محكمة قطر الدولية
ومركز تسوية المنازعات
QATAR INTERNATIONAL COURT
AND DISPUTE RESOLUTION CENTRE

In the name of His Highness Sheikh Tamim bin Hamad Al Thani,

Emir of the State of Qatar

Neutral Citation: [2025] QIC (A) 6

IN THE QATAR FINANCIAL CENTRE

CIVIL AND COMMERCIAL COURT

APPELLATE DIVISION

[On appeal from [2024] QIC (F) 57]

Date: 29 April 2025

CASE NO: CTFIC0036/2024

THE CHANCELLOR, MASTERS, AND SCHOLARS OF THE UNIVERSITY OF CAMBRIDGE

Claimant/Appellant

v

THE HOLDING WLL

Defendant/Respondent

JUDGMENT

Before:

Lord Thomas of Cwmgiedd, President

Justice Sir William Blair

Justice Dr Hassan Al-Sayed

Order

1. The appeal is dismissed.

2. No order as to costs

Judgment

1. The Appellant, The Chancellor, Masters, and Scholars of the University of Cambridge ('**Cambridge**') appeals with the permission of the Appellate Division against the judgment of the First Instance Circuit ('**FIC**'; Justices George Arestis, Dr Muna Al-Marzouqi and Dr Yongjian Zhang) given on 22 December 2024 in which it declined jurisdiction to determine the dispute between Cambridge and the Respondent, The Holding WLL ('**Holding**'). The dispute arose under a first demand guarantee given by Holding to Cambridge which included a jurisdiction clause submitting disputes to the "…*Courts of the Qatar Financial Centre…*"(the '**QFC**'). It is the effect of this jurisdiction clause that is the central issue in this judgment.

The factual background

2. On 5 August 2019 Cambridge, acting through the Cambridge University Press which provides publishing and educational services internationally, entered into a Services Agreement with Technolab Co ('**Technolab**'), a subsidiary of Holding (both companies being incorporated in the State of Qatar) for the provision of certain subcontracted services including content development, translation, pre-press and training services as part of Technolab's tendered contract with the Qatari Ministry of Education to deliver certain science curriculum materials. The services agreement was subsequently amended and varied with the result that the contract value was in excess of $12m.

3. The Services Agreement expired on 31 December 2022. Although significant sums were paid by Technolab to Cambridge, Cambridge contend that further amounts are due under that agreement. On 27 January 2024, Cambridge and Technolab entered into an Acknowledgement Agreement under which the parties acknowledged that

Cambridge had fulfilled its obligations under the Services Agreement and provided all the services due, and that Technolab had yet to pay to Cambridge in full the outstanding fees that were owed to Cambridge under that agreement. The Services Agreement and the Acknowledgment Agreement were each governed by the laws of England and Wales and gave the courts of England and Wales exclusive jurisdiction.

4. On 17 January 2024, Cambridge and Holding entered into a first demand guarantee and indemnity agreement (the '**Agreement'**) with respect to the amounts due under the agreements between Technolab and Cambridge. The Agreement recorded that Technolab is a wholly owned subsidiary of Holding, which thereby provided the demand guarantee to add its assurance on a demand basis that Cambridge would be paid what was acknowledged to be due and owing. Such demand guarantees are of great importance in international trade. Clause 12 of the Agreement provided that the applicable law was the law and regulations of the State of Qatar. The Agreement also contained a jurisdiction clause:

> *The parties irrevocably agree that the Courts of the Qatar Financial Centre shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Guarantee, its subject matter or formation (including non-contractual disputes or claims).*

5. Thus, whereas both the Services Agreement and the Acknowledgement Agreement provided for English law and the jurisdiction of the courts of England and Wales, the Agreement provided for the law and regulations of the State of Qatar and the jurisdiction of the QFC Civil and Commercial Court (the '**Court**').

6. Cambridge, after complying with the formal requirements of the Agreement, brought proceedings against Holding in this Court seeking as due under the demand guarantee $1,684,315.26 and GBP £681,019.34 plus accrued interest as of 26 May 2024 of GBP £120,855.18 and $ 214,085.24, and served the proceedings on Holding on 4 September 2024. As Holding did not challenge the jurisdiction of the Court under article 19 of the Court's Regulations and Procedural Rules (the '**Rules**') and made no other answer to the claim and served no Defence, Cambridge sought summary judgment on 10 October 2024. Again, Holding made no response.

