from the QFC between the entities established therein;
2. arising between QFC institutions and other entities established therein;
3. arising between entities established in the QFC and contractors therewith and employees thereof, unless the parties agree otherwise;

4. disputes arising from transactions, contracts or arrangements taking place between entities established within the QFC and residents of Qatar, or entities established in Qatar but outside the QFC, unless the parties agree otherwise.

The QFC Court Rules also provide for an 'opt in' jurisdiction at Article 9.2, providing that "*consistently and in accordance with fundamental international principles and international best practice, the Court will take account of the expressed accord of the parties that the Court shall have jurisdiction*". However, the Court's jurisdiction is not expressed to be exclusive in either the QFC Law or the QFC Court Rules.

Previous jurisprudence of the Court established a number of principles. It is well settled that Article 8.3(c)(3) of the QFC Law confers jurisdiction on this Court where one of the parties to a civil or commercial dispute is an entity established in the QFC and the other party is a contractor with it, even where that other party is established elsewhere, including in Qatar outside the QFC: *Daman Health Insurance Qatar LLC v Al Bawakir Company Ltd* [2017] QIC (F) 2. In that case, the claimant brought a claim against a defendant for unpaid insurance premiums. Although the claimant was a QFC incorporated entity, the defendant was incorporated in Qatar outside the QFC. The agreement between the parties contained no terms setting out which court would have jurisdiction in the event of a dispute. The QFC Court found that Article 8.3(c)(4) granted jurisdiction to the Court in disputes between QFC and non-QFC parties and established a presumption that the Court would have jurisdiction unless otherwise agreed, expressly or implicitly, to an alternative.

In recent cases, the First Instance Circuit Court has been willing to dismiss claims where it has clearly lacked jurisdiction, for instance in *Amberberg Limited v Aycan Richards* [2021] QIC (F) 1, where none of the statutory grounds were fulfilled. In *Jennifer O'Sullivan v Ernst & Young Middle East & North Africa* [2020] QIC (F) 8, the First Instance Circuit declined jurisdiction on the grounds that the claimant's claim was properly against a different party located outside the QFC, and that in any event was barred by a non-exclusive jurisdiction clause in favour of courts in the United Kingdom; and in *Oussama Assaad v Nomura International PLC* [2018] QIC (F) 8, the First Instance Circuit struck out parts of the claimant's reply relating to a dispute between the claimant and the defendant's DIFC branch, but allowed the remainder of the claim relating to the QFC to continue.

In *Aycan Richards v (1) Nigel Thomas Howard Perera and (2) International Financial Services Qatar LLC* [2020] QIC (F) 17 the First Instance Court found that a term that "the Qatari courts will have exclusive jurisdiction with regards to all matters related to this Agreement" was wide enough to include both the QFC and non-QFC courts of Qatar and was insufficient to oust the QFC Court's jurisdiction, that was otherwise founded in the identity of the second defendant as a corporate entity established in the QFC. In *Badri & Salim Elmeouchi LLP v Data Managers International Ltd* [2020] QIC (F) 1 the Court established that being licensed by the QFC and having a presence in the QFC was enough to make it an entity "*established*" in the QFC even if it was established elsewhere; and the jurisdiction under Article 8(3)(c)(3) did not require both entities to be established in the QFC, only one was. Permission to appeal the decision was refused.

The QFC Courts have also exerted their jurisdiction in extraterritorial ways. In a relatively recent case ([2019] QIC (A) 3), the QFC Appellate Circuit upheld the decision of the First Instance Circuit relating to a QFC Regulatory Authority Notice served on a financial institution and requesting the production of documents and information held by any of the its branches or offices, including those based outside Qatar and its head office in the UAE. The respondent handed over documents held within its QFC branch but not elsewhere, including documents held in its headquarters located outside of Qatar. The Regulatory Authority sought orders to compel disclosure, which were granted by the First Instance Circuit. The Appellate Circuit considered five grounds of appeal, including the jurisdiction of the Regulatory Authority to commence an investigation into matters that occurred outside the QFC and to issue the Notice; whether the scope of that jurisdiction extended to the QFC branch or the whole institution as a body corporate and, if the latter, whether it extended to requiring disclosure of documents held outside Qatar; the validity of the Notice; the jurisdiction of the First Instance Circuit in ordering compliance with the Notice; and the

exercise of the First Instance Circuit's discretion when doing so.

