

# Qatar Court of Cassation Finds Individual Company Members Can Represent Company

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The Qatar Court of Cassation issued an important judgment at the end of May 2016, when it ordered a Qatari bank to pay a Bahraini bank's director and sub-committee members their bonus entitlements. Al Tamimi represented the successful foreign bank.

The Court upheld the lower court's decision that the foreign bank (the Claimant) was entitled in its capacity as the bank to claim entitlements from the Qatari Bank on behalf of four of its board members. The Court dismissed arguments that board members could only claim for payments in their personal capacity as individuals. The Qatari Bank's counterclaim was also dismissed, in which it had argued that the Board members' lack of voting on Resolutions was damaging to the Appellant's interests.

This is a significant outcome and highlights a key precedent with respect to the rights of banks in Qatar and their board members.

## Background

The Claimant (a foreign bank) brought a claim against the Respondent (a Qatari bank) seeking judgment against the latter for QAR 2,232,000. This was the balance due to the directors appointed by the Claimant to the Defendant's Board of Directors ("BoD") in respect of bonus entitlements for 2012.

The Claimant contended that, as a Bahraini shareholding company, it had purchased a 40% stake in the Respondent, a Qatari shareholding company. According to the Respondent's Articles of Association ("AoA"), the Board of Directors were to consist of 10 members, 4 to be appointed by the Claimant and the remainder to be appointed by the Respondent. The Respondent did not pay the directors their entitlements so the Claimant proceeded to court.

The Respondent filed a counterclaim against the Claimant for QAR 10 million in damages, contending that the Claimant was represented on the BoD by four directors who, while attending BoD meetings, did not vote on BoD resolutions, thereby impeding the Respondent's activities and denying it the opportunity of making profit.

## Court of First Instance

The Court of First Instance dismissed both claims on the grounds of lack of capacity. The case had been filed by the foreign bank itself, whilst in the court's judgment the bank did not have capacity to request the entitlements as they should have been requested by the board members in their personal capacity.

## Court of Appeal

The Claimant and Respondent appealed the judgments made at the Court of First Instance. At the Court of Appeal it was ordered that the Respondent pay the Claimant the full amount of the claim, and upheld the dismissal of the Respondent's counterclaim. The Court of Appeal held that the bank enjoys the necessary capacity to claim for the entitlements of the board members on the basis that the bank is a juridical entity which should be represented by natural persons such as the board members pursuant to article 54 of the Civil Code.

## **Court of Cassation**

The Respondent appealed the decision. It argued that since the Court of First Instance had dismissed the action due to the Claimant's lack of capacity, it was contrary to the two-tier procedural rule for the Court of Appeal to adjudicate on the merits of the case. The Court of Cassation dismissed this argument, on the basis that a plea that an action should not be heard due to the Claimant's lack of capacity is a substantive plea in response to the case as a whole.

The Court of Appeal had found that the Claimant did have the capacity to claim the entitlements of its representative Board members, since the Respondent was entrusted to appoint the Board members and thus could pursue such actions on their behalf. The Court of Cassation upheld these findings.

The Court of Cassation also upheld the Court of Appeal's conclusion that the conduct of board members of refraining to vote at BoD meetings did not give rise to liability for damages and was not intended to impede the Appellants interests.

## **Significance of the Ruling**

This judgment highlights that any juridical person (i.e. an entity created by law, such as a company) should be represented by a natural person to express the former's will. Accordingly, the court of first instance committed an error in the interpretation of the provisions of the civil law which state that entitlements awarded to board members should be paid to the company which possess the appointing and removing authority for these members. The main role of board members is that they are merely representing the appointing company. Accordingly, all the fruits of such representation should be yielded back to the appointing company.