The decision of the FIC

7. In its judgment the FIC first considered whether it had jurisdiction. Cambridge is an entity created and regulated under the laws of the United Kingdom. Technolab and Holding are Qatari companies but are not established (registered) in the QFC. Therefore, the dispute does not fall within the provisions as to jurisdiction set out in article 8 of the QFC Law (Law No. 7 of 2005 as amended; the '**QFC Law**').

8. Cambridge contended, relying on a prior decision of the FIC, *Amberberg Limited v Thomas Fewtrell* [2022] QIC (F) 3, that jurisdiction was granted under article 9.2 of the Rules, though under article 9.4 of the Rules the Court was entitled, if it considered it desirable or appropriate, to decline jurisdiction.

9. The FIC followed the decision in *Amberberg Limited* and held that it had jurisdiction under article 9.2 of the Rules but declined to exercise that jurisdiction in the exercise of its discretion as set out in article 9.4 of the Rules.

The procedure on the appeal

10. Cambridge sought permission to appeal in its application dated 19 January 2025. In view of the importance of resolving the question as to whether the Rules confer jurisdiction on the Court under article 9.2 to accept jurisdiction under a jurisdiction clause in a contract, and, if so, the principles under which the discretion under article 9.2 should be exercised, we granted permission on 18 February 2025. Cambridge was then represented, as it had been before the FIC, by Crowell & Moring LLP; at the hearing Cambridge was also represented by Thomas Williams and Oliver McEntee of Kings Chambers, United Kingdom, as Counsel.

11. As at that time, Holding had still not engaged in any part in the proceedings and as the issues raised, particularly whether this Court has jurisdiction under an opt-in clause in a contract, require careful argument and consideration, we appointed Ms Chadia El Meouchi of Badri and Salim El Meouchi LLP (Doha, Qatar) as Amicus Curiae on 18 February 2025. By a further Order dated 10 March 2025, we specified ten questions on which we particularly required assistance from her and Cambridge. She submitted a written brief and appeared before us at the hearing. We are extremely grateful to her for her thorough research and the clarity of her submissions.

12. After our appointment of the Amicus Curiae, Holding informed us through Mr Ahmed Durrani of Sultan Al-Abdulla & Partners (Doha, Qatar) on 13 March 2025 that it wished to appear at the hearing of the appeal, even though it had not challenged the jurisdiction of the Court or served any Defence. It sought an adjournment of the hearing which had been fixed for some time and the discharge of the Amicus Curiae. We refused the adjournment and the application to discharge the Amicus Curiae by an Order dated 13 March 2025, but agreed that Holding could appear at the hearing.

13. Submissions were exchanged between the parties on 27 March 2025 and the oral hearing was held on 7 April 2025.

14. In essence, the issue before us was whether the jurisdiction of this Court as set in the QFC Law could be modified or extended by the Rules and in particular by article 9.2, so that parties not established in the QFC could opt-in to the jurisdiction of the Court.

15. In the event that we decided we had jurisdiction, Cambridge submitted that we should enter judgment as there is no defence to its claim against Holding under the demand guarantee. Holding submitted that we should not do so as it had defences to the claim. It submitted that recourse must be made under article 824(1) of the Qatari Civil Code (Law No. 22 of 2004) first against Technolab; it reserved its right to explore a defence based on vitiating factors under Qatari law and asserted that the parallel proceedings between Technolab and the Ministry of Education might have a material bearing on the obligations of Holding and witness evidence might be necessary. On its part, Cambridge contended that the demand guarantee is a commercial guarantee governed by the Commercial Law (Law No. 27 of 2006), under that law it is permitted to bring a claim against Holding only, and none of the matters raised provided a defence. It urged us to grant summary judgment.

16. It is now generally accepted internationally that parties can make a choice by a jurisdiction clause in a contract to confer on the courts of a chosen state jurisdiction to decide disputes under that contract. The Hague Convention on Choice of Court Agreements 2005 (the '**Hague Convention**') gives formal international expression to that principle which the courts of some states welcome as strengthening the position of the courts of their state as a jurisdiction of choice for the resolution of disputes by parties

that may have no other connection with the state. Such states also appreciate the economic and financial benefits that flow to them as a result. Though there is a general principle that the acceptance of the choice of parties can confer jurisdiction, this is subject to the state's legal regime which confers and defines jurisdiction on the courts of that state. Therefore, the fact that Qatar is not a party to the Hague Convention does not diminish the general principle.

