

QFC CIVIL AND COMMERCIAL COURT

OFFICIAL PRACTICE GUIDE

2011

This Official Practice Guide was prepared by the Judges of the QFC Civil and Commercial Court under the supervision of Justice Lord Cullen. The contents have been approved by the President of the Court.

A THE PURPOSE OF THIS PRACTICE GUIDE

- 1 This Practice Guide is intended to provide parties to disputes and their legal representatives with practical information as to the general approach of the Court and what is expected of them in cases before the Court. Although the Practice Guide is issued under Article 37.2 of the Court's Regulations and Rules of Procedure ("Regulations"), its contents do not have the force of law. However, the Practice Guide may be taken into account by the Court in assessing the conduct of parties to the litigation, for example, when a question of costs arises. The Practice Guide should be read in conjunction with Law No (7) of 2005 as amended by Law No (2) of 2009, and the Regulations.
- 2 The terms of the Regulations are not repeated verbatim below, but the headings refer to the principal articles of the Regulations which are relevant.
- 3 Under Article 37.2 the Court may also issue Practice Directions. This Practice Guide and any Practice Directions may be revised from time to time in the light of practical experience in cases.
- 4 The Laws and Regulations, along with the current Practice Guide and Directions, the Court's judgments (all in English and Arabic), and information about the members of the Court, can be found on the website www.qfccourt.com.

B THE COURT

1. The QFC Civil and Commercial Court was established as a court of the State of Qatar by Law No (2) of 2009, amending Law No (7) of 2005.
2. The Court was set up as a means of providing independent and transparent judicial mechanisms for the resolution of disputes, with the aim of attracting international financial services and other business and professional entities to Qatar and providing such entities with the opportunity to have their disputes resolved by judges experienced in dealing with financial and commercial matters. Judges of the highest international reputation were appointed to be members of the Court. Lord Woolf was appointed as its first President. A list of the current Judges of the Court can be found on the website.
3. The Court comprises, in accordance with the Law No (2) of 2009, two Divisions, a First Instance and an Appellate Division. Each of the judges is able to sit in either

Division of the Court. Proceedings will be heard and determined at first instance and on appeal by three judges.

4. The Court began hearing cases in 2009. Its purpose designed premises were opened by HE Sheikh Hamad Bin Jassim Al-Thani, Prime Minister and Minister of Foreign Affairs, on 14 December 2010. The courtroom is equipped with the full range of technology required in a modern court. There are ample facilities for the parties to meet and work.
5. The Regulations were approved by the Council of Ministers and signed by HH Hamad Bin Khalifa Al-Thani, Emir of the State of Qatar, and became binding, on 15 December 2010. Cases are conducted in accordance with the Regulations, the directions of the Registrar, of the judges in individual cases or the President, and the overriding objective in Article 4 of the Regulations, namely to “deal with all cases justly”, which includes ensuring that litigation takes place expeditiously and effectively, and in a manner that is proportionate to the amount involved and the importance and complexity of the case.
6. The Registrar of the Court, subject to the directions of the President and if allocated to conduct particular proceedings the Judges who are allocated to the case, is responsible for the administration of cases before the Court. Forms for use in proceedings before the Court may be obtained from the Registrar and are available on the website. The Registrar may be contacted at Registrar@qfcj.org.qa.
7. The Court also offers services for alternative dispute resolution in a separate part of its premises. These are designed to suit the particular type of dispute. Mediation services will be available prior to and after the beginning of proceedings. The Court will also support and facilitate arbitration under the rules chosen by the parties.

C PRACTICE

1. The jurisdiction of the Court (Articles 9 and 19)

- 1.1 If any question arises as to whether the Court has jurisdiction in a particular case, the Court will proceed on its view as to the answer to that question.
- 1.2 If objection is taken to the Court exercising jurisdiction, the Court expects it to be raised, in accordance with good practice, at the earliest practicable opportunity.

Cause would require to be shown for such a question to be entertained at a later stage.

- 1.3 As is stated in Article 9.4, if the Court considers it desirable or appropriate to do so, it may decline jurisdiction or may refer any proceedings to another court in the State. It may take this course either on its own initiative or as a result of an application by a party. In considering whether or not to refer to another court, the Court will attach importance to whether the parties have consented to it having jurisdiction.
- 1.4 In addition, Article 9.2 states that the Court will take into account the expressed accord of the parties that it should have jurisdiction. Thus the Court may in its discretion accept jurisdiction where the parties by consent request it to do so. Among the considerations to which the Court will have regard in exercising that discretion is whether the dispute between the parties has a connection with Qatar.

2. The powers of the Court (Articles 10, 31 and 33)

- 2.1 Article 10 sets out a number of steps which the Court may take, without prejudice to its power (Article 10.1) “to take all steps that are necessary or expedient for the proper determination of a case.” It has the power to grant a number of remedies, without prejudice to its power (Article 10.3) to grant all such relief and make all such other orders as may be appropriate and just, in accordance with the overriding objective set out in Article 4.
- 2.2 As stated in Article 33.2, the general practice of the Court is to award costs against an unsuccessful party. However, the Court may make a different order if it considers it appropriate in the circumstances to do so.

