



**IN THE CIVIL AND COMMERCIAL COURT
OF THE QATAR FINANCIAL CENTRE**

1 JUNE 2009

CASE NO: 0001/2009

QATAR FINANCIAL CENTRE AUTHORITY

APPLICANT

SILVER LEAF CAPITAL PARTNERS LLC

RESPONDENT

**APPLICATION FOR A WINDING UP ORDER
PURSUANT TO ARTICLE 80 OF THE QATAR
FINANCIAL CENTRE INSOLVENCY REGULATIONS
REGULATION NO.5 OF 2005**

Members of the Court:

**Sir Peter Gibson
Barbara Dohmann QC
The Hon. Ronald Sackville AO QC**

ORDERS

THE COURT ORDERS THAT:

1. Pursuant to Arts 77 (4) and 80 of the *Insolvency Regulations*, Silver Leaf be wound up.
2. Pursuant to Art 83 (1) of the *Insolvency Regulations*, Joanne Kim Rolls and Steven John Parker, both of whom are entered on the Register of the Official Liquidators issued at the QFC, be appointed to act as joint liquidators of Silver Leaf.

JUDGMENT

THE COURT:

The Proceedings

1. These proceedings are the first to be heard and determined by the Civil and Commercial Court of Qatar (“*the Court*”). The Court is established by Art 8 (3) of the *Qatar Financial Centre Law* (Law No.7 of 2005), as amended by Law No.2 of 2009 (“*QFC Law*”).
2. The applicant, the Qatar Financial Centre Authority (“QFCA”), commenced the present proceedings on 26 March 2009 by filing an application in the Court seeking orders winding up the respondent company (“*Silver Leaf*”) and appointing a liquidator of Silver Leaf. The QFCA seeks the orders pursuant to Arts 77(4) and 80 of the *QFC Insolvency Regulations* (Regulation No. 5 of 2005) (“*Insolvency Regulations*”), on the ground that the Court should form the opinion that it is just and equitable that Silver Leaf be wound up.
3. The QFCA is established by Art 3 (1) of the *QFC Law*, as the body responsible for the business of operating the Qatar Financial Center (“*QFC*”). The QFC is a financial and business centre located in Doha: *QFC Law*, Art 2 (1).
4. Silver Leaf is a limited liability company incorporated in Qatar pursuant to the *QFC Companies Regulations*, Silver Leaf has four directors, each of whom holds 100 of the 400 issued shares in the company. Two of the directors, Mr. Keith and Mr. D’Souza, are based in London (“*London directors*”) and the remaining two directors, Mr.Said and Mr.Tayyem, are based in Doha (“*Doha directors*”).

5. On 13 February 2008 (the date of Silver Leaf’s incorporation), the QFCA granted Silver Leaf a licence to carry on “*the business of a Holding Company*” in or from the QFC: *see QFC Law*, Art 11 (1), sch 3, para 14. The Business Plan for Silver Leaf, prepared shortly before its incorporation, contemplated that the company would be a “*vehicle for the [four] founding partners to prepare and launch its Private Equity Fund at the QFC*”. It is common ground, however, that the proposed Fund has never been launched and that Silver Leaf now has no assets available to meet its liabilities. It is also common ground that the relationship between the Qatar directors, on the one hand, and the London directors, on the other, has irretrievably broken down. Each set of directors has made allegations of improper or inappropriate conduct against the other but it is important to point out that the allegations have not been tested in these proceedings and the Court has not found it necessary to make any findings in respect of them.
6. The documents filed on behalf of the QFCA identify a number of grounds upon which the Court is asked to form the opinion that it is just and equitable to make an order for the winding up of Silver Leaf. The grounds are identified in the statement made by the QFCA’s Chief Legal Officer, as follows:
- “(a) The Company is licensed to conduct certain business activities and it has been conducting activities beyond the scope that it was licensed to undertake;
 - (b) The Company is unable to pay its debts and has no income;
 - (c) The Company is insolvent;
 - (d) There is a justifiable lack of confidence in the ability of the directors to pass any board resolutions or conduct the business;
 - (e) There are justifiable grounds for concluding that the shareholders have irreconcilable differences that will frustrate the purpose of the business;
 - (f) There is no or very little prospect of Silver Leaf undertaking the Permitted Activities that it was licensed to undertake;
 - (g) It is in the interests of the Qatar Financial Centre and the public that Silver Leaf is wound [up] to:
 - (i) Protect the public from an insolvent company;
 - (ii) Prevent exposure of the public to unauthorized financial activities; and