17. In some legal systems, a court will generally accept jurisdiction conferred by a jurisdiction clause. In England and Wales at common law, such clauses enable a court to accept jurisdiction by giving effect to the bargain the parties had made, unless there are specific reasons, such as considerations of comity, where the court should not (see the decision of the London Commercial Court in *Akai Pty Ltd v People's Insurance Co Ltd* [1999] I.L.Pr. 24 at paragraphs 46-53). Different considerations apply to the enforcement of jurisdiction clauses by means of anti-suit injunctions.

18. However, in some other legal systems a court can only have jurisdiction if such jurisdiction is conferred on it by legislation; this was pithily put by the Supreme Court of Pakistan in *Eden Builders (Pvt.) Ltd v Muhammad Aslam* [2022] SCMR 2044 at paragraph 6, and *Sprint Oil and Gas Services Pakistan FZC v Oil and Gas Development Company Ltd* [2024] SCMR 117 at paragraph 11: *"… it is a settled proposition of law that the parties cannot by agreement confer jurisdiction upon any court when otherwise the court has no jurisdiction."*

19. Qatar is such a state. Article 132 of the Constitution of Qatar (the '**Constitution**') provides that:

> *The law shall regulate all types and instances of courts and define their jurisdiction and powers.*

The text in Arabic is:

…يرتب القانون المحاكم على اختلاف أنواعها ودرجاتها، ويبين صلاحياتها واختصاصاتها،

20. As we will explain more fully, a court in Qatar only has jurisdiction when it is conferred by law in the sense of legislation. The FIC summarised the position in *Waqar Zaman v Meinhardt BIM Studios* [2024] QIC (F) 5, at paragraph 7: "… *as a creature of statute, [this Court] has no inherent jurisdiction*".

21. We therefore turn to consider the provisions relating to the jurisdiction conferred on this Court by legislation – the QFC Law and the Rules.

The QFC Law

Fundamental law, primary, and secondary legislation

22. Qatar has, in common with most states, a hierarchy of laws which, as relevant to the issue before us, can be briefly summarised:

    i. The fundamental law set out in the Constitution.

    ii. Primary or ordinary legislation (القانون) made by the Shura Council as the legislative power (or branch) of the state under article 61 of the Constitution and ratified by the Emir under article 106(1) of the Constitution.

    iii. Subsidiary or secondary legislation (اللائحة), often called regulations, made under delegated powers provided for in the primary legislation. These are made by the Council of Ministers, as the executive power (or branch) of the state under article 121 of the Constitution and ratified by the Emir.

23. The objective of this hierarchy as applied by the judicial power (or branch) of the state is to ensure that the legal order of Qatar operates harmoniously as between the different types of legislation and in accordance with the intention of the legislative power (or branch) of the state.

24. The QFC Law is primary legislation as a law made by the Shura Council by the procedure as set out in its Preamble. It is "*law*" (قانون) as described in article 132 of the Constitution, as distinct from regulation (لائحة) as described in article 139 of the Constitution:

> *The law shall regulate the method of resolving disputes between the judicial bodies and the conflicts of judgments.*

The text in Arabic is:

> *ينظم القانون طريقة البت في الخلاف على الاختصاص بين جهات القضاء وفي تنازع الأحكام.*

The heads of jurisdiction of the QFC Court under primary legislation – the QFC Law

25. The Court was established under article 8 of the QFC Law in furtherance of the overall objectives of the legislation for the QFC Authority, as set out in article 5 of the QFC Law, including:

> *1. to establish, develop and promote the QFC as a leading location for international finance and business designed to attract international banking, financial services, insurance businesses, corporate head office functions, as well as other business.*
>
> *2. to participate, in consultation with the Regulatory Authority and the Appeals Body as may be appropriate, in the establishment and maintenance of an appropriate legal and regulatory regime to govern the QFC and activities lawfully conducted within it or conducted outside it by persons, companies or entities established within it.*

26. Thus, although no specific objective was set out for the Court, it is clear that the intention of the legislative power was to establish the Court to further the overall objectives of the QFC by providing for an international court for activities relating to the financial institutions and businesses established in the QFC.

