

**In the name of His Highness Sheikh Tamim Bin Hamad Al Thani,
Emir of the State of Qatar**

**IN THE REGULATORY TRIBUNAL
OF THE QATAR FINANCIAL CENTRE**

26 October 2014

CASE NO: 01/2014

INTERNATIONAL LEGAL CONSULTANTS LLC

Appellant

v

QFC COMPANIES REGISTRATION OFFICE

Respondent

DECISION OF THE REGULATORY TRIBUNAL

Members of the Regulatory Tribunal:

Rt. Hon. Sir David Keene, Chairman

Professor Francois Gianviti

Professor Nisuke Ando

DECISION

INTRODUCTION

1. This is the first appeal against a decision of the QFC Companies Registration Office (“CRO”) to be heard by this Tribunal. There is no dispute as to our jurisdiction; under Article 8(2)(c) of the QFC Law No 7 of 2005, as amended, this Tribunal’s jurisdiction covers appeals against decisions of the QFCA, the Regulatory Authority and “other QFC institutions”, of which the CRO is undoubtedly one.
2. The appeal is brought by International Legal Consultants LLC (“ILC”) against a decision of the CRO to issue on the 11 May 2014 a Financial Penalty Notice, by which a penalty of USD 2000 was imposed on ILC. The penalty was imposed for an alleged failure to notify a change of registered office, something which a corporate body licensed to do business in the Qatar Financial Centre is required to do within 21 days of the change: see Article 43 of the QFC Companies Regulations 2005 as amended. Those Regulations provide for a fine of up to USD 2000 for a failure to notify a change of registered office.
3. The parties to this appeal have very helpfully agreed a Statement of Agreed Facts/Chronology, which forms an appendix to this judgment. That has avoided the need for any oral evidence to be given at the hearing and also enables the facts to be dealt with in this judgment more briefly than would otherwise have been possible. The Tribunal is grateful to the parties for their co-operation on this.

SUMMARY OF THE FACTS

4. The Appellant was incorporated in the Qatar Financial Centre in November 2006 and licensed by the QFC Authority to conduct permitted activities relating to the provision of professional services in respect of legal services, companies and trust administration services. At that time, its registered address on the Companies Registration Office Register appeared as “Qatar Financial Centre, Office 704, 7th Floor, QFC Tower, Diplomatic Area, West Bay, Doha- Qatar.”
5. By means of a notification form dated 22 April 2010, ILC gave notice of a change in the address of its registered office. The new address was given as:

“Qatar-Doha West Bay,
City Centre Area,
Tatweer Tower- 3rd Floor,
Office #3”

6. In October 2012 the Appellant moved from the 3rd floor of Tatweer Tower to the 6th floor of the same tower (“the 2012 move”). Despite that move, the Appellant’s Annual Return for the year ending 13 November 2012, received by the CRO on 31 December 2012, continued to cite the 3rd floor of Tatweer Tower as its registered office address. So did its Annual Return for the following year, received by the CRO on 17 February 2014. Both Annual Returns state that the “preferred method of contact” for the Appellant is by email.
7. The Annual Return for the year ending 13 November 2013 was filed late and on 18 March 2014 the CRO imposed a fine for this late filing of USD 800. The following day a CRO driver sought to hand deliver the fine documents to ILC’s address as given in the Register, namely the 3rd floor Tatweer Tower, but he failed. A further unsuccessful attempt was made on 20 March 2014. An exchange of emails then followed.
8. On 23 March 2014, ILC by email informed the CRO that they were changing offices within the same tower and asked if a change of floors required notification. The CRO replied that it did.

