Litigating in the Qatar International Court /
تتقاضي في محكمة قطر الدولية

Gerald Lebovits
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Inside the Qatar International Court. Justice Lebovits is seated at the Registrar’s desk while Qatari lawyers are practicing their trial skills in a simulated trial presided over by the Court’s Registrar. This photograph appeared in Al Sharq, Al Watan, and the Qatar Tribune on May 26, 2015. Other articles about this program were published on May 26 in Al Raya, Al Watan, and the Gulf Times.
Litigating in the Qatar International Court
By Hon. Gerald Lebovits and Delphine Miller

I. The QFC and Its Entities

A. History

In 2009, His Highness Sheikh Hamad bin Khalifa Al-Thani, then the Emir of the State of Qatar, established and personally inaugurated, with a silver gavel now on display beside the courtroom door, the Qatar International Court. His Highness The Emir’s goal was to attract to Qatar international business and financial services; to provide a modern, specialist court with international expertise; and to assure that litigants in conflict in Qatar and across the globe would have an independent, transparent, and enforceable judicial mechanism in Qatar to resolve their disputes quickly and fairly in accordance with due process and the best international legal practices. The Qatar International Court and Dispute Resolution Centre (QICDRC), of which the Qatar International Court is now a part, was established in 2012.

The Qatar International Court itself consists of the Qatar Financial Centre (QFC) Regulatory Tribunal and the QFC Civil and Commercial Court. In 2005, a few years before the Qatar International Court was established, the QFC was founded as a financial and business center for international financial services. The QFC serves as an independent, statutory, and regulatory body authorizing and regulating financial-service businesses in and from Qatar.

The QFC has three entities: the QFC Authority, the QFC Regulatory Authority, and the Qatar International Court, which is itself divided between the Regulatory Tribunal and the Civil and Commercial Court. The Regulatory Tribunal hears appeals from decisions by the QFC Authority, which manages the QFC. It also hears appeals from the QFC Regulatory Authority, established to regulate and supervise “banking, financial, and insurance-related businesses carried on in or from the QFC.” The QFC Regulatory Tribunal hears appeals from decisions made by other QFC institutions. This article focuses only on the Civil and Commercial Court.

The Civil and Commercial Court was established as a court of the State of Qatar by Article 8 (3) of the QFC Law (Law No. (7) of 2005), as amended by Law No. (2) of 2009. The Court began to hear cases in 2009. The Court’s headquarters are in the QFC, in Doha, Qatar’s capital city. Whenever necessary, the Court can conduct its proceedings in any other place in the State of Qatar and, in particular, in Qatar’s six other baladiyat, or municipalities.

B. The Structure of the Civil and Commercial Court

The Civil and Commercial Court is comprised of two divisions: the First Instance Circuit and the Appellate Division, sometimes called the Appellate Circuit. In each circuit, three Justices—each called My Lord or My Lady—sit on each case. The Court’s thirteen Justices come from Qatar, the United Kingdom, Germany, New Zealand, and Singapore. The Justices, currently all part-time Justices, are all eminent practitioners with considerable experience in their home countries, particularly in dealing with financial and commercial matters. Some are retired judges. Two of the Justices are women. (Proposed legislation calls for full-time Justices, with only one Justice presiding in the First Instance Circuit at each trial.)

The Qatar International Court’s current President is the Right Honorable the Lord Nicholas A. Phillips of Worth Matravers, who, from 2009 to 2012, was the first President of the Supreme Court of the United Kingdom. Lord Phillips succeeded the former and first President of the Qatar International Court, the Right Honorable the Lord Harry Woolf, who was the Lord Chief Justice of England and Wales from 2000 to 2005.

The Civil and Commercial Court’s overriding objective is “to deal with all cases justly.” This objective requires the Court to dispose of cases expeditiously and effectively, using no more resources of the Court or the parties than necessary. The objective also requires the Court to handle cases proportionate to their importance, taking into account the complexity of the issues and each party’s financial position.

Several key principles on which the QFC Law is based stem from this overriding objective. The Civil and Commercial Court follows adversary common-law principles, as opposed to the inquisitorial system applied in Qatar’s other courts. In those other courts, Qatar applies Islamic Shari’ah law as the main source of law and specifically to family law, inheritance law, and some criminal cases. Qatar’s civil courts apply Roman and Napoleonic civil law and procedure.

On the other hand, the Court’s procedures are similar to those found in common-law systems. They are, at bottom, a simplified version of the Civil Procedure Rules used in England and Wales and are modeled on London’s Commercial Court, a division of the Queen’s Bench Division of the High Court of Justice. But Qatari law controls. The Appellate Division in the Chedid case has made it clear that litigants should not base their arguments on English case law when Qatari law applicable to the Court, such as the QFC Regulations, governs an issue. Moreover, the Court in the Silver Leaf case explained that the law applicable to the Court is interpreted with “regard to the circumstances in Qatar.” The Court found that it is not bound to follow another country’s judicial interpretation of legal princi-
The Court’s decisions are, however, considered persuasive and not binding, like they are in common-law systems. There is no jury before the Civil and Commercial Court. The Court’s decisions may not be appealed to Qatar’s civil courts or even to Qatar’s highest court, the Court of Cassation. Decisions the Court renders are final.