3. Making, or responding to, a claim or application (Articles 16, 17, 20, 21 and 23)

- 3.1 Any party who wishes to seek the assistance of the Court to resolve a dispute should give as much notice as possible to the Registrar before completing a claim form. This notice should be in writing and sent to the Registrar via email in a letter format in PDF. It should summarise the nature of the matters that the party wishes the Court to resolve. Where this is practical, it should be sent to the

other party or parties involved in the dispute no later than the date on which the Registrar is notified.

- 3.2 As is stated in Article 17, proceedings are commenced by the Registry issuing a claim form which has been completed by the claimant. For this purpose the claimant is expected to include, so far as possible, contact details for the parties and their known legal representatives.
- 3.3 Article 17.3 requires a claimant to set out, among other things; the nature of the dispute, the facts relied on, the legal basis for the claim and the remedy which the claimant wishes the Court to give. Article 17.3 also requires a claimant to attach all documents that are of particular importance to the claimant's case. The claim form should not set out the evidence on which the claimant proposes to rely.
- 3.4 Parties should put forward at the same time all their claims against a defendant which arise out of the same matters.
- 3.5 Article 20.1 states that a defence should indicate whether the claim or any part of it is admitted. To that end the defence should indicate to what extent the facts relied on by the claimant are accepted, or, as the case may be, are disputed.

4. Filing of documents (Article 8, 14, 20, 21, 23)

- 4.1 These articles contain provisions as to filing of documents for various purposes. Parties may take the opportunity to attach other documents as annexures or exhibits. There should be no duplication in the filing of documents. In order to avoid duplication, parties should, so far as possible, employ references to those that have already been filed by a party.

5. Language (Article 3)

- 5.1 The one language that is common to the Judges of the Court is English, so wherever possible the parties should agree at the earliest possible opportunity that this is the language to be used throughout the conduct of proceedings.
- 5.2 However, parties are entitled to conduct proceedings in Arabic if they wish to do so: see Article 3.2. This should be understood as applying also to new documents

which parties file with the Court, such as claim forms, defences, applications, written submissions or supporting affidavits.

- 5.3 Where the parties to a case conduct proceedings in different languages, they are encouraged to agree between themselves at the earliest possible opportunity whether English or Arabic will be used throughout the proceedings in order to prevent delay and misunderstanding.
- 5.4 All translations of documents which have been commissioned by the court will be taken to be accurate.
- 5.5 The Court can conduct oral hearings in English or Arabic (or both) and simultaneous oral translations can be provided.

6. Rights of audience (Article 29) and the representation of parties

- 6.1 A qualified lawyer entitled to appear before a Qatari court or a superior court of any other jurisdiction has a right of audience before the Court.
- 6.2 A certificate or other means of showing appropriate qualifications and good standing on the part of a representative seeking a right of audience may be required by the Court. In any event copies of these should be sent via email to the Registrar at the earliest opportunity, and at least seven days before the date of a hearing as notified to the parties by the Registrar.
- 6.3 It is emphasised that, where a party is legally represented, communications between that party and the Court (as represented by the Registrar), should be through that legal representative and not through the party.
- 6.4 Litigants may appear before the Court in person. However, in the case of a company which is without legal representation, a lay person may be permitted, with the leave of the Court, to appear on the company's behalf if the Court is provided with evidence of proper authority from the company and if the Court is satisfied that the lay representation is in the interests of justice.
- 6.5 In accordance with standard practice in commercial litigation, communications with the Registrar should be copied at the same time to the other party or parties.

7. Management of cases and directions (Articles 15, 22 and 25)

- 7.1 The management of cases in advance of their determination will be carried out by the Court. In accordance with the overriding objective referred to in paragraph 5 under “B. The Court” above, the Court has power to make appropriate directions for the management of cases. Parties will be invited to make submissions as to the directions they request should be made. In accordance with Article 15.4, procedural directions in any case may be given by the Registrar or by one or more of the Judges. Where the Registrar has given a procedural direction or order, any party wishing to challenge it can appeal to the Court, and any such appeal will be by way of an entirely fresh hearing before one or more Judges.
- 7.2 Directions may be given by the Court in writing, or, where appropriate, at a directions hearing. Directions hearings may be held in Doha, or by means of video link or telephone, with the members of the Court and/or parties being outside Doha.
- 7.3 The Court will aim, at as early a stage as is practicable, to fix a hearing date, and set a timetable designed to ensure it is heard on that date. It may determine that summary disposal is appropriate.
- 7.4 As part of case management the Court may give directions including the selection of the issues for hearing or trial. In preparation for a hearing or trial, it may direct the filing of statements (which will normally not be required to be sworn), the reports of experts or written submissions. Parties may also be directed to submit, for agreement and settling by the Court, a list of the points in regard to which they are in dispute.
- 7.5 Parties and their representatives are expected to act reasonably, cooperatively and in accordance with the spirit of this Guide.
- 7.6 In accordance with Article 5 the Court will encourage the parties, whenever it is appropriate to do so, to resolve their disputes by resorting to arbitration or mediation or any other method of alternative dispute resolution (as to which see below under heading 15).