27. As originally drafted, article 8(3)(c) of the QFC Law sets out four heads of jurisdiction for this Court:

> *The First Instance Circuit of the QFC Court shall have the jurisdiction to hear the following disputes:*
>
> *1-Civil and commercial disputes arising from transactions, contracts, arrangements or incidences taking place in or from the QFC between the entities established therein.*
>
> *2-Civil and commercial disputes arising between the QFC authorities or institutions and the entities established therein.*
>
> *3-Civil and commercial disputes arising between entities established in the QFC and contractors therewith and employees thereof, unless the parties agree otherwise.*
>
> *4.-Civil and commercial disputes arising from transactions, contracts or arrangements taking place between entities established within the QFC and residents of The State, or entities established in The State but outside the QFC, unless the parties agree otherwise.*

28. Paragraphs (1) - (4) have in common that the requirement to enable this Court to have jurisdiction is that one of the parties is established in the QFC. It was clearly intended that this Court was to be given, under those paragraphs (1) - (4), jurisdiction over disputes where at least one of the parties was established in the QFC. Paragraphs (1) - (4) cannot, therefore, give the Court jurisdiction in the dispute between Cambridge and Holding as neither is established in the QFC.

29. In 2021, a fifth head of jurisdiction was added by primary legislation, namely Law No. 14 of 2021, to the QFC Law at article 8(3)(c): "*5-Civil and commercial disputes related to other bodies over which it has jurisdiction pursuant to a law*."

30. Although head (5) is material to consideration of the Rules, as we set out at paragraphs 46 and following below, it was rightly not argued before us that it provides any head of jurisdiction in itself relevant to the issue of whether this Court has jurisdiction in the dispute between Cambridge and Holding.

Can a wider jurisdiction be established under the Rules?

31. As none of the heads of jurisdiction set out in the primary legislation, the QFC Law, is applicable, we therefore turn to consider whether jurisdiction which is not available under the primary legislation is available under the Rules and in particular article 9.2 on which Cambridge relies.

<u>The scope of the Rules</u>

32. Article 9 of the Rules provides:

> *9.1 The Court has jurisdiction to decide on the matters set out under Article 8(3)(c) of the QFC Law as follows:*
>
> > [The provisions of article 9.1 mirror those of article 8.3(c)(1)-(4) as set out above]
>
> *9.2 Consistently and in accordance with fundamental international principles and international best practice, the Court will take into account the expressed accord of the parties that the Court shall have jurisdiction.*
>
> *9.3 The Court shall also have jurisdiction in relation to any matter in respect of which jurisdiction is conferred on it by the QFC Law or QFC Regulations.*

9.4 Any issue as to whether a dispute falls within the jurisdiction of the Court shall be determined by the Court whose decision shall be final. If the Court considers it desirable or appropriate, it may decline jurisdiction or may refer any proceedings to another Court in the State.

33. The principal contention of Cambridge was that the power to make regulations set out in the QFC Law was wide enough to encompass article 9.2; the express and unambiguous language read in context conferred the necessary delegated powers to the Council of Ministers within the framework of the QFC Law. Article 9.2 of the Rules enables the Court to accept jurisdiction where the parties expressly submitted to the jurisdiction of the Court, conveniently called an opt-in jurisdiction.

The extent of the power under the QFC Law to make the Rules

34. It is therefore necessary to consider whether there is power to create a further head of jurisdiction by the Rules when it is the QFC Law, the primary legislation under which the Rules are issued, that sets out the heads of jurisdiction of the Court.

35. The power to make regulations is set out principally in article 9.1 of, and Schedule 2 to the QFC Law:

Article 9

1. Each of The QFC Authority, The Regulatory Authority, The Regulatory Tribunal and The Civil and Commercial Court shall have the power to prepare and submit to The Minister its Regulations (or amendments, modifications to or repeal of the existing regulations) as it shall deem appropriate to achieve its respective objectives or to aid it to implement, carry out and enforce its powers and functions, including provisions for the determination and payment of compensation and fines in the event of breach of, or as otherwise provided in, any such Regulations. The Minister shall have power to enact such Regulations (save that the enactment of any Regulations referred to in Article (8) shall additionally require the consent of The Council of Ministers) as required by such Article) and, save as aforesaid, The Minister shall have power to enact amendments and modifications to and may repeal existing Regulations.