On the first point, the Appellate Circuit confirmed that the jurisdiction of the Authority extended to making enquiries into matters that occurred outside the QFC, and to order the disclosure of documents held outside the Centre, because of the wording of provisions in the QFC Law and Regulations and the QFC Financial Services Regulations. Relying on DIFC Court jurisprudence, the Appellate Circuit found that the scope of jurisdiction extended to the whole financial institution, applying the principle that a branch is no more than a part of the larger corporation, which was the regulated entity for the regulated activities carried out through its branch in the QFC. The branch was only a separate entity for certain, limited purposes which did not apply in this case. Third, the Notice had been validly served, and the CFI had had jurisdiction to make the disclosure order. Finally, the CFI had exercised its discretion validly, *inter alia* because of the scope of the Notice and the documents and information sought were required for a proper and authorised investigation, although it found some of the further documents sought may be beyond the Notice requirements and so remitted that issue back to the CFI.

The QFC Court has also developed methods of enforcement. Under rule 34.3.3 of the QFC Court Rules, the QFC Court is allowed to enforce its own judgments, decisions and orders by referring the matter to a relevant competent agency or authority of the Qatari state. This provision allows parties to be creative in their enforcement mechanisms: not only can judgment creditors seek enforcement in the local courts, they can also approach bodies like the Qatar Central Bank, which is what happened in the financial institution case referred to above, where the QFC Regulatory Authority Notice was enforced through the QCB. This is not restricted only to regulatory matters: in *Protech Solutions LLC v Mohd Rashid Al Shourouqi* [2016] QIC (F) 2, the first instance court entered summary judgment in the claimant's favour following the dishonouring of a cheque issued by the defendant. The claimant was able to enforce the QFC Court judgment, of QAR 2,752,000 (around US\$756,000), following a referral by the Court to the QCB which froze the defendant's assets to the value of the judgment debt.

The future

The published judgments of the QFC Courts show ever-increasing numbers of disputes reaching advanced stages, with a healthy number of appeals, and a range of disputes covering construction, insurance, general commercial and employment, amongst others. Recent cases of note include a trio involving determinations of demands made against performance bonds and advance payment guarantees: (1) *Obayashi Qatar LLC* (2) *HBK Contracting Co WLL v Qatar First Bank LLC* [2020] QIC (F) 5 at first instance; and then *Leonard SPA v Doha Bank Assurance Company LLC* [2019] QIC (F) 6 and [2020] QIC (A) 1 at first instance and on appeal respectively. It is highly likely that the Court will continue to see growth in construction- and banking-related disputes, but a survey of cases showed, in 2019, a breadth of disputes from debt recovery to insurance, regulatory actions, trusts, employment and contempt of court. The variety and number of cases will only increase as ever-greater numbers of companies open offices within the QFC.

The QFC will also develop its alternative dispute resolution offering, offering parties a high-quality venue for arbitration and mediation sessions. For instance, in June 2019, the QICDRC entered into a co-operation agreement with the International Centre for the Settlement of Investment Disputes ('ICSID') in order to promote the facilitation of ICSID disputes in Qatar.

Given Qatar's importance in the GCC, not least as an economic powerhouse and with the 2022 World Cup reaching its final stages before kick-off, the QFC Courts are growing in importance and have a clear place alongside the other common law commercial courts of the GCC.

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*I choose **Bleak House** because, unlike the progress of events in that story, the QFC Courts are a forward-looking model of expeditious and technology-enhanced dispute resolution, the opposite of the Court of Chancery likened by Dickens to “being roasted at a slow fire...stung to death by single bees...drowned by drop.*