The Court also follows the equality principle, according to which the Court must ensure that the parties are on equal footing. The Court may not discriminate against litigants in any way or favor one side over the other based on race, religion, wealth, nationality, language, or other considerations.

The Court also follows the best international practices to render its decisions. The Court applies due process by providing fair procedures to litigants. Under due process, parties are entitled to sufficient notice and have the right to be heard.

The Civil and Commercial Court is part of the QFC and is located on two floors in QFC office building Tower Two in Doha. The QFC’s Board promotes, operates, and runs the QFC. The Board must provide “all infrastructure, personnel, services, and support” needed to ensure that the QFC is “run at all times in accordance with best international standards for financial and business centers of a similar kind.” The Board must also maintain the QFC as a “leading financial and business center in the Middle East.”

Foreign companies may register with, and be licensed by, the QFC. There are many advantages for companies to do so. The QFC Law protects QFC-registered companies. Notwithstanding any provision to the contrary, QFC-registered companies may not be subject to expropriation or any restriction on private ownership. QFC-registered companies have the freedom to repatriate profits and realize investments. QFC-registered companies may hire the employees of their choice on the terms of their choice, subject to the Regulations and any international treaty obligations into which Qatar enters. QFC-registered companies are not subject to any taxes, except those determined in accordance with the Regulations. QFC-registered companies may be owned up to one hundred percent by any person, company, or entity not a Qatari national or resident. QFC-registered companies may not be prosecuted if they follow the law.

The Qatar International Court, and by extension the Civil and Commercial Court, has a Registrar, currently Christopher Grout, a UK–trained barrister. The Registrar, who heads the Registry Office, is a judicial officer with a legal, judicial, and managerial role in the Court. The Registrar decides which Justice will sit on which panel, based on the availability and on the expertise of each Justice. The Registrar also often presides over case management, Directions Hearings, and cost determinations. The Registrar’s decisions can be reviewed by the Justices on an interim appeal.

The Civil and Commercial Court is presided over by a President, also called the Chairman (whom Americans would call the Chief Justice), and “a sufficient number of members,” called the Lord Justices of the Qatar International Court. Upon the proposal of the Minister of Finance, the Council of Ministers—Qatar’s supreme executive authority, also called the Advisory Council or, in Arabic, the Majilis Al Shura (a group that includes the Prime Minister)—appoints them for five-year renewable terms. The President and Justices must be of good character, at least thirty years old when appointed, and have the requisite legal knowledge and experience.

The President manages the Civil and Commercial Court’s administrative and financial affairs. The President and the Justices of the Civil and Commercial Court may not be Board members or employees, members of the board of directors of the Regulatory Authority, or Board members of a QFC institution. If the President or Justices of the Civil and Commercial Court become members or employees of these institutions, they will automatically cease to be President or members of the Civil and Commercial Court.

The President and Justices of the Civil and Commercial Court must by law perform their duties independently and impartially. They may not have any financial interest with the parties to a dispute. The Council of Ministers may remove the President and any Justice of the Civil and Commercial Court who becomes incapable of performing his or her duties due to illness, is declared bankrupt, or is convicted of a crime, or if the Council of Ministers finds the President or Justice guilty of serious misconduct. If the President is unable to perform the functions of office, the other Justices will name one of their own temporarily to perform the President’s duties.

The Civil and Commercial Court, its President, and its Justices are not subject to civil liability in relation to acts, omissions, or good-faith negligence while performing their duties. They are not exempt from civil liability relating to any commercial contract to which they are a party. The State of Qatar has no liability for any acts or omissions by the Civil and Commercial Court, its President, or its Justices. All the Justices of the Civil and Commercial Court are public officers under Criminal Law No. 11 of 2004.

Like every American court, the Civil and Commercial Court has the power to set its own internal regulations concerning employee rules, terms, and conditions.

As noted above, the Civil and Commercial Court is divided into two divisions: the First Instance Circuit and the Appellate Division. The Justices are not permanently
assigned to one of the divisions. They may sit in either division, although they may not sit on an appellate panel that reviews one of their own First Instance decisions.

In the First Instance Circuit, the parties are called the claimant and the defendant. The claimant is sometimes called the “plaintiff.” A party is called an applicant when that party applies for something (Americans call it a “motion”), such as an application for interim relief. A party is called a “respondent” when that party responds to something, such as an application for interim relief. Before the Appellate Division, the parties are called the applicant and the respondent. Claimants (and applicants on appeal) sit to the Justices’ left. Defendants (and respondents on appeal) sit to the Justices’ left.

Parties may represent themselves before the Court, without a lawyer. A lay person may appear on a company’s behalf on some conditions: There must be leave of Court; the company must authorize the lay person to appear on the company’s behalf; and the Court must be satisfied that lay representation is in the interests of justice.

Counsel may represent any party, but the Court has the discretion to decide who has the rights of audience. When the Court does not give any direction, any qualified lawyer admitted to a court of superior jurisdiction anywhere in the world has rights of audience. This right of audience is still subject to the Registrar’s or the Justices’ being satisfied of the lawyer’s qualifications, competence, and good standing. If required, the lawyer must send proof of qualifications by email at the earliest possible opportunity, and at least seven days before a hearing date.

When legal counsel represents a party, any communication between that party and the Court must be done through counsel. If a party communicates with the Registrar, that party should copy the other party to the communication.