2. The Regulations may govern, without limitation, the matters set out in Schedule (2) and may be written in such language as the Minister shall determine.

Schedule 2

Regulations enacted under Article 9 may, without limiting the generality of that Article, govern the following matters:

….

5. Contract and agency and regulations relating to trusts applicable in the QFC, the jurisdiction of courts and arbitrators in and outside the State in connection with activities carried out in the QFC and the enforcement of contractual provisions;…

36. Further provision as to the making of the Rules was made by articles 8.7, 18.2 and 18.3 of the QFC Law and by paragraph 16 of Schedule 6 to the QFC Law. These additional provisions do not materially affect the determination of the issue and it is therefore unnecessary to set them out.

37. The Rules were made under these powers and issued under Decision 1 of the Minister of Economy and Finance dated 25 January 2011, with approval by Decision 53 of 2010 of the Council of Ministers, and ratification by the Emir. The Rules were published in the Official Gazette, Issue 2 dated 14 February 2011.

Decision 28 of 2015

38. It is common ground that any secondary legislation made under the powers set out in the QFC Law to which we have referred must operate within the framework established by the QFC Law as the primary legislation, and cannot contradict, modify or override the provisions of that primary legislation (as the Court of Cassation made clear in Decision 28 of 2015, to which we refer in more detail below).

39. It was contended by Cambridge and Holding that the Rules made by the Council of Ministers (as the executive power) could expand or add to the law as set out in the primary legislation, the QFC Law, and that this was the intention of the legislative power when it issued the QFC Law. Both pointed to the wide wording of article 9.1 of the QFC Law which enabled regulations to be made which the Court deemed appropriate to achieve its objectives and to enable it to implement and carry out its powers and functions. They also pointed to the wide words in article 9.2 " …*without limitation* ...", and in Schedule 2 "… *without limiting the generality of* ..." and to the express reference in paragraph 5 of Schedule 2 to the " … *jurisdiction of courts and arbitrators in and outside the State*".

40. Cambridge contended that the Rules could create a general opt-in jurisdiction relying on what it contended were the wide objectives of the QFC Law. Holding contended that

an opt-in jurisdiction could be created, but that it was clear from the QFC Law and the objectives set out therein that such a jurisdiction was limited to disputes in connection with activities carried out in the QFC; such a limited opt-in would therefore not apply to the dispute between it and Cambridge.

41. We cannot accept either of these contentions. In our judgment, taking into account as Cambridge submitted the language of the legislation and the intention of the legislative power in issuing the QFC Law (as inferred from the context and the process by which legislation was made), no additional head of jurisdiction was intended to be or could be created by the Rules. This Court's jurisdiction is set out in the QFC Law. It was and is not permissible to use the power to make Rules to extend or add to or modify the jurisdiction in any way. As article 121.2 of the Constitution makes clear, the context in which the QFC Law was issued was that the Council of Ministers was to make the Rules for the purpose of implementing the QFC Law (as the primary legislation) in compliance with its provisions. Any extension, addition or modification would have to be made by primary legislation.

42. In our judgment, this follows not only from the intention and language of the QFC Law but also from the way in which the hierarchy of legislation operates as was clearly explained in Decision 28 of 2015. After setting out the first two tiers of the legislative hierarchy (the Constitution and primary legislation), the Court of Cassation in its Decision 28 of 2015 said:

> *Then, as a third tier is secondary legislation, the principle being that the executive authority does not engage in legislation, and its primary role is to implement laws and enforce their provisions, however, as an exception to this principle, and to achieve the cooperation of the authorities and their mutual support, the Constitution has entrusted the executive authority, under Article 34 thereof, in specific cases functions that fall within the scope of legislative functions including the issuance of secondary legislation through regulations that are necessary for the implementation of laws. The higher status of some legal provisions based on the ranking of their enactment necessarily implies their ranking so that a lower-ranking provision cannot constrain a higher-ranking one but rather must operate within its framework.*
>
> *All these provisions are subject to the supreme text that is embodied in the Constitution, thereby unifying them in strength, status, and hierarchy and they support each other. Together, they create an organic unity that gathers them*

and upholds their cohesion, ensuring that their application aligns with the purposes defined by the Constitution. Thus, their purposes do not conflict but instead complement each other within a unified system where values and principles harmonize, without any provision contradicting another. Each piece of legislation derives its validity and legitimacy from its conformity with the higher- legislation, meaning that it cannot be issued in contradiction to, conflict with, modify, exempt from, or suspend the provisions of superior legislation. Such deviations would contradict the intent of the supreme legislator, who structured these provisions to reflect the true purpose and objective behind their formulation.

