

# Kluwer Arbitration Blog

## Challenges to the Jurisdiction of the QFC Court in Qatar

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Similar to other countries in the region, Qatar's primary legal system is civil law based. In 2005, the Qatar Financial Centre ("QFC"), an offshore jurisdiction, was established in Qatar by virtue of [Law No. 7 of 2005 as amended by Law No. 2 of 2009](#) ("QFC Law"). This post sheds light on the jurisdiction of the QFC Court, with particular emphasis on its relationship to the local Qatari courts, and explores the implications of the QFC Court's decisions, including the recent case of *C v D*, where a Note on Ruling was issued confirming the QFC Court's jurisdiction in a Qatar seated arbitration

### The QFC

The QFC is home to more than [1300 companies](#) that are currently registered there. The QFC Law provides the basic structure of the QFC and establishes the QFC Authority, the QFC Regulatory Authority and the Qatar International Court and Dispute Resolution ("QICDRC"). In turn, the QICDRC consists of the Civil and Commercial Court of the QFC ("QFC Court") and the QFC Regulatory Tribunal. The rulings of the QFC Court are issued in the name of His Highness the Emir of Qatar and are regularly published in English and Arabic on the QICDRC's website as well as on LexisNexis.

The jurisdiction of the QFC Court is stipulated in article 8(3)(c) of the QFC Law as well as under article 9.1.4 of the [QFC Court Regulations and Procedural Rules](#) ("Rules"). These provisions provide that the QFC Court has jurisdiction over civil and commercial disputes in four distinct scenarios: (i) transactions, contracts, arrangements or incidences taking place in or between entities established in the QFC; (ii) matters between the QFC authorities or instructions and entities established therein; (iii) matters between entities established in the QFC and contractors therewith and employees thereof, unless the parties agree otherwise; and (iv) 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.

From January 2020 to June 2021, jurisdiction challenges were raised in 10 cases before the QFC Court, which were addressed by way of preliminary judgments which it considered would "most expeditiously and effectively be addressed by consideration of the documents filed by the parties,

without the need for an oral hearing.”<sup>1)</sup> The QFC Court rendered its decisions in 9 of these cases while in the tenth case of *C v D*, it released a note on its ruling. The unsatisfied respondents brought their cases before the appellate division of the QFC Court in two of these cases.

### **Local Qatari Courts vis-à-vis QFC Court**

The jurisdiction of the QFC Court is not based on the parties’ agreement or preference. It is stipulated in the QFC Law and the Rules. In *Ahmed Mohammed Youssef Hassan v Arab Jordan Investment Bank (Qatar) LLC*, the claimant sought an order from the QFC Court to recover documentation held by the respondent, a QFC entity, which was ordered to be provided to the claimant by the local Qatar Court of Appeal. While the QFC Court dismissed the case for lack of jurisdiction, it offered some interesting observation on the relationship between the local Qatari courts and the QFC Court.

In particular, the QFC Court noted that where states have separate but parallel jurisdictions, legislation may exist for the parties facing ongoing legal proceedings in one jurisdiction for assistance in legal proceedings pending before the courts in the other jurisdiction. As no such legislation exists in Qatar that provides for the cooperation between the local Qatari courts and the QFC Court, they called for this issue to be considered by the legislative authority of Qatar, and rightfully so. To provide meaningful access to justice and enhance the judicial system in Qatar, the two court systems must cooperate and work in tandem with each other. In the first instance, this could even be achieved by a joint judicial committee consisting of representatives from both the local Qatari courts and the QFC Court. The committee could render binding decisions on matters which require cooperation between the two court systems. The committee could also decide on which court system should have jurisdiction in cases where there are contrary arguments for both.

### **QFC Court has Jurisdiction where Legal Services Provided by QFC Entity**

In *John and Wiedeman LLC v Integrated Intelligence Services and Trading LLC*, the claimant was a QFC-licensed law firm claiming legal fees for services rendered to a non-QFC company. The respondent challenged the jurisdiction of the QFC Court, on the basis of article 10 of the QFC Law, and argued that legal services were not among the activities that business were permitted to operate within the QFC. In its judgment, the QFC Court relied on article 8.3(c/4) of the same law to hold it had jurisdiction over the matter, as the subject matter was a civil dispute arising between an QFC entity and one established elsewhere in Qatar. The legal services provided by the law firm were considered to fall within the permitted business activities to be carried out within the QFC.

In *Badri and Salim Elmeouchi LLP v Data Managers International Limited*, a claim was brought by a QFC-licensed law firm which operated from its offices located in Lebanon and Qatar, against its Lebanese client, for the recovery of its legal fees. The law firm’s client (respondent in this case) objected to the jurisdiction of the QFC Court on the basis that there was no agreement (on jurisdiction) for the parties to litigate their dispute before the QFC Court. This, the respondent argued, was especially given that the legal services were provided entirely from the law firm’s office in Lebanon. In response, the law firm considered that the QFC Court had jurisdiction over the dispute irrespective of where the parties were domiciled. Agreeing with the law firm, the QFC

Court held that it had jurisdiction on the basis that the law firm was licensed and had a presence in the QFC, notwithstanding that it also had an office elsewhere.