9. On 10 April 2014, the Appellant filed its notification of the change of address to the 6th floor. In fact, only a few days before, on 6 April 2014, ILC had moved from the 6th floor to the 19th floor. That change was duly notified to the CRO within the requisite 21 days, namely on 16 April 2014.
10. However, the notification dated 10 April 2014 as to the change of address in October 2012 was, if notification was required, well outside the 21 day period. On 11 May 2014 the CRO issued the Financial Penalty Notice because of that alleged breach of the Regulations. It is that Notice, imposing a penalty of USD 2000, which is the subject of this appeal. As the Statement of Agreed Facts/Chronology records, ILC formally objected to the Notice, and there were discussions between the parties following the rejection of the objection, but to no avail. On 16 June 2014 the penalty was paid, and on 1 July 2014 Notice of Appeal was given by ILC.
11. For the record, the amendments to the Regulations providing for financial penalties for late notifications were the subject of consultation beginning on 8 December 2011, as was a Guidance Note dealing with the application of the Regulations. The Regulations were then enacted in their amended form on 11 April 2012 and the Guidance Note was formally published.
12. At the outset of the hearing, the Tribunal sought clarification from the CRO on one matter to which reference had been made, somewhat obliquely, in its Response to the Notice of Appeal. The CRO had suggested under the heading "Costs" that the Appellant had waived its right of appeal, or was estopped from appealing, as a result of paying the penalty without reserving its right of appeal. However, Mr. Dhanoo on behalf of the CRO made it clear that it sought to take no such point and that the appeal could proceed on the issues raised in the pleadings. We turn therefore to those issues.

THE ISSUES

13. The Appellant raises a number of points in support of its appeal. Those points can helpfully be treated as four in number. The first three relate to whether it was in breach of the Regulations; the fourth concerns the penalty imposed.
14. The first concerns the meaning of the words “registered office” in the Regulations. The Appellant asserts, entirely accurately, that there is no definition of that phrase in the Regulations. If one looks therefore to the ordinary meaning of the phrase, one does not find that the address of a business specifies a particular floor of a building. Often a mere Post Office Box number is given. In support of this argument, the Appellant refers to a number of business cards produced by other firms and companies. Mr. Daillet, on behalf of the Appellant, draws attention to the fact that the CRO itself uses only its QFC Tower 1 address, with no mention of floor, when informing persons of the address to which various formal documents should be sent. This includes the address to which Notices of Objection to a financial penalty should be sent, as well as applications for a waiver of the prescribed time limits for filing a document. In the latter case the CRO’s address is given as “Qatar Financial Centre Authority, QFC Tower 1, Diplomatic Area, West Bay, Doha.”
15. In addition, says Mr. Daillet, there is a marked contrast with the position in Dubai, where the relevant forms make it clear that the floor must be specified in the registered office address. Given this uncertainty as to meaning, the term “registered office” must be interpreted flexibly, since a breach of this Regulation gives rise to a liability to a financial penalty. Moreover, argues the Appellant, it is not for the CRO to attach its own interpretation to the words, it being neither a legislative nor a judicial body. Consequently, the failure to notify did not amount to a breach of the Regulations.
16. The response of the CRO on this first issue is that the term “registered office” relates to a specified floor which is occupied by the business in question if it occupies only part of a multi-floor building. Only if it occupies the whole building can the building suffice as the registered office. This is because the purpose of designating a registered office, the address of which appears in the publically available register, is to enable interested parties to serve formal or otherwise important documents to the business. This is what the

CRO was seeking to do on 19 and 20 March 2014. The delivery or service of such documents should not depend upon the efficiency of the reception staff serving the whole of an office tower block. The CRO points out that 80 per cent of designated locations in the QFC are in multi-occupancy towers and such locations are not distinguished in Qatar by post codes or zip codes. A Post Office Box number would not suffice for the purpose in question.

17. Mr. Dhanoo also emphasises that another purpose of the registered office address is so that members of the public can inspect a company's documents. That is their right upon payment of a reasonable fee under the Companies Regulations Article 44(2). Such a right can only properly be exercised if the precise floor in a tower is given in the registered address. Such matters should not be left to the vagaries of the reception staff on the ground floor of a tower. The CRO's position is, he says, different because the QFCA, of which the CRO is a division, is the lead tenant of QFC Tower 1 and employs, directly or through sub-contractors, the staff of the building. It therefore has control over them.
18. The Tribunal's decision on this issue is as follows. First, while the CRO is not a legislative or judicial body, it does have to form its own view, albeit an initial one which is subject to control by this Tribunal, as to the meaning of words in the Regulations. It is required to administer the Regulations: see Article 8(5). Moreover, it is given the power by those Regulations to impose a penalty where it "considers that a person has contravened a provision in those Regulations..."- see Article 129(2). Inevitably, therefore, it has to take a view as to whether a provision has been breached, and that requires it to interpret the meaning of the relevant regulation or regulations. That, however, is subject to the judicial control of this Tribunal, whose decision on the meaning of the Regulations will take precedence, confirming or overriding the view taken by the CRO. Hence there was nothing improper about the CRO determining that, in its view, a breach of the Regulations had taken place.
19. Next, we accept the broad thrust of the CRO's case on this issue. The point of having a registered office is indeed to enable the service or delivery of important documents, sometimes formal official documents. That being so, the address given as the registered office should be sufficiently precise to enable such service or delivery to be achieved