43. In our view, the terms of this judgment are decisive in clarifying the distinction as to what is a permissible and impermissible use of delegated powers under primary legislation. The distinction can, as the Amicus Curiae submitted, best be examined by considering the way powers set out in paragraph 5 of Schedule 2 to the QFC Law can and have been operated:

    i. As is clear from paragraph 5 of Schedule 2, the QFC Authority has power with the agreement of the Council of Ministers to make regulations relating to contracts. It has done so by making the QFC Contract Regulations 2005 which set out the essential principles of contract law applicable in the QFC; these regulations are extensive and cover the whole of the law of contract. In no sense do they modify or expand the law as set out in the QFC Law, as that law is completely silent on the law of contract.

    ii. Paragraph 5 of Schedule 2 also permits regulations to be made in relation to "*… the jurisdiction of courts and arbitrators in and outside the State in connection with activities carried out in the QFC*". However, as we have explained, the QFC Law sets out the jurisdiction of this Court. Any extension or change to the jurisdiction of this Court modifies the provisions set out in the QFC Law and is therefore impermissible, but regulations can be made in relation to the way in which the jurisdiction of other courts and of arbitrators impacts on the QFC and the enforcement of contracts.

44. The wide wording in article 9 of, and Schedule 2 to the QFC Law must be read in light of Decision 28 of 2015.

45. As we have already mentioned, article 132 of the Constitution provides that the jurisdiction of the courts is to be set out in primary legislation. Any extension of jurisdiction by regulations would impact upon the jurisdiction of other Qatari Courts as set out in the primary legislation establishing their jurisdiction. Therefore, when in 2017 the Law of Arbitration in Civil and Commercial Matters (Law No. 2 of 2017) was issued, specific jurisdiction in arbitration matters was conferred on this Court by that primary legislation. As was observed by the FIC in *A v B* [2023] QIC (F) 15 at paragraph 8 (i), when considering the jurisdiction provisions, the other national courts are the default courts in Qatar and only special provisions can give this Court jurisdiction.

Were the Rules validated by the express provision as *"pursuant to a law"* in article 8.3 (c)(5) of the QFC Law as amended?

46. As we have explained at paragraph 29, article 8.3(c)(5) of the QFC Law inserted by amendment in 2021 gives the Court jurisdiction over disputes where " … *jurisdiction is granted pursuant to a law*". It was accepted by Cambridge that this could not retrospectively validate the Rules made in 2011.

47. However, we consider that this provision is relevant as to whether jurisdiction can be expanded by the Rules. In our judgment it confirms the conclusion we have already expressed that primary legislation is needed. "*Pursuant to a law*" is a clear provision in the Arabic text (وفقًا للقانون), and means pursuant to primary legislation; it does not mean rooted in law, as it expressly refers to the type of legislation required – primary legislation. This provision therefore reinforces the position that any increase or expansion of the jurisdiction of this Court must be made by primary legislation.

48. The purpose of the provision added in 2021 was to enable changes to confer jurisdiction on this Court to be made by other primary legislation without needing to amend the QFC Law further. In this way, it accommodated Law No. 15 of 2021 (amending certain provisions of Law No. 34 of 2005 on Free Zones) as primary legislation which added to the jurisdiction of this Court disputes between entities registered in the Qatar Free Zones ('**QFZ**'), between such entities and the QFZ Authority and between such entities and others. In *Aarnout Henri Nicolaes Wennekers v Qatar Free Zones Authority* [2024] QIC (A) 7, the Court closely examined the provisions of articles 43 and 44 of Law No. 15 of 2021 to determine whether it, or the Administrative Circuit, had jurisdiction in the dispute.