II. Jurisdiction

There is no minimum or maximum monetary jurisdiction, and the Court hears only civil cases.

The First Instance Circuit has jurisdiction over civil and commercial disputes arising between QFC-registered companies; between a QFC-registered company and the QFC or any of its institutions; between a QFC-registered company and its employees; between a QFC-registered company and a non-QFC body it has contracted with unless the parties agree otherwise; and between a QFC-registered company and a citizen of the State of Qatar. Currently, one hundred eighty companies are registered with the QFC.

The First Instance Circuit also has jurisdiction over civil and commercial disputes arising between parties that consent to the Court’s jurisdiction. In accordance with the best international practices, the Court will take into account the parties’ express consent that the Court should have jurisdiction. Consent can be expressed in a document, given orally, or inferred from the parties’ conduct. The parties’ accord is not binding on the Court.

The parties must object to jurisdiction at the earliest practicable opportunity. Doing so is called an objection, but the parties must make an application to contest the Court’s jurisdiction. If the Court does not accept jurisdiction, the Court may refer the proceedings to another court in the State on its own initiative or on a party’s application. In considering whether to do so, the Court will take into account whether the parties have consented to the Court’s jurisdiction.

The Court also exercises discretion whether to accept or decline jurisdiction. The Court will take into account whether the parties expressly agreed that the Court should have jurisdiction and whether the dispute between the parties has a connection with Qatar.

To contest the Civil and Commercial Court’s jurisdiction, the contesting party—the defendant/applicant—must notify the Registry and the claimant within fourteen days of being served with the Claim Form, which Americans call a complaint. Then, the contesting party, called the applicant at this phase, must file an Application Notice with the Registry and serve it on the other party within fourteen days of the notification to the Registry.

The Appellate Division has jurisdiction over appeals against decisions of the First Instance Circuit and the Regulatory Tribunal.

III. The Law Applicable to the Civil and Commercial Court

The Civil and Commercial Court applies QFC Law No. (7) of 2005, as amended, and the Procedural Rules and Regulations, often referred to as the Regulations. In addition to the Regulations, sixteen substantive laws are found on the QFC’s Web site: Arbitration Regulations; Companies Regulations; Contract Regulations; Data Protection Regulations; Employment Regulations; Financial Services Regulations; Immigration Regulations; Insolvency Regulations; Limited Liability Partnerships Regulations; Partnership Regulations; QFC Authority Regulations; QFC Tax Regulations; Security Regulations; Single Family Office Regulations; Special Company Regulations; and Trust Regulations.

The Regulations apply to all proceedings, including those before the Appellate Division. The Regulations are drafted in both English and Arabic. Both versions are authoritative, but if a conflict arises between the two, the Arabic version—Qatar’s official language—will prevail. Although the Court’s own procedural and evidentiary rules control, the Court will apply any substantive law the parties explicitly agree to apply. The Court may, however, use its discretion to decline to apply the law to which the parties agree if it finds good reasons making it inap-
propriate to apply it.76 For example, the Court will not apply the law the parties agreed to if the other jurisdiction’s law conflicts with Qatari public order.77 Absent the parties’ agreement to apply the substantive law of a different jurisdiction, the Court will apply Qatari substantive law.

In any event, the Court will always apply all consumer-protection provisions of the QFC Law and the QFC Regulations.78 The Court may also take the Practice Guide into account to assess the parties’ conduct.79 The Practice Guide is issued pursuant to the Regulations.80 It is read in conjunction with the QFC Law and the Regulations but does not have the force of law.81 The Court may also issue Practice Directions,82 although it has not yet done so. The Practice Guide and the Practice Directions may be revised by taking into account practical experience.83

IV. How Cases Are Heard in the Civil and Commercial Court

A. Filing Forms

The Court charges no filing fees or other costs for anything.

All forms may be obtained from the Registrar or from the Court’s Web site,84 which is currently under partial construction. Claimants can either sign in as a guest or register on the Web site to complete the appropriate form. All forms are expandable to allow the claimants to choose which parts of the form they need, depending on their dispute, and to enable them to explain their position. After the claimants fill out the form’s relevant parts, they submit it by pressing the submit button. New hard-copy forms will be available in October 2015.

A party wishing to resolve a dispute before the Court must concisely complete a Claim Form, which the Registry then issues on the Court’s behalf.85 To make things more user-friendly, the Court allows potential claimants to ask the Registrar to intervene before filing a claim. Claimants that choose to do so should summarize the nature of the dispute and notify the other party no later than the day the Registrar is notified.86

The issuance of the Claim Form by the Registry marks the commencement of the proceeding.87 The day the Registry stamps the Claim Form is the date on which a claim issues.88 The Claim Form must indicate the names and addresses of the parties and their legal representatives, the facts relied on, the legal basis for the claim, the remedy sought, the applicable law and language, and whether any step has been taken to resolve the dispute by ADR.89

The statute of limitations for filing a claim is six years from the date on which the cause of action accrued.90

The claimant must attach or append to the Claim Form the documents supporting the claim. The claimant should not, however, detail in the Claim Form the evidence on which the claimant intends to rely.91 All claims arising out of the same matter must be made at the same time.92 Claimants that do not do so lose their right to sue anew. If two or more claims are filed regarding the same matter, or for different interests in the same dispute, or which involve similar issues, the Court may consolidate the claims or hear them concurrently.93