with efficiency and confidence. Merely registering the address of a multi-storey tower block, when only one or a few floors are occupied, would not adequately achieve the purpose of a registered office. That is also underlined by the right vested in members of the public under Article 44(2) of the Regulations to inspect the company's documents at its registered office. We agree with Mr. Dhanoo that the exercise of that right should not depend upon the efficiency of the staff at a tower block's reception desk. The position of the CRO is different because of the QFCA's control over such staff, which enables the CRO to use as its address merely the QFC Tower 1 address. Consequently, the Tribunal accepts that in principle a registered office address must include a reference to a floor where the whole tower is not occupied by the company in question.

20. But in any event, the position in the present case is more straightforward. The Appellant had, as at 23 April 2010, registered the address of its registered office as "Tatweer Tower- 3rd floor, Office #3." That remained as its registered office address at the time of the move in October 2012 and thereafter, until the late notification of the change was filed on 10 April 2014. The Appellant's registered office was not given merely as "Tatweer Tower", with no mention of the floor. The reference to the 3rd floor formed an integral part of the registered address, on which those consulting the public register were entitled to rely. It was no longer accurate, once the move of October 2012 had taken place. We are in no doubt that the change of address to the 6th floor required notification to the CRO, so that the Register would reflect reality.

21. The second ground of appeal advanced is that there was no breach of the Regulations, because regulatory offences are to be seen as similar to or the same as criminal offences. Consequently the principle should apply that no retroactive penalty should be imposed. What the Appellant means by this is not that its failure to notify its change of address came before the date of the relevant regulatory provisions. That is clearly not so. The 21 day time limit for notifying the CRO and the financial penalty for failing to do so were contained in the Regulations in their amended form, and those came into effect on 11 April 2012. That was indisputably before the Appellant's move from the 3rd floor to the 6th floor in October 2012. So there is no retroactivity or retrospectivity in the sense in which such terms are normally used.

22. Rather the Appellant's argument here is that the CRO only notified its interpretation of "registered office" to the Appellant by email on 23 March 2014, after the date of the alleged breach. That seems to be an argument that the Appellant had not understood the Regulations in the same way as the CRO.
23. If that is a relevant consideration, it does not go to the question of whether there was a breach or not. It goes only to mitigation of penalty. That is because the issue of whether there was a breach of the Regulations does not depend on the Appellant being notified as to the correct meaning of the wording. It depends upon the meaning which this Tribunal gives to the term "registered office." That meaning is then to be seen as having been the meaning of the term from the time the Regulations came into effect. Any misunderstanding on the part of the Appellant is relevant only to the scale of the penalty, not to whether or not the Regulations were contravened. We therefore reject the Appellant's arguments on this second issue.
24. Thirdly, the Appellant maintains that the CRO's action in imposing a penalty is unjustified. The supposed breach of the Regulations was of little or no consequence, especially as by the time of the penalty notice, the Appellant had moved again, away from the sixth floor. Therefore no useful purpose is served by fining it.
25. The CRO on this issue explains that the purpose of late filing penalties was and is to improve the compliance culture amongst QFC firms. There had been a significant number of late filings, with the result that the public register was not up to date. In the present case, the problems caused by the failure to notify the move from the 3rd floor of Tatweer Tower resulted in the failure of the CRO's driver to be able to deliver a hard copy of the Annual Return penalty notice on two occasions, the 19 and 20 March 2014. That demonstrates the importance of notification.
26. We can see force in both sides arguments on this issue, but those arguments do not seem to us to have any relevance to the question of whether the Appellant was in breach of the Regulations. Whether any useful purpose is served by the penalty imposed in this case relates to the size of the penalty appropriate in the circumstances, not to breach. We shall come to the fourth and final issue, namely the appropriateness of the USD 2000 penalty very shortly. But having considered all the Appellant's arguments on breach, we are

satisfied that ILC did fail to notify the CRO of the October 2012 change of registered office within 21 days and in consequence it was in breach of Article 43(1). The appeal as to breach must fail. We turn to the final issue, that of the scale of the penalty imposed.

