

Decision to allow GCC companies to conduct business in Qatar without a Qatari partner

by Ahmed El Amoury - a.amoury@tamimi.com - Doha

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A recent decision from Qatar's highest court, the Court of Cassation, may prove to have significant implications on doing business in Qatar.

The Court recently allowed GCC companies to conduct economic activities in the state of Qatar, in the areas of industry, agriculture, animal resources, fisheries and contracting, without the need to establish a Qatari company with a Qatari shareholder.

The Case at First Instance

In 2010, the Claimant (a construction company) filed a civil case before the Court of First Instance in Qatar, seeking the termination of the contract and compensation in relation to a construction agreement. The Defendant (the contractor) submitted to the Court a counter claim seeking the remainder of his outstanding money in relation to the same agreement in addition to compensation. The Court appointed an expert who approved the Defendant's dues towards the Claimant.

In 2012, the Court of First Instance took a decision to dismiss the original claim filed by the Claimant and in the counter claim, ordered the Claimant to pay the amount of USD \$107,000 but refused to order any compensation to be paid.

Ruling of the Court of Appeal

In 2012, the Claimant and the Defendant brought the decision of the Court of First Instance before the Court of Appeal. In a judgment handed down in 2012, the Court of Appeal upheld the finding of the Court of First Instance but in addition awarded the Defendant a further compensation amount of USD \$20,000 as damages for the delay caused by the Claimant's non-payment.

Judgment of the Court of Cassation

In 2013, the Claimant lodged a further challenge with the Court of Cassation, seeking to overturn the judgment and based its argument inter alia on the following ground:

The Defendant is a non-Qatari company and hence does not have the right to conduct any economic activities in Qatar. Consequently, the construction contract between the Defendant and the Claimant is null and void as it was entered into in violation of Law No. (13) of the year 2000, which prevents foreign investors from conducting contracting activities in Qatar without forming a Qatari company with a Qatari shareholder who holds at least 51% of the capital of the company.

The Court of Cassation rejected all grounds of the Claimant's appeal and reasoned as follows:

Article 3 of Law No. (6) of the year 1983 relating to the executive measures for the Unified Economic Treaty between the countries of the Cooperation Council for the Arab States of the Gulf effective from 1/3/1983 provides that:

"it is permitted to the nationals of the countries of the Cooperation Council for the Arab States of the Gulf – either the juridical persons or the natural persons – to perform economic activity in Qatar in

industrial, agricultural, fishing, animal wealth and contracting sectors provided that in order for the nationals of the council for the Arab States of Gulf to conduct business in any of the pre-mentioned sectors, they have to share their business with Qatari nationals with not less than 25% quota in the business. This sharing shall continue to a period not less than 5 years starting from the date of enforcement of this law.” The explanatory memorandum of the law provides that ” in enforcing the resolution of the committee of financial and economic cooperation issued on June 1982 in Riyadh, the principle of the freedom of practicing the economic activity in industrial, agricultural, fishing, animal wealth and contracting sectors shall be started provided that each country member in the Cooperation Council to stipulate the partnership of its nationals in a percentage not exceeding 25% for a period of five years. After that period, practicing these activities shall be free from any restrictions. The justification of this rule is to grant the nationals of the other countries of the GCC the national treatment granted to its own nationals.”

The Court of Cassation explained the above by stating that the restriction on GCC citizens to conduct these aforesaid activities in Qatar is limited to five years only. After the five years have elapsed, these activities can be practised freely by nationals of the GCC States without any further restrictions. The judgment confirmed that the aim of such a provision is to protect the commercial activity of the State from any losses sustained as a result of foreign competition. As such, the business shall be released from this restriction after this period.

Accordingly, and with reference to the principle prevailing before this Court of Cassation, the provisions of the specific law shall prevail and apply over the provisions of the general law.

Moreover, the later general law does not impliedly supersede the previous specific law but the specific law remains applicable to accomplish the purpose for which it was issued. This constitutes an exception to the new general law unless the new law governs the discrepancies between the two laws.

The Court went on to say the provisions of the specific Law No. (6) of the year 1983 shall prevail over the provision of the general Law No. (13) of the year 2000 regarding foreign investment in Qatar in case of discrepancy. As a result, the Court concluded that the Defendant, which is a Kuwaiti company, is permitted to practise the contracting activity in Qatar without a Qatari partner.

Conclusion

This judgment is considered a practical application of the provisions of Law No. (6) of the year 1983 which ratifies the economic treaty between the GCC States pursuant to the articles of incorporation of the Cooperation Council (which calls for stronger ties and cooperation between the States of the GCC). The principle of treating other GCC nationals as nationals in Qatar will promote a stronger cooperation between juridical and natural persons especially in relation to incorporation of companies and all economic activities and investments.