(iii) Maintain the confidence and integrity of the Qatar Financial Centre as an international financial centre operating in accordance with best international practice;

(h) There are numerous creditors that require that the Company[‘s] assets be distributed equitably in accordance with law”.

7. The QFCA does not press ground (a). However, it presses all the other grounds, although it places most reliance on grounds (b) and (c) and grounds (e) and (f).

Insolvency Regulations

8. The *Insolvency Regulations* were made by the Minister of Economy and Commerce pursuant to Art 9 of the *QFC Law* and apply in the QFC: Art 2. Article 77 of the *Insolvency Regulations* provides that a company incorporated under the *QFC Companies Regulations* may be wound up by “the Tribunal” if:

“(4) the Tribunal is of the opinion that it is just and equitable that the Company should be wound up“.

9. Article 80 of the *Insolvency Regulations* provides as follows:

“Where it appears to the QFC Authority that it is expedient in the interest of the QFC that a Company should be wound up, it may make an application for the Company to be wound up if the Tribunal thinks it just and equitable for it to be so”.

10. There is no dispute, given that Law No. 2 of 2009 has come in to force, that the references in Arts 77 and 80 to “*the Tribunal*”, are to be read as references to this Court. The jurisdiction of the Court includes hearing civil and commercial disputes arising between the QFC authorities or institutions and the entities established therein: *QFC Law*, Art 8 (3) (c) (1).

11. Article 83 of the *Insolvency Regulations* deals with the appointment and duties of the Liquidator. Article 83 (1) provides as follows:

“Where the Tribunal orders that a company be wound up, the Tribunal shall identify in the order the person who is to act as Liquidator of the Company and that person shall take office immediately upon the order being made. That person shall within 21 days summon meetings of the Company’s creditors and contributories for the purposes of choosing a person to be Liquidator of the Company”.

The Course of These Proceedings

12. For an apparently straightforward application to wind up a dormant company, the present proceedings have generated a significant number of interlocutory disputes and a very large volume of documentation. In order to understand the issues that arise in the course of the proceedings it is necessary to recount the procedural history.
13. The Court was initially informed that there was some urgency about dealing with the winding up application. For that reason the parties (the QFCA and Silver Leaf) were informed that a hearing would be scheduled in Doha on 3 May 2009. In anticipation of the hearing, the QFCA filed four statements of evidence relating to which numerous exhibits were annexed, relating to the affairs of Silver Leaf. The QFCA also filed detailed written submissions prepared by its counsel, Mr Lowe.
14. On 21 April 2009, the London directors filed an application requesting postponement of the hearing. They did so on the grounds that more time was required to instruct counsel. In a statement supporting the adjournment application, Mr Keith acknowledged that the directors of Silver Leaf had been in a deadlock since September 2008 and that the board of the company had been unable to make decisions. He also stated that Silver Leaf had ceased all trading activity and had no assets. However, Mr Keith expressed concern that the legal representatives who proposed to appear on behalf of Silver Leaf at the hearing might be in a position of conflict by reason of their prior association with the company.
15. In the meantime, Mr Lowe drew to the attention of the Court a possible jurisdictional question arising from the fact that Law No.2 of 2009, which completed the establishment of the Court, had not then been published in the *Official Gazette*. Mr Lowe suggested that the effect of an earlier law, Law No.1 of 1961, might be that Law No.2 of 2009 (amending the *QFC Law*) did

not come into force until 30 days after its publication in the *Official Gazette*. Mr Lowe made no mention at this time of the possible significance of the *Constitution of Qatar*.