The decision in *Amberberg Limited*

49. The view we have set out contradicts the decision of the FIC in *Amberberg Limited* on which the FIC relied on in this case. In *Amberberg Limited*, the FIC had before it an opt-in jurisdiction clause under a sale and purchase agreement in respect of shares in a company established in the QFC; the corporate purchaser of the shares (which was not established in the QFC) and the company established in the QFC both brought claims against the sellers. Although it was not disputed that the company established in the QFC could bring claims in this Court against the sellers as it was established in the QFC, it was contended that the corporate purchaser could not as it was not established in the QFC and therefore there was no relevant head of jurisdiction under the provisions of article 8.3 (c)(1)-(4) of the QFC Law. The FIC held that it could bring the claim in this Court under the provisions of article 9.2 of the Rules as that article obliged the Court to take into account " …*the express accord of the parties that it should have jurisdiction*".

50. The FIC in *Amberberg Limited* was referred to the decision of this Appellate Court (Lord Woolf of Barnes, President, and Justices Sir David Keene and Lord Scott of Foscotte) in *Nazim Omara v Al Mal Bank LLC* [2011] QIC (A) 1. In that case, the Court had to consider the Appellant's argument that the requirement for permission to appeal set out in article 35.1 of the Rules was an impediment to the right of appeal under the provisions in paragraph 11 of Schedule 6 to the QFC Law and was therefore invalid. That paragraph provided that:

> *The decision of the First Instance Circuit is enforceable unless the Appellate Circuit decides otherwise on a motion from the appellant party and for reasons the Appellate Circuit considers reasonable.*

51. It was held at paragraph 9 of the judgment that the requirement for permission, although in one sense an impediment:

> *… can, however, generally be justified in contemporary litigation as contributing to the efficient economic and effective resolution of litigation. In more recent times many legal systems have found that appeals without any merit prevent litigants being able to obtain justice and causes them additional expense and inconvenience. The requirement of permission can help to reduce this inconvenience to a minimum. It is one of the objectives of the QFC Civil and Commercial Court to provide procedures which accord with best*

international practice. It is to assist in achieving this that the requirement for permission was imposed by the Rules and Regulations.

…

The Rules and Regulations were approved by the Council of Ministers. We are of the opinion that the requirement for permission to appeal clearly falls within the language and spirit of paragraph 15 of Schedule 6 and Article 9 of QFC Law 2005, and the requirement for permission is appropriately included in the Rules and Regulations. Therefore, we reject [the appellant's] submissions as to the invalidity of requirement for permission. We 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.

52. Although this Court in 2011 did not have the benefit of the clear analysis subsequently set out in Decision 28 of 2015, the way the Court approached the issue and its judgment can be seen as being in line with that Decision. What really mattered was not the fact that the Rules had been approved by the Council of Ministers, but that the Rules were within the framework of the QFC Law and did not modify or contradict it. Paragraph 15 of Schedule 6 to the QFC Law requires the Rules to be " … *in accordance with the provisions of this Law, the fundamental litigation principles and international best practices*." The requirement for "*permission*", a term used internationally, was not, however, in fact and on analysis an impediment or contradiction or modification of the right to appeal, but operated in accordance with international best practice to ensure that appeals without merit were speedily determined as being without merit.

53. It is unfortunate that the attention of the FIC in *Amberberg Limited* was not referred to Decision 28 of 2015 which made clear the approach that is to be applied to secondary legislation. Without the benefit of that citation, the FIC was therefore mistaken in the view that the Rules in article 9.2 could add to the jurisdiction of this Court, as no submission was made to it that this was impermissible as it was beyond the way the regulation making power under the QFC Law could be exercised; in the terms used in *Amberberg Limited*, article 9.2 of the Rules would be "*ultra vires*" if it sought to go beyond that.

<u>The limited effect of article 9.2 of the Rules as submitted by Holding</u>

54. The argument made by Holding was that the wide scope of the extent of an opt-in jurisdiction contended for by Cambridge was wrong. The Court's jurisdiction was to be

read as restricted to disputes relating to the QFC, as had been observed in *Tahar Rais v Al Fardan Group* [2023] QIC (F) 49 at paragraphs 4 and 5. However it contended that article 9.2 of the Rules did provide an opt-in jurisdiction in respect of activities in the QFC if the wording of article 9.2 of the Rules was understood to be limited to " … *disputes connected with activities carried out in the QFC, but not otherwise covered in article 9.1 above*". Three examples were posited of types of agreement which, if they contained a jurisdiction clause in favour of the Court, would give the Court jurisdiction – where shareholders not established in the QFC were engaged in a shareholders' dispute in a QFC company; where entities not established in the QFC were engaged in a dispute over the sale of shares in a QFC company (as in *Amberberg Limited)*; and where there was a dispute between two entities not established in the QFC about setting up a company in the QFC.