27. As we have already recorded, the penalty of USD 2000 imposed in this case is the maximum possible for such a breach of the Regulations: see Schedule 1 to the Regulations. The CRO has issued (as noted earlier) a Guidance Note, after public consultation, which deals amongst other things with how it will determine the amount of a late filing penalty. Paragraph 12 thereof provides:

“How does the CRO determine the amount of the late filing penalty to be imposed?”

The amount of the penalty shall be determined in the sole discretion of the CRO, up to the maximum penalty amount. Depending upon the severity of a Firm’s failure to comply with the Regulations, the CRO would normally seek to first impose a fine of approximately twenty percent (20%) of the maximum penalty amount. If the notification remains unfiled an additional ten percent (10%) of the maximum penalty amount will be levied on the contravening Firm for each subsequent month. However, where a contravention is deemed by the CRO to be “serious”, the maximum penalty amount may be immediately imposed on a contravening Firm.

If the notification remains unfiled for a period of 3 months, then the QFCA may take appropriate enforcement measures, including the suspension or revocation of a Firm’s license in the QFC.”

28. The Appellant contends that to fine it the maximum amount is disproportionate. It emphasises that its change of address was simply a move within the same tower to a different floor, which is very different from a move between two towers. Moreover, it no longer occupies that floor today, the 6th floor, so no useful purpose is served by so great a fine. In addition, it acted promptly in notifying the CRO of the change from the 3rd to the 6th floor, once it had been clarified that such a move required notification. The emails establishing that there was such a requirement were dated 23 March 2014, and the CRO

then received the formal notification of the move to the 6th floor on 10 April 2014, within 21 days of the clarification. The Appellant rejects the CRO's allegation that it has a poor record of compliance with the filing requirements.

29. Mr. Daillet emphasises that there is no evidence that any member of the public was ever misled by its failure to notify. The CRO appears to have adopted a "one size fits all" approach in imposing the maximum fine.
30. The CRO argues that its penalty accords with its Guidance Note. Instead of giving notice as it should have done by 21 days after the October 2012 move, notice was not given until April 2014, a delay of some 16 months. Moreover, the Appellant had perpetuated the incorrect entry on the Register by retaining the 3rd floor address in its 2012 Annual Return filed on 29 January 2013. This degree of delay is serious and merits the maximum penalty. Mr. Dhanoo submits that the CRO had no real option under the Guidance, given the delay, but to impose the maximum penalty. Moreover, the Appellant was late with its Annual Return for the year ending 13 November 2012, as it was for the following year, which led to the penalty of USD 800. This does show a consistent failure to comply with the regulatory requirements.
31. The CRO accepts that the Appellant's request on 23 March 2014 for clarification was genuine and not a subterfuge and that one could envisage worse cases of non-compliance than this. But, says Mr. Dhanoo, in really grave cases the QFCA might feel able to exercise its power to suspend or revoke a company's license. At the least, the Appellant was at fault in not seeking clarification earlier, as it could have done. As a company providing legal services, it ought to have known better.
32. The Tribunal can see force in the specific points made by the CRO, though it is to be observed that the Appellant's previous record of late filing was not substantial. Its Annual Return for 2012 was late by just over two weeks; its Annual Return for 2013 was more significantly late, but this appears to have been partly because of confusion between the Annual Return and the Annual Compliance Checklist. Nonetheless, the Appellant does not have an unblemished record.