16. On 25 April 2009, the members of the Court met to consider the London directors' application for an adjournment of the scheduled hearing. The members of the Court communicated to the parties their view that:

“the hearing fixed for 3 May should go ahead on that day but that any application, whether procedural or substantive and including any application for an adjournment may be made at that hearing. The hearing will be held in open court and it will be conducted in accordance with the Guidance which has been agreed to by all members of the [Court]”.

17. On 29 April 2009, the Court invited responses to the jurisdictional issue raised by the QFCA. Following receipt of submissions, the Court confirmed that the hearing for 3 May 2009 would proceed and that any jurisdictional issue could be addressed at that time.

The First Hearing

18. The scheduled hearing duly took place on 3 May 2009. The QFCA was represented by Mr Lowe and Mr Abu Shaikha, while Ms El Meouchi announced her appearance for Silver Leaf and was permitted by the Court (without deciding the issue raised by the London directors) to present arguments on behalf of the company. The London directors were represented by Mr White and the Doha directors by Mr Qureshi QC. Several persons and companies claiming to be creditors of Silver Leaf also appeared at the hearing, either personally or through legal representatives.
19. A number of issues were debated at the hearing, including the jurisdictional question. The Court pointed out that the date on which Law No. 2 of 2009 came into force was likely to be governed, not by Law No.1 of 1961, but by Art 142 (1) of the *Constitution of Qatar*. Article

142 (1) provides that the laws enacted under the Constitution must be published in the *Official Gazette* within two weeks of their issue and:

“unless otherwise stated in the laws themselves, such laws shall come into force a month as of [*sic*] the date of their publication”.

20. Since Law No. 2 of 2009 had not been gazetted until 23 April 2009, the Court noted that there was a possible question as to whether it had jurisdiction to hear and determine the application, at least prior to 24 May 2009 (that is prior to the expiration of one month from the date of gazettal).

21. Other issues debated at the hearing included the following:

- the significance of the QFCA not then having secured the consent of any person to act as a liquidator of Silver Leaf;
- whether, if the case were adjourned until a date on or after 24 May 2009, a provisional liquidator of Silver Leaf should be appointed in the meantime;
- whether the allegations made by each set of directors against the other were relevant to the issues arising on a winding up application; and
- whether it was appropriate, given the apparent deadlock within Silver Leaf, that the company should be represented on the winding up application by legal representatives who had acted on its behalf from its incorporation but whose retainer had not been approved by the London directors.

22. The Court heard argument on these matters in open court. The Court deferred any decision on the jurisdictional question and on the issue of Silver Leaf’s legal representation. It also declined the QFCA’s application to appoint a provisional liquidator, pointing out (among other

things) that Silver Leaf had no continuing business requiring protection and that there was nothing to indicate that intervention of this kind was required.

23. The proceedings were adjourned until 28 May 2009. The Court gave directions for the further conduct of the proceedings, including a direction that the QFCA identify the proposed liquidator of Silver Leaf as soon as possible.

Further Orders

24. On 3 May 2009, the Doha directors gave notice of a board meeting to be held on 17 May 2009 to confirm that El Meouchi LLP was authorized by Silver Leaf to act on its behalf in all legal proceedings, including the winding up application. On 8 May 2009, the London directors applied in writing for injunctions restraining Silver Leaf and the Doha directors from taking any action, including convening a board meeting, without the consent of all directors and shareholders. The London directors also sought an order restraining El Meouchi LLP, the law firm purporting to represent Silver Leaf, from appearing on behalf of the company at the adjourned hearing. On 16 May 2009, the Court issued a ruling declining to grant the relief sought by the London directors. On 17 May 2009, at a board meeting to which the London directors objected and did not attend, the Doha directors passed a resolution purporting to confer authority on El Meouchi LLP to act on Silver Leaf's behalf.