55. However, although very narrow in scope, we cannot accept this contention either, as it modifies the jurisdiction provisions of the QFC Law. Furthermore, we would observe that if it had been intended to create such a jurisdiction in the Rules, the wording would have been expressed in a clear way.

What was the purpose of article 9.2?

56. Cambridge contended that the objectives of the Court were wider than those we have set out at paragraph 25 as it was intended that it should be able to engage in reasonable activities falling within the activities of modern international commercial courts. Article 9.2 was therefore included as modern international commercial courts would have an opt-in jurisdiction and this should be seen as a reasonable activity of such courts. As stated earlier, we agree that it is now generally accepted internationally that parties can make a choice by a jurisdiction clause in a contract to confer on a chosen court jurisdiction to decide disputes under that contract. In the present case, the parties sought to follow that principle. However, it should be noted that the jurisdiction of international commercial courts differs from court to court. There is no single model. In any event, we cannot accept the premise of this submission as the objectives set for the Court are those in article 5 of the QFC Law that we have outlined at paragraph 25.

57. The taking into account of the expressed accord of parties does, as article 9.2 of the Rules states, reflects fundamental international principles and international best

practice. But we can find no definite basis for concluding that it was intended in itself to provide a further head of jurisdiction. It may have been to bolster the acceptance of jurisdiction under the jurisdiction provisions of the QFC Law where there was also a jurisdiction clause (as in *Blom Bank Qatar v Qatar Asphalt Company* [2019] QIC (F) 4 at paragraph 21). We record that it was suggested by the Amicus Curiae that it was inserted into the Rules in anticipation of the jurisdiction being increased to include opt-in jurisdiction, as the Dubai International Financial Centre Courts had been given such jurisdiction in 2011. It is, of course, a matter for the State of Qatar whether it wishes to extend jurisdiction to allow for opt-in: the Court cannot create it by its own Rules.

Conclusion on opt-in jurisdiction

58. For the reasons we have set out, the jurisdiction of the Court is that set out in article 8 of the QFC Law and other primary legislation. Article 9.2 of the Rules does not have the effect of extending jurisdiction to enable the Court to accept a general opt-in jurisdiction beyond the heads of jurisdiction set out in primary legislation. It is therefore not necessary for us to consider the way in which the discretion should be exercised.

Costs

59. As to the costs of the proceedings, we consider that Holding, although successful on the appeal, should bear its own costs. It should have appeared both before the FIC and, when Cambridge appealed, have responded to the appeal. It has given no good explanation for its failure and, had it presented the arguments before the FIC which it presented before us, the decision of the FIC may well have been different.

60. Cambridge made the bold submission that this Court should pay its costs in the event it failed to establish jurisdiction under article 9.2 of the Rules on the basis that the Court should have appreciated when it and the Council of Ministers made that article of the Rules, it has no power to do so; it also submitted that a Practice Guide issued in 2012 had wrongly stated that the Court might in its discretion accept jurisdiction where the parties by consent request it to do so. We reject that submission. It was Cambridge which sought to rely on article 9.2 as giving the Court opt-in jurisdiction in the present case. It failed before the FIC which refused to exercise its discretion to accept jurisdiction. It also failed before us for the different reasons set out in this judgment. It must pay its own costs.

By the Court,

[signed]

Lord Thomas of Cwmgiedd, President

A signed copy of this Judgment has been filed with the Registry.

Representation

The Claimant/Appellant was represented by Mr Thomas Williams and Mr Oliver McEntee of Counsel (King's Chambers, Manchester, UK), instructed by Crowell & Moring LLP (Doha, Qatar).

The Defendant/Respondent was represented by Mr Ahmed Durrani and Mr Umang Singh of Sultan Al-Abdulla & Partners (Doha, Qatar).

The Amicus Curiae was Ms Chadia El Meouchi of Badri and Salim El Meouchi LLP (Doha, Qatar).