33. It is a principle applied in many jurisdictions that one should be reluctant to impose the maximum penalty in a particular case unless it is clear that the case is one of the most serious examples of the offence or regulatory breach likely to arise. If that principle is not applied, there is a grave risk that one will end up imposing the same penalty, namely the maximum, in cases which vary greatly in their seriousness. That in turn would be contrary to a basic principle of justice, which seeks to draw a distinction between more serious and less serious cases: see, for example, the English cases *R v Byrne* 62 Cr App R 159 and *R v Carroll* 16 Cr App R (S) 488.
34. It is difficult to observe the present case as one of the more serious instances of a breach of the filing requirement for change of registered office. The fact that the move in question was within the same tower block is, in itself, of some, though limited, significance. What seems to us to be the more important aspect of that fact is that the Appellant had not appreciated that the change of floors required the filing of a notice. It is not suggested by the CRO that the Appellant's query by email of 23 March 2014 seeking clarification on this was anything other than genuine. Indeed, when on 29 May 2014 the CRO rejected the Appellant's objection to the penalty, its Senior Companies Registration Office Administrator sent an accompanying email to the Appellant stating the CRO "did not doubt either the reasoning for the delay or the mitigation provided."
35. This means that the Appellant's failure to notify is not to be seen as deliberate but as the result of a mistake on its part. Moreover, while we have held that the Appellant's understanding was mistaken, its error was not inexcusable. There is no definition in the Regulations or in the Guidance Note of "registered office." Unlike the Dubai International Financial Centre Companies Regulations, which by Regulation 3.1.2 makes it clear that the floor or level should be specified, the QFC material is silent on the matter. We recommend that the Guidance Note should be amended to make good this omission. No doubt the Appellant could and should have sought clarification on this point, and there is certainly no doubt that, presumably through carelessness, it continued to refer to the 3rd floor of Tatweer Tower in its Annual Returns for 2012 and 2013. This shows a lax approach to regulatory requirements deserving of a penalty, but not at the maximum possible level.

36. This Tribunal has previously made it clear that it will not lightly interfere with penalties imposed by the QFCRA. That applies also to the QFCA and QFC institutions such as the CRO. Intervention will only be appropriate where the penalty is one which is wrong in principle or otherwise clearly inappropriate. In the present case, the imposition of the maximum penalty was wrong in principle and clearly disproportionate. It was unjustified on the facts. This was an inadvertent delay caused by a misinterpretation of the Regulations. It was wrong for the CRO simply to apply the delay provisions in the Guidance in a mechanical way. The decision at which we have arrived is that the penalty of USD 2000 should be set aside and a penalty of USD 1000 be substituted for it.

CONCLUSION

37. For the reasons set out above, the appeal is allowed. The Notice of 11 May 2014 is upheld but only to the extent of USD 1000 and the CRO is directed to repay the sum of USD 1000 to the Appellant within 21 days of this judgment. As for the costs of these proceedings, the parties were invited at the end of the hearing to make any application for costs, but both parties declined to do so. We also formally recommend that the QFCA/CRO should consider amending its Guidance Note to make it clear that a registered office address should include a reference to floor level where the office is located in a tower of which only part is occupied by the company in question.

Representation:

For the Appellant: Mr. Michel Daillet, International Legal Consultants LLC, Doha.

For the Respondent: Mr. David Dhanoo, Chief Legal Officer, QFCA, Doha.

By and on behalf of the Court



Rt. Hon Sir David Keene, Chairman



Appendix 1

**IN THE REGULATORY TRIBUNAL
OF THE QATAR FINANCIAL CENTRE**

CASE No:

Between

INTERNATIONAL LEGAL CONSULTANTS LLC

Appellant

v

COMPANIES REGISTRATION OFFICE

Respondent

STATEMENT OF AGREED FACTS / CHRONOLOGY

1. 13th November 2006 – International Legal Consultants LLC (firm no 00023) (“ILC”) is Incorporated by the Qatar Financial Centre (“QFC”) Companies Registration Office (“CRO”) and simultaneously Licensed by the QFC Authority (“QFCA”) to undertake the permitted activity of professional services in respect of legal services, companies and trust administration services;