25. By this stage the London directors and the Doha directors had each filed substantial documentation addressing their competing contentions as to who was to blame for the failure of Silver Leaf in achieving its objectives. On 20 May 2009 the Court issued a direction as follows:

“ Parties intending to appear before the Court on 28 May 2009 are reminded that the relevant issues for the Court to determine on the QFCA's application for the winding up of [Silver Leaf] are whether the grounds asserted by the QFCA for the winding up of [Silver Leaf] are established and if so whether the Court should wind up [Silver Leaf]. The Court's provisional view, subject to any arguments to the contrary which may be advanced at the

hearing, is that the disputes evidenced in the documents submitted to the Court as to who is to blame for the present situation of [Silver Leaf] are not relevant to those issues”.

The Adjourned Hearing

26. Prior to the hearing held on 28 May 2009, the QFCA filed a form of consent executed by two liquidators duly registered in Qatar, indicating their willingness to accept appointment as liquidators of Silver Leaf should the Court be minded to appoint them. Each party, including the Qatar directors and the London directors, filed further written submissions in relation to the winding up application.
27. At the outset of the hearing the Court decided that the initiating process and all other documentation filed in the Court should be deemed to have been refiled on 24 May 2009. This direction was designed to overcome any question concerning the jurisdiction of the Court that might otherwise have arisen from the delay in publishing Law No. 2 of 2009 in the *Official Gazette*. The Court again permitted Ms El Meouchi to present arguments on behalf of Silver Leaf without resolving the issues raised by the London directors as to her role as the company’s legal representative.
28. It became apparent from the written and oral submissions that there was a good deal of common ground among the parties present at the hearing:
- Silver Leaf accepted both that it was insolvent and that there were irreconcilable differences between the two sets of directors (although Ms El Meouchi pointed out that Silver Leaf’s articles of association provide for the Chairman (Mr Tayyem) to have a casting vote). Silver Leaf supported the Court making a winding up order on the basis that it was just and equitable to make such an order.
 - The Doha directors, while rejecting all allegations made against them, also accepted that Silver Leaf was unable to pay its debts and that the two sets of directors were deadlocked

(although they, too, pointed to the Chairman's casting vote at a board meeting as a means of resolving disagreements). Not surprisingly, the Doha directors took the same position as Silver Leaf in relation to the making of a winding up order.

- The London directors reiterated their claim that there were irreconcilable differences between the two sets of directors and that these differences had effectively paralysed Silver Leaf's operations. The London directors also implicitly accepted that Silver Leaf was insolvent and unable to discharge its liabilities. While their written submissions did not expressly say so, Mr White on their behalf made it clear at the adjourned hearing that the London directors did not dispute that a winding up order should be made on the just and equitable ground.
- None of the parties appearing at the hearing objected to the persons nominated by the QFCA as joint liquidators of Silver Leaf, should a winding up order be made.

29. It follows from what we have said that all parties (including the Doha and London directors) in substance agree that:

- Silver Leaf is unable to pay its debts (although the parties do not agree as to the precise nature and extent of Silver Leaf's liabilities);
- the two sets of directors have irreconcilable differences which have prevented Silver Leaf from carrying out the objectives for which it was incorporated and for which it was granted a licence by the QFCA;
- these circumstances justify the Court in concluding that it is just and equitable that Silver Leaf should be wound up; and
- it is appropriate that a winding up order be made (or, in the case of the London directors, there is no dispute that such an order should be made).

Reasoning

30. These matters, upon which all parties are agreed, justify the Court forming the opinion required by Art 80 of the *Insolvency Regulations* that it is just and equitable that Silver Leaf be wound up. Nonetheless, it is appropriate that we should explain in more detail why we have formed that opinion.
31. The starting point for determining the application made by the QFC for an order winding up Silver Leaf must be the legislation (including any subordinate legislation) governing an application of this kind. The task of the Court is to interpret the relevant statutory language, in this case the *Insolvency Regulations*, so as to give effect to its intention. The process of interpretation of the legislation must take into account the context in which the statutory language appears. The Court must also bear in mind that it has to work with English translations of the Arabic text and, in consequence, special difficulties may sