

Qatar Judgment 238 of 2019: The capacity of a parent company to sue on behalf of its Qatari branch

Hani Al Naddaf - Partner, Head of Litigation - Qatar - Arbitration / Litigation / Construction and Infrastructure / Insurance

- Doha

Reem Khader - Associate - Litigation

- Doha

Introduction

Foreign commercial clients frequently seek our advice on the legal status of branches established in Qatar, particularly whether a branch is a legal entity separate from the foreign parent company.

This question is addressed in Law 25 of 2005 (the “**Commercial Registration Law**”), as amended by Law 20 of 2014. It is clearly set out in the law that the registration of a branch (including a branch of a foreign company) in the Commercial Register does not grant the branch a separate legal personality from its parent company (Article 3 of the Commercial Registration Law).

In a recent judgment (No. 238 of 2019), the Court of Cassation has given careful consideration to the effect of the Commercial Registration Law, overturning a decision of the Court of Appeal which deviated from the above well-established rule.

Background

In 2016, an action was filed before the Court of First Instance by a company (the Claimant) against a branch of the defendant’s company (the Defendant) in Qatar, seeking a money judgment against the branch. The Court of First Instance accepted the claim and delivered its judgment against the defendant branch, ordering it to pay the claimed amount.

In 2018, the parent company of the branch appealed the Court of First Instance decision before the Court of Appeal. The Court of Appeal dismissed the appeal on the basis that the parent company did not have the requisite standing to file an appeal on the basis it was not the defendant in the case (i.e., the parent company and the defendant branch possessed separate legal entities).

Court of Cassation Ruling- capacity to sue

The Court of Cassation overturned the Court of Appeal’s decision, describing it as a misapplication of the law.

In its judgment, the Court of Cassation referred to Article 3 of the Commercial Registration Law and confirmed that a company branch does not, by registration in the Commercial Registry, acquire a legal personality which is independent of the parent company. As a result, the parent company is entitled to

appeal a decision on behalf of its branch.

The Court of Cassation revisited basic rules of Qatari law on capacity to sue. The court explained that the right to litigate is granted to recognised natural and juridical persons. It noted that the criteria for the recognition of a juridical person is twofold; (1) there must be a group of natural persons or assets allocated to a specific objective and (2) express recognition by the law of the status of such a group as a juridical person with a separate legal personality. With respect to the second criteria, the Court of Cassation observed with regard to branch companies that:

"[...] of such recognised juridical persons is the commercial company, and it is under its veil that all of its branches exist, for none of such branches may acquire its own personality independent of the company".

The Court also emphasised that:

"...the commercial company holds the legal personality of all of its branches, [the latter] to which the law has not provided such personality."

The Court of Cassation concluded that since it is the commercial company that holds the legal personality for itself and its branches, then it is this commercial company that is granted the right to litigate:

"A valid proceeding requires that it be duly instituted by a party with capacity to sue. This condition must be met at first instance and at a stage of appeal and is a matter of public policy - the implication of this: an entity with a recognized right to legal capacity may challenge rulings made against its subsidiaries - an example. The Court of Appeal's decision that the Appellant company has no capacity to bring its appeal from a ruling made against one of its subsidiaries is in error."

Accordingly, the Court of Cassation concluded that the Court of Appeal erred in refusing to recognise the legal standing of the appellant and overruled its judgment.

Conclusion

Under Qatari law, a branch of a foreign company registered under the Commercial Registration Law does not possess a separate legal identity from its foreign parent. Hence, the foreign parent enjoys the capacity to sue on behalf of its Qatari branch provided it satisfies certain substantive and formal components under Qatari law, i.e., it comprises a group of persons or assets allocated to a specific objective and enjoys recognition as a legal entity, subject to such requirements and conditions as set by law. As noted by the Court of Cassation, *"of the juridical persons whose existence is recognized by law is the commercial company, including its branches, none of which are a separate legal entity from the company."*