2. 8th December 2011 – QFCA publishes consultation notice regarding proposed amendments to the QFC Companies Regulations 2005 (the “Regulations”) including the addition of certain financial penalties relating to late notifications. The QFCA also consults on the Late Filing Penalties Guidance (“Guidance Note”) which explains how the CRO will interpret the Regulations.
3. 11th April 2012 – The Regulations are enacted and the Guidance Note is published;
4. October 2012 - ILC move from the 3rd Floor of Tatweer Tower, Doha, to the 6th Floor of the same tower (the “Office Move”);
5. 31st December 2012 – CRO receives ILC’s Annual Return (“AR”) for the period 14th November 2011 to 13th November 2012 (the “2012 AR”) erroneously containing reference to the 3rd Floor Tatweer Tower as ILC’s registered office address; the 2012 AR states that ILC’s “preferred method of contact” is e-mail;
6. 30th January 2014 – CRO receives ILC’s Annual CRO Compliance Checklist;
7. 16th February 2014 – ILC explains by email to the CRO that it confused the CRO Annual Return with the 2014 Annual Compliance Checklist that ILC had filed on the 30th January 2014;
8. 17th February 2014 – CRO receives ILC’s AR for the period 14th November 2012 to 13th November 2013 (the “2013 AR”) still containing the reference to the 3rd Floor Tatweer Tower as ILC’s registered office address. The 2013 AR reiterates that ILC’s “preferred method of contact” is e-mail;
9. 18th March 2014 – CRO fines ILC US\$800 for the late filing of its 2013 AR (the “AR Fine”);

10. 19th March 2014 – QFCA driver fails in an attempt to deliver the original AR Fine documents to ILC’s address of 3rd Floor Tatweer Tower being the registered office address in the CRO records; the drivers note of the attempted delivery states that “ILC is no longer in Tatweer Tower”;
11. 20th March 2014 – QFCA driver attempts second unsuccessful hand delivery of AR Fine documents to ILC’s registered office address;
12. 20th March 2014 – As a result of failed hand deliveries, the CRO enquire by email with ILC as to its location to enable delivery of AR Fine documents;
13. 23rd March 2014 - ILC emails the CRO and invites it to leave the AR Fine documents with the security officers at the reception of the Tatweer Tower;
14. 23rd March 2014 – ILC by email inform the CRO that they are changing offices within the same tower and ask if a change of floors requires notification;
15. 23rd March 2014 – CRO informs ILC by email that a change in floor does require notification;
16. 6th April 2014 – ILC moves from 6th floor of Tatweer Tower to the 19th Floor (the “Second Office Move”);
17. 10th April 2014 - CRO receives Q07 notification from ILC of the Office Move (the “Late Notification”);
18. 13th April 2014 – CRO highlights to ILC by email that it never received a Q07 notification for the Second Office Move;

19. 14th April 2014 – CRO informs ILC by email that it has processed the Late Notification, and requests ILC to send the CRO another Q07 notification for the Second Office Move. CRO further informs ILC that the notification deadline is on April 27th 2014;
20. 15th April 2014 – Original AR Fine documents hand delivered to ILC.
21. 16th April 2014 – ILC files Q07 notification relating to the Second Office Move;
22. 16th April 2014 – ILC objects to the AR Fine (“AR Objection”);
23. 8th May 2014 – CRO rejects the AR Objection;
24. 11th May 2014 - the CRO issue a Late Filing Penalty Notice (the “Fine”) to ILC in the sum of US\$2,000 regarding the Late Notification;
25. 13th May 2014 - QFCA receives payment of the AR Fine in the sum of US\$800;
26. 18th May 2014 - ILC send a Notice of Objection to the Fine to the CRO (the “Objection”);
27. 29th May 2014 - the CRO reject the Objection;
28. 12th June 2014 – The CRO Manager and QFC Authority Chief Legal Officer (“CLO”) met with Michel Daillet of ILC to discuss the decision to reject the Objection (the “Meeting”). The CLO found that the grounds advanced by ILC were objectively insufficient, legally defective and afforded no other reasonable or justifiable grounds to support the reduction or withdrawal of the fine, and further explained that the implementation of the fines regime in May 2012 had resulted in a 50% improvement in compliance with the CRO filing requirements which had resulted in a positive impact on the CRO’s statutory objective of maintaining its public register. The Meeting resulted in no change to the Fine;

29. 16th June 2014 – QFCA receives payment of the Fine in the sum of US\$2,000 from ILC. ILC did not communicate to the CRO that the payment was “without prejudice” or otherwise reserving any of its rights to subsequently challenge the Fine;

30. 1st July 2014 – ILC issues appeal against the Fine with the QFC Regulatory Tribunal.