

The Enforceability of Bank Facility Agreements in Qatar

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In a recent judgment, the court of first instance in Qatar ordered the borrower (or, the defendant) to specifically perform their contractual obligation under a facility agreement by depositing with the lending bank (the lender) a specific amount as a guarantee against the facility given by the lender. The court also imposed a daily fine of QAR 5,000 (approximately \$1,370) against the borrower until the borrower deposits the agreed sum upon guarantee with the lender. The lender was an international bank represented by Al Tamimi & Company.

The facility agreement concluded between the lender and the borrower included a clause obliging the borrower, at any time upon the lender's request, to guarantee the facility amount by placing a deposit with the lender in the same amount as the facility. In 2013, the lender requested the borrower to provide a deposit amounting to 100% of the amount provided under the facility. The borrower agreed by signing an undertaking to this effect. The borrower's beneficiary requested the lender to encash the facility or extend its duration. Before extending the facility, the lender requested the borrower to pay the amount of the undertaking.

However, the borrower failed to adhere to its undertaking and did not deposit the amount.

The lender filed a claim against the borrower requesting: (i) specific performance; (ii) a fine until the amount is paid; and (iii) compensation for delay in the borrower's performance of its obligations. The court upheld the lender's requests except for the compensation.

The court reconfirmed the principle set out in article 171 (1) of the Qatari Civil Code. This provides that the contract is the law of the parties that cannot be altered or amended except by the parties' mutual agreement or as provided for in the law.

In levying the fine, the court referred to article 255 (1) of the Qatari Civil Code which entitles the court to impose a fine where the obligation cannot be performed by someone other than the obligor (the borrower in this case).

The outcome of this judgment should give some level of confidence to the lending banks in Qatar that banks can enforce the provisions in the facility agreements, provided the provisions do not contravene public policy or mandatory provisions of Qatari laws. It should also encourage borrowers to perform their obligations in due course to avoid the application of fines.

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