The claimant serves the Claim Form on the respondent (defendant).94 A Claim Form is valid for service for four months from the date it issues,95 which is the date the Registry stamps the form.96

Unless the Court orders otherwise, defendants must complete a Defence Form (note the U.K. spelling) within twenty-eight days from the date of service of the claim.97 In the Defence Form, defendants may admit the claim in full or in part and propose how the claim will be satisfied.98 Defendants may also state a defense to the claim or interpose a counterclaim. The defendant serves the Defence and/or Counterclaim Form on the claimant. A defendant is not required to serve any defense if the defendant intends to contest the Court’s jurisdiction.99 Defendants are required to serve a defense only after the Court has accepted jurisdiction.100

Claimants have the option to complete a Reply to Defence and/or Counterclaim Form.101 This is an optional, brief statement of reply to the matters raised in the defense. If the defendant counterclaims, claimants must tell the Court whether they admit the claim or any part of it or whether they dispute the claim. Claimants serve on the defendant the reply and/or counterclaim to the defense.

All forms must contain a signed statement of truth to promise the Court that the contents of the claim are true.102 The statement of truth must be signed by the party, by a party’s representative, or by the party’s legal representative.103 The promisor does not write the statement of truth under oath or affirmation. But once in Court, the Justices will ask that person whether the statement is true, and then that person will affirm or swear on the Holy Qur’an or on the New Testament (both of which are in the courtroom at the witness’s desk).

The statement of truth must take the following form: “I believe [or, where a statement is made by a representative, ‘The [claimant or defendant] believes’] that the facts stated in this [claim form, defence, etc.] are true.”104

B. Filing and Serving Forms

Forms must be filed with the Court’s Registry by post (mail), fax, or in-hand deposit of the document at the Registry.105 A document satisfies the requirement that it be sent to the Court when that document is filed at the Registry.106 Electronic filing is not permitted as the exclusive way to file, but it may be used in addition to another method of filing.107 (Proposed legislation, if enacted, will allow e-filing to be the exclusive way to file all papers with the Registry.)
Claimants and defendants must serve the forms on all parties to the claim. The Court does not serve forms. Service is made by personal service, delivery to a party’s home or office address, registered mail, fax, or any other method agreed by the parties or by ordered by the Court. Service within Qatar may be done by personal service, delivery to a party’s home address, mail, fax, or any method agreed by the parties or directed by the Court. Service outside Qatar does not require the Court’s permission, but service must comply with the rules applicable to the country where the form is served. (Proposed legislation, if enacted, will allow service to comply with Qatari law, and not the law of another jurisdiction.) Claimants must notify the Registry when they served the Claim Form and what method of service they used.

For time limits to file and serve, periods calculated in days do not count the day on which the period in question begins. A “working day” does not include a Friday, Saturday, or Qatar public holiday. “Business hours” are from 7:00 a.m. to 2:00 p.m., Doha time, which is seven hours ahead of New York time. A document served by mail or similar method is deemed served or filed on the second working day after it was sent.

When a document is served or filed by fax and is transmitted during business hours, it is deemed transmitted the same day. When the document is transmitted outside business hours, it is deemed transmitted the next working day. The Registrar or the Justice may extend or shorten any time limit set out in the Regulations but may not shorten the time limits the QFC law sets out.

C. Summary Judgment

The Court may grant summary judgment when the issue can be decided on the facts and law without a trial. The Court may grant summary judgment on a claim, a defense, or any issue. A party wanting the Court to rule on summary judgment makes a pretrial motion, called an interim application. All inferences must be resolved in the light most favorable to the nonmoving party. The Court will deny the application if it finds a genuine issue of material fact. The Court will usually resolve the application on the papers, without oral argument.

D. Case Management

If the Court does not decide the dispute on the papers, the case will go through case management. The Registrar and the Justices—are responsible for case management. They will set out a timetable, and the Court may give directions, taking into account the parties’ interests and the best international practice.

The Court gives directions concerning the future management of the case after service of the Claim Form and service of the defense or of any jurisdictional application. A Directions Hearing may take place if the Court so directs. The Directions Hearing may occur in Doha or by telephone or video if the Justices or the parties are not in Doha. During a Directions Hearing, the Court gives directions about the future management of the case. A minimum seven days’ notice to the parties is required for a Directions Hearing. The goal of case management is to encourage the parties to act reasonably and ensure efficiency.

The Court may order case-management directions on any party’s application or on its own initiative. The Court may make whatever directions it considers appropriate, such as selecting the issues to be heard at trial. Directions are intended to ensure the “just, expeditious and economical determination” of a case. In the interests of justice, the Court may delegate the hearing of any issue to one or more of the three presiding Justices. The remaining Justices may adopt or reject the decision of the one Justice.

If the Registrar, rather than a Justice, renders a case-management or Directions Hearing decision, either party may file an interim appeal to enable a Justice to reverse the Registrar’s decision.

The Court may permit the amendment of the Claim Form or any statement of the case. To grant an amendment, the Court will look at whether it would carry any prejudice, whether the other party has known for some time about the facts underlying the proposed amendment (and thus that no surprise results), whether the prejudice—if any—can be cured, and whether the moving party is unrepresented.

If a party fails to comply with the Court’s direction and does not have a reasonable excuse for not doing so, the Court may award costs against that party. The Court may also dismiss a claimant or applicant’s claim or application in whole or in part or strike out the defendant’s defense or the applicant’s response in whole or in part. The Court may order case-management directions on any party’s application or on its own initiative. The Court may make whatever directions it considers appropriate, such as selecting the issues to be heard at trial. Directions are intended to ensure the “just, expeditious and economical determination” of a case. In the interests of justice, the Court may delegate the hearing of any issue to one or more of the three presiding Justices. The remaining Justices may adopt or reject the decision of the one Justice.

A party seeking relief from the Court other than a full trial may complete an Application Notice and serve it on the respondent. The applying party is the applicant, and the party responding is the respondent, regardless whether either is the claimant or the defendant. The party seeking relief must file the Application Notice with the Registry when it completes it or as soon as possible.

The party being served with the application notice must respond within twenty-eight days of service or within the period of time set by the Registrar of the Court. The respondent must attach any important document to the response. All applications and responses to applications must include a statement of truth, such as: “I believe that the facts stated in this [application] [response] are true.” A party with an urgent matter may contact the Registry to seek the Court’s assistance before the proceedings begin.
E. Disclosure

Litigants before the Civil and Commercial Court have no obligation to disclose (or, as Americans call it, to provide discovery).142 But the Court may require the parties to disclose documents relevant to the case and to provide further information about the case.143 The Court may do so at any stage of the proceedings.144 If the parties disagree about which document should be produced, the Court resolves that dispute by taking into account the best international practices.145

The Court may also determine what documents, if any, are privileged.146 Privileged documents may be “without prejudice” letters, correspondence between the parties on which the sender mentions “without prejudice.” A privileged document may also be an attorney-client or other privileged communication.148 The privilege attached to the “without prejudice” correspondence and attorney-client communications may be disregarded in exceptional circumstances to protect the public interest.149

Parties must disclose all documents on which they rely during the proceedings.150 Parties are entitled to request disclosure of any relevant document from another party.151 But parties may assert any privilege they may have on any document.152

The need for American-style depositions is reduced by the Court’s requirement for witness statements on claims, applications, and responses. The parties may still apply for depositions, which might be granted in the Court’s discretion in an unusual case.

F. Pretrial

At least fourteen days in advance, the Registrar notifies parties of the date and place of the hearing, also called a trial. The Court may give directions about the venue, language, length, timing, extent of written or oral submissions, or adjournment.154 The parties must give the Court a summary of their arguments in the case with references to documents, evidence, witnesses, and legal provisions.155 This skeleton argument should be as concise as possible and not exceed fifty pages.156 During the pretrial review with the Court, the parties must also draw up a list of trial issues.157

The parties must further agree together on what documentary evidence the Court will consider. The parties prepare a binder of consecutively paginated documents, which they submit to the Court before trial. If the Justices find any document inadmissible or without foundation or weight, they are free to ignore it at trial even though it is already in the binder.

G. Trial

During trial, the Court hears both parties’ evidence and arguments. Parties are present in the courtroom in Doha or virtually through video or, if permitted, by telephone.158 If by video, they must consult with the Registrar about videolink arrangements at least seven days before the trial, sometimes called the hearing.159

Trials are held in public,160 unless an extraordinary circumstance requires closure. The language spoken during the proceedings is English, but it can be Arabic if the parties wish so. To avoid delays and misunderstandings, the parties must choose at the earliest possible time the language they would like to use during the proceedings.164 If the parties wish to conduct the proceedings in Arabic, they must agree upon it “at the outset of the initiation of the claim.”165 Simultaneous oral translations are available. The Court provides interpreters, who use the courtroom’s interpreter booth to translate.

The Court may limit the time allowed for the trial.167 The method of litigation at the Court is adversarial. Proceedings are audio recorded. Videotaped proceedings and overnight typed transcriptions are available on request.

If the claim is defended or there is a counterclaim, the parties must prove their case in Court. The Court plays an active role in determining what evidence it needs to see by issuing directions to the party regarding the documents that may be filed and by strictly controlling oral evidence. The rules applicable before the Court do not provide for a particular burden of proof. In practice, the claimant’s burden, to succeed, is to prove its case by a preponderance of the credible evidence or, as it is put in England, “on the balance of probabilities.”168

The Court admits evidence both as to matters of fact and as to matters of expert opinion on the terms and in the form the Court considers appropriate.168 Importantly, the Court generally admits all evidence, including evidence an American court would reject, such as hearsay. But the Court will assess the credibility, reliability, and weight of that evidence in light of the arguments.

A witness may choose between taking an oath or affirming.171 When witnesses take an oath, they do so according to their religious beliefs.172 A witness unable to attend the hearing in person may offer evidence by video link.173 To do so, that witness must make arrangements with the Registrar at least seven days before the trial date.174

The Court does not call its own witnesses, except in rare circumstances.175 The Justices may ask witnesses questions to clarify the evidence.176 The Court may give directions about how any matter at issue must be established.177 The Court controls the order in which witnesses will testify.178

The Court decides whether parties are permitted to call expert witnesses.179 The Court may give directions about the form and content of any expert’s report and the number of experts who may be called.180 The Court may appoint an expert to offer an opinion based on the evidence adduced at trial.181 Experts, by whomever called,
have a duty to assist the Court on matters within their expertise.182 The expert’s duty overrides any obligation to the person from whom he or she receives instructions or by whom he or she is paid.183 Experts must give evidence independently.184

The parties may offer opening statements, upon the Court’s discretion. An opening statement offers a preview of the evidence. Unlike the American courts’ default format, the claimant offers an opening statement followed by the claimant’s case-in-chief. The defendant makes an opening statement only when the claimant is done. A defendant that wishes to make its opening statement right after the claimant’s must ask the Justices for permission.

The parties’ attorneys may question the witnesses in successive turn. During the claimant’s case-in-chief, the claimant will examine its witnesses (direct examination), and the defendant may cross-examine the claimant’s witnesses. That might be followed by the claimant’s re-examination, which Americans call “redirect examination.” The defendant’s case-in-chief consists of examining its witnesses, the claimant then cross-examining each witness, followed by the defendant’s possible re-examination. If permitted, there will be a rebuttal case: first by the claimant, then by the defendant, and finally by the claimant again if the claimant interposed a counterclaim.

There are no affirmative defenses in the Civil and Commercial Court; there are defenses only. After the evidence is presented, the parties will deliver their closing arguments. They reiterate, through argument, the important evidence admitted in Court.

The examination of witnesses, after they affirm or are sworn in, begins with a question to the witnesses calling them to swear or affirm that their witness statements—those they submitted with their claims, applications, and responses—are true. Then, the Justices or counsel will ask the witnesses whether they wish to add or supplement their written witness statements with oral testimony. This procedure, quite different from American procedure, is designed to make trials simple and expeditious while still assuring due process through cross-examination. Witnesses will not, generally speaking, be called upon to lay a foundation to introduce evidence, as they would in an American court. Lawyers will simply refer the Court to the evidence already submitted in the binder.

The Court, based on its U.K. traditions, disfavors the American Perry Mason mode of lawyering. Lawyers do not use the word “objection.” To object, lawyers merely rise and state their grounds. Lawyers do not finish with a witness by saying “your witness” to their adversary. They conclude their examination by stating that they have “no further questions,” or words to that effect. Lawyers do not end their case by saying “claimant rests.” Lawyers do not ask for permission to approach a witness. The Justices will likely deny that permission anyway. Instead, lawyers examine and argue from their counsel table.

If a party fails to appear at trial, the Court may adjourn, give directions, or render a default judgment.185

H. The Court’s Decision

In deciding cases, the Court takes into consideration the parties’ documents, evidence, and oral arguments. The Court may make all orders it considers consistent with the Court’s overriding objective: to do justice.186 The decision of the majority of the Justices is the Court’s decision.187 Any Justice may write a dissenting opinion.188 As noted above, the Court’s decisions are treated as persuasive precedents and not binding.189 Although the Court is a common-law court, it does not follow an essential principle of the common-law: stare decisis.

The Court’s decisions are published in English and Arabic on the Court’s Web site.190 The Court must issue a decision within ninety days from the date the respondent received official notice of the claim.191 This ninety-day time limit from start to finish greatly surpasses the best international practices prescribing quick and efficient judgments. The Court must give reasons for its decisions.192

The Court may award costs against parties,193 and generally the unsuccessful party must bear the winning party’s costs,194 including attorney fees. This rule is different from the American Rule, in which each side bears its own fees unless a statute or contract provides that the loser must pay the prevailing party’s reasonable legal costs. In deciding how to award costs, the Court may take into account “any reasonable settlement offers made by either party.”195

The Court may order the parties to try to agree on the amount of the costs.196 If the parties are unable to agree, the Registrar will determine the costs,197 subject to an appeal to the Justices.

The Court may award damages,198 grant injunctions199 and restitution,200 and order specific performance,201 declaratory relief,202 and disgorgement of profits.203 The Court may render a judgment that directs a party to do or not do something. The Court may also render a money judgment,204 grant an accounting,205 and order the payment of interest.206 A money judgment must be complied with within fourteen days of the judgment unless the Court sets a specific date.207

The Court can communicate the decision to the parties in several ways. At the end of the trial, the Court may announce its decision and the reasons, or it may announce the decision but reserve the written reasons for a later date. The Court may also announce nothing at the end of the trial and, instead, publish the decision later.
A party may file a motion to reargue within fourteen days of the communication of the Court’s decision if the party believes that the Court made an “accidental slip or omission” in its decision.208 The Court may also correct the error on its own.209

Civil claims are often settled between the parties before the trial begins or the judgment is rendered. The parties must record their settlements so that the Court can enforce it.

The Court encourages the parties to engage in an alternative-dispute-resolution process whenever appropriate.210 The Court supports and facilitates arbitration.211 The Court may even require the parties to attempt to settle their case through an alternative-dispute-resolution mechanism.212 The Court can stay or adjourn the proceedings to allow the parties to do so.213 Parties to a dispute are welcome to seek the Court’s help to resolve it, regardless of whether they intend to or could commence court proceedings.214 The Civil and Commercial Court’s President has the power to establish a dispute resolution center.215

The State of Qatar designed the Court’s layout with alternative dispute resolution in mind.216 The Court features a mediation and arbitration room, and there are ample break-out rooms for the parties,217 with separate high-tech rooms for claimants and defendants.

I. Enforcement

Decisions rendered by the Qatar International Court are enforceable like any other decision rendered by a Court of the State of Qatar.218 The enforcement Justice, who is primarily responsible for enforcing the Court’s decisions, issues execution orders within the QFC.219 The Civil and Commercial Court’s President appoints one of the Justices to be the Court’s enforcement judge.220 Parties contravene a judgment and are subject to the Court’s contempt powers if, without excuse, they fail to comply with the Court’s orders or decisions.221

J. Appeal

A party may appeal the Registrar’s procedural directions or orders to a panel of Justices of the First Instance Court.222 This appeal triggers a de novo review before one or more Justices.223 A party may also appeal decisions of the First Instance Court to the Appellate Division, with permission of either court.

A party seeking permission to appeal must complete an application and a Notice of Appeal.224 The Notice must set out the grounds for the appeal.225 The applicant must file with the Registrar both the application and the notice within sixty days after the date of the decision the applicant wishes to appeal.226 The notice of appeal must be filed before the Appellate Circuit within sixty days from the date of the decision sought to be appealed.227

Applicants may seek permission to appeal either from the First Instance Justices who decided their case or from the Appellate Division,228 but not from both. If either denies permission to appeal, the First Instance Court’s decision is final and binding and not subject to further appeal anywhere.229 The Court will grant permission to appeal if it finds “substantial grounds for considering that a judgment or decision is erroneous and there is a significant risk that the decision will result in serious injustice.”230 This standard is so high that the Appellate Division stated in dictum in the Babiker case that “[W]e do however emphasize that the requirement of the permission should not be used to cause a litigant any material injustice. If this Court considers there is an arguable case it will usually readily grant permission to appeal.”231 (Proposed legislation, if enacted, will make it easier to get permission to appeal.)

The parties may appeal the First Instance Court’s cost award, even though the Appellate Division found in Chedid that the First Instance Court is “much better placed to evaluate what is fair and reasonable than the appellate court.”232

If the Court grants permission, the appeal is a review, not a rehearing.233 Generally speaking, the parties may present only those arguments articulated in their application for permission to appeal.

A First Instance Court Justice who originally issued the judgment may not sit on the Appellate Division to review that same judgment.234 The Appellate Division may rule on the merits of the appeal when it reviews the application for permission to appeal. This is the “rolled-up” technique, which applies only when the party seeks the Appellate Division’s permission to appeal. The Appellate Division must issue a decision within ninety days after the date the respondent receives official notice of the appeal.235 Decisions of the Appellate Division are final.236

V. Q-Construct

Qatar is currently developing a fast-track scheme, called Q-Construct, for construction disputes.237 This scheme was established as a result of an estimated $280 billion infrastructure investment for the 2022 FIFA World Cup, including new soccer stadiums, transportation, hotels, and residential and commercial buildings.238 This fast-track scheme will allow parties, otherwise bound by contracts with arbitration clauses, to bring their construction-related disputes before one or more adjudicators selected from a panel of specialists registered at the QICDRC.239

A QICDRC Justice specialized in construction will oversee the scheme.240 The adjudicator or adjudicators will render their decision within thirty days from the day the claim was filed. That decision will be enforceable immediately, but the parties remain entitled to go through the arbitration process provided for in their contracts if they
choose to do so. Q-Construct will enable parties to obtain a decision quickly to permit the construction project to go forward if the adjudicator(s) decide(s) that it should.

VI. Conclusion

The Qatar International Court, and more specifically the Civil and Commercial Court, is designed to attract international business and to make Qatar a world capital for investment. The Court seeks to achieve this by assuring justice and an expeditious decision-making process while observing the best international practices. The Court, an institution separate from Qatar’s Shari’ah and civil courts, uses a simplified model of the United Kingdom’s evidentiary and procedural rules. Some of the world’s most respected judges preside in this Court.

This article was prepared in the hopes that once practitioners become familiar with the Qatar International Court’s procedures and Qatari law, they will take advantage of this extraordinary forum, where they will receive a welcoming as-salamu alaykum from the Court and its expert staff.

Endnotes
2. Law No. (7) of 2005 (as amended) art. 3 (hereinafter “Law No. (7)”).
3. Id. art. 8.1.
4. Id. art. 8.2(c).
7. Law No. (7) art. 8.3(b).
8. Regulations and Procedural Rules art. 2.2 (hereinafter “Regulations”).
9. Id. art. 35.4.
12. Regulations art. 4.1; Guide B5.
13. Regulations arts. 4.3.1 & 28.4; Guide B5.
14. Regulations art. 4.3.3; Guide B5.
17. Id.
18. Id.
20. Law No. (7) Sched. 6, art. 14.
21. Regulations art. 4.3.2.
22. Law No. (7) art. 5.4 & Sched. 4, art. 16.3.
23. Law No. (7) Sched. 1, art. 5.3.
24. Id.
73. Regulations art. 2.2.
74. Id. art. 3.1.
75. Regulations art. 11.1.2; Guide at C9.1.
76. Regulations art. 11.1.2(a).
77. Law No. (7) Sched. 6, art. 8; Regulations art. 11.1.2(b); Guide C9.1.
78. Regulations art. 11.1.2(c).
80. Regulations art. 37.2.
82. Id. A3.
83. Id.
85. Regulations art. 17.2.
87. Regulations art. 17.1; Guide C3.2.
88. Regulations art. 17.2.
89. Regulations art. 17.3; Guide C3.3.
90. Regulations art. 11.2.
91. Guide C3.3.
92. Id. C3.4.
93. Regulations art. 30.1.
94. Id. art. 18.1.
95. Id. art. 17.5.
96. Id. art. 17.2.
97. Id. art. 20.1.
98. Guide C3.5.
99. Regulations art. 20.2.
100. Id. art. 20.2.
101. Id. art. 21.1.
102. Id. art. 16.1.
103. Id. art. 16.2.
104. Id. art. 16.3.
105. Id. art. 8.1.
106. Id. art. 8.2.
107. Id. arts. 8.2 & 18.3.5.
108. Id. art. 18.
109. Id. art. 18.3.
110. Id. art. 18.2.
111. Id. art. 18.5.
112. Id. art. 14.2.
113. Id.
114. Id. art. 14.3.1.
115. Id. art. 14.3.3(a).
116. Id. art. 14.3.3(b).
117. Id. art. 14.6.
119. Regulations art. 22.6.
120. Id. art. 7.3; Guide C7.1.
121. Regulations art. 15.2.
122. Id. art. 22.1.
123. Regulations art. 22.2; Guide C7.2.
125. Regulations art. 22.2.
126. Guide C7.5.
127. Regulations art. 15.3.
128. Id. arts. 10.2.1 & 22.3.
130. Regulations art. 15.2.
131. Id. art. 12.5.
132. Id. art. 12.5.
133. Id. art. 24.1.1.
134. Id. arts. 31.1.2–31.1.3.
135. Id. art. 31.2.
136. Id. art. 23.1.
137. Id. art. 12.5.
138. Id. art. 23.4.
139. Id. art. 23.4.
140. Id. art. 23.5.
141. Id. art. 23.2.
143. Regulations art. 24.1.3; Guide C8.1.
144. Regulations art. 26.1.
146. Regulations art. 10.2.5; Guide C11.4.
148. Id. C8.1.
149. Id.
150. Regulations art. 26.2.1.
151. Id. art. 26.2.2.
152. Id. art. 26.4.
153. Id. art. 28.1.
154. Id. arts. 28.2.1–28.2.4.
156. Id.
157. Id.
158. Regulations art. 28.7.
160. Regulations art. 28.3; Guide C10.1.
161. Regulations art. 3.2; Guide C5.1.
162. Regulations art. 3.2; Guide C5.2.
164. Id. C5.3.
165. Id. C10.1.
166. Id. C5.5.
167. Id. at C10.2.
168. Regulations art. 10.2.3.
170. Id. C11.4.
171. Id. C11.1.
172. Id.
173. Id. C11.2.
174. Id.
175. Id. C11.3.
176. Id.
177. Regulations art. 21.1.1.
178. Id. art. 27.1.6.
179. Id. art. 27.1.3.
180. Id. arts. 21.1.4 & 27.1.5.
181. Id. art. 27.2.
182. Id. art. 27.4.1.
183. Id. art. 27.4.2.
184. Id. art. 27.4.3.
185. Id. art. 28.5.
186. Id. art. 10.3.
187. Id. art. 32.2.
188. Id. art. 32.3.
191. Law No. (7) Sched. 6, art. 10; Regulations art. 32.1.
192. Regulations art. 32.1.
193. Id. at Arts. 10.4.10 & 33.1.
194. Regulations art. 33.1 & 33.2; Guide C2.2.
195. Regulations art. 33.3.
196. Id. art. 33.5.
197. Id.
198. Id. art. 10.4.2.
199. Id. art. 10.4.3.
200. Id. art. 10.4.6.
201. Id. art. 10.4.4.
202. Id. art. 10.5.5.
203. Id. art. 10.4.7.
204. Id. art. 10.4.1.
205. Id. art. 10.4.8.
206. Id. art. 10.4.9.
207. McNair Chambers, note 155 supra, at 11.
208. Regulations art. 32.5.
209. Id. art. 32.5.
210. Regulations art. 5.1; Guide C7.6.
212. Regulations art. 10.2.2.
213. Id. art. 25.1.
214. Regulations art. 25.2; Guide C15.1.
215. Regulations art. 5.2.
217. Id.
218. Regulations art. 34.1; Guide C13.1.
219. Law No. (7) Sched. 6, art. 17; Regulations art. 34.5; Guide C13.1.
220. Law No. (7) Sched. 6, art. 17.
221. Regulations art. 34.2.1.
222. Id. art. 15.4; Guide C7.1.
223. Law No. (7) art. 8.3 (a); Regulations art. 35.4; Guide C7.1.
224. Regulations art. 35.3.
225. Id.
226. Id.
227. Law No. (7) Sched. 6, art. 12; Regulations art. 35.3.
229. Regulations art. 35.1.
233. Regulations art. 35.6; Guide C14.1.
234. Law No. (7) art. 8.3(d); Regulations art. 35.5.
235. Law No. (7) Sched. 6, art. 13.
236. Id.
238. Id.
239. Id.
240. Id.

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