If the respondent's contention in this case was accurate, that the legal and fiduciary services were carried out by the associated Lebanese law firm of the claimant, then this raises a number of interesting points that the QFC Court, unfortunately, did not address. In particular, where the substantial services of a QFC entity is rendered from a foreign jurisdiction, care needs to be taken that any decision issued by the QFC Court is not contradictory to the rules and regulations of the professional legal body in that jurisdiction where the legal services were rendered.

### **QFC Court is a Qatari Court**

In *Aycan Richards v (1) Nigel Thomas Howard Perera and (2) International Financial Services Qatar LLC*, the challenge of the respondents was based on the parties' dispute resolution clause which provided that "Qatari courts" would have exclusive jurisdiction over the matter. The respondents argued that the reference to "Qatari courts" expressly excluded the QFC Court.

In its judgment, the QFC Court considered that as a matter of general language, it was clearly a Qatari court and relied on Article 3.2 of the Rules for this, which states that "[i]t is recognised that the Court is a court of Qatar". The QFC Court held that the reference to "Qatari courts" could not only be a reference to the local Qatari courts. It reasoned that even if the reference to the governing law being "laws of the State of Qatar" was to the national laws of Qatar, it still did not follow that the reference to "Qatari courts" meant the local Qatari courts. Based on this and their observation that there was nothing elsewhere that explicitly excluded the jurisdiction of the QFC Court, it held that it had jurisdiction over the matter.

This decision essentially expands the ambit of the QFC Court's jurisdiction; it envisages that the QFC Court can decide on matters governed by the local Qatari laws. How this could be achieved in practice ought to be explored and decided by way of the joint judicial committee proposed above.

### **QFC Court Has Jurisdiction Over Arbitrations Seated in Qatar**

Following the enactment of the *Qatar Arbitration Law* in 2017, parties in Qatar seated arbitrations were expressly allowed to choose either "[t]he Civil and Commercial Arbitral Disputes Circuit in the Court of Appeals" (i.e., the local Qatari courts) or "[t]he First Instance Circuit of Civil and Commercial Court of the Qatar Financial Centre" (i.e., the QFC Court) as the Competent Court in their arbitration.

In the recent case of *C v D*, none of the parties were established in the QFC. Their contract provided for arbitration under the LCIA arbitral rules, QICDRC in the QFC as the seat and Qatar as the venue of the arbitration. Upon the application by a party to obtain an interim relief by way of an injunction, the QFC Court stated, in a March 2021 Note on Ruling, that it "was satisfied that it had jurisdiction to deal with the application, in circumstances in which an arbitral tribunal could not yet act, or act effectively".<sup>2)</sup> In this case, the QFC Court confirmed that it had jurisdiction to act as the supervisory courts in Qatar seated arbitrations where invariably, the Qatar Arbitration Law applies.

C v D reiterates the freedom that parties arbitrating in Qatar have, in selecting either the local Qatari civil jurisdiction courts or the common law based QFC Court to have supervisory jurisdiction over arbitrations seated in Qatar. This is irrespective of whether the parties are established within the QFC.

### **Implication for Non-QFC Parties Going Forward**

Based on the above, it appears that the QFC Court has, on the one hand, an absolute or exclusive territorial jurisdiction to hear and determine civil and commercial disputes arising between (i) any entities both established in QFC; and/or (ii) any QFC authority and an entity established in QFC as a default. On the other hand, subject to a contrary agreement between the parties (opt-out), the QFC Court has jurisdiction in disputes which may arise between (iii) any entity established in QFC and a contractor therewith (contract for services with a client) or any employee thereof (contract of labour) and/or (iv) any entity in QFC and a resident in Qatar or a non-QFC entity, whether in or outside Qatar. It is obvious that the QFC Court's territorial competence was meant to go gradually from absolute to relative and from exclusive jurisdiction to consensual agreement where not both of the parties are QFC registered.

Non-QFC parties, whether established in Qatar or abroad, must exercise particular care when they enter into agreements with QFC-based entities, by using the opt-out mechanism. This is not least because the QFC Law has determined that the QFC Court will ordinarily exercise jurisdiction over contracts that fall within the four exclusive jurisdictional gateways as indicated under article 8.3(c).

Over time, it is hoped that both the court systems in Qatar are linked by way of a seamless mechanism that will allow parties facing litigation in Qatar to avail of the benefits in both the civil law local Qatari courts and common law QFC Court.

*Dr Minas Khatchadourian provided his contributions to this post before his recent and very sad passing. We join the international arbitration community in mourning this great loss. His invaluable contributions to progress international arbitration in Qatar and the wider region will be fondly remembered.*

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## References

- ?1 Ahmed Mohammed Youssef Hassan v Arab Jordan Investment Bank (Qatar) LLC [2021] QIC (F) 7, para 4.
- ?2 Para 3.

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