8. Disclosure (Articles 10.2.5 and 26)

- 8.1 There is no general obligation of disclosure of documents. However, as stated in the Articles, the Court has power to order production of documents or material in electronic form. Where there is a dispute as to what should be produced, the Court will act according to the overriding objective, taking into account best international practice. Subject to the need, in exceptional circumstances, to protect the public interest, the privilege attaching to “without prejudice” correspondence and to communications between a party and that party’s legal advisers for the purpose of obtaining giving legal advice will be respected.

9. The applicable law (Article 11)

- 9.1 Detailed provisions governing commercial activities have been enacted as part of the QFC legislation. That legislation (including regulations issued under it) will be applied by the Court unless the parties to a dispute have expressly agreed to apply some other law not inconsistent with Qatari public order law. See paragraph 8 of Schedule 6 to Law No (7) of 2005, as amended.

10. Hearings (Article 28)

- 10.1 Hearings will usually be in public (Article 28.3). They will also be conducted in English (Article 3.2), unless it is agreed between the parties and the Court at the outset of the initiation of the claim that they will be in Arabic.
- 10.2 The time allowed for a hearing, or the evidence or submissions of parties may be limited, as directed by the Court.

11. Evidence (Articles 10.2, and 27)

- 11.1 A witness may be required to give evidence on oath or affirmation (Article 27.6). The witness may choose between taking an oath and making an affirmation. An oath is taken by a witness according to that witness’s religious beliefs. The courtroom has simultaneous translation facilities enabling the interpretation of evidence and oral discussion in court from English to Arabic and vice versa.

- 11.2 The evidence of a witness who is unable to attend court may be taken by video link. Parties who wish a witness to give evidence via video link must consult with the Registrar on the video link arrangements at least seven days prior to the commencement of a hearing, and must take full responsibility for ensuring that the video link at the location of the witness is arranged and is effective.
- 11.3 It is the responsibility of the parties to adduce the evidence, documentary and oral, on which they intend to rely in the proceedings. Except in the very rarest of circumstances, the Court does not call its own witnesses. In general, the examination and cross-examination of witnesses is a matter for the parties or their legal representatives. The Judges may ask questions of witnesses, although this will generally be for the purpose of clarifying the evidence that has been given.
- 11.4 In pursuance of the overriding objective, the general approach of the Court to evidence which a party seeks to lead or to challenge is that technicalities should, where possible, be avoided. Where evidence, whether written or oral, is or may be relevant to an issue before the Court (if it is accepted), the Court will generally admit that evidence. Whether that evidence is credible or reliable, and what weight should be attached to it, will be matters for the Court to determine in the light of argument. The Court will, of course, respect privilege where it arises, and, more generally, will act with due regard to the requirements of natural justice.

12. Judgments (Article 32)

- 12.1 Decisions by the Court will be treated as persuasive precedents in later cases.
- 12.2 The parties may invite the Court, for example, in order to minimise costs, to reach a decision on the papers, without the need for an oral hearing. Unless there are reasons in the interests of justice to require an oral hearing, the Court will normally accede to such a request. However, any judgment will be given in open court.
- 12.3 All judgments of the Court are published on the website in English and Arabic.

13. Enforcement (Articles 6.3 and 34)

- 13.1 The judgments and orders of the Court are enforceable as the judgments and orders of a court of the State of Qatar (Article 34.1). The Enforcement Judge, appointed in accordance with paragraph 17 of Schedule 6 to Law No (7) of 2005, as amended, is primarily responsible for the enforcement of the Court's judgments, decisions and orders (Article 34.5).

14. Appeals (Articles 9.5 and 35)

- 14.1 It should be noted that an appeal to the Appellate Division is subject to the requirement for permission (Article 35.1). The purpose of the requirement for permission is the efficient, economic and effective resolution of litigation, but without causing material injustice. If an appeal is permitted to proceed, it takes the form of review and not a rehearing (Article 35.6).

15. Alternative Dispute Resolution

- 15.1 The layout of the premises has been designed with ADR in mind, including a mediation/arbitration room and ample break-out rooms for the parties. Parties to a dispute are welcome to seek assistance in resolving it irrespective of whether they intend to or could commence court proceedings. When the Court considers this is appropriate, a reasonable charge will be made for the use of the Court's premises.
- 15.2 Parties seeking to have the use of the Court premises for the hearing of arbitration should lodge a request with one of the established bodies, stating that the seat of the arbitration should be, for example, in London, but that the venue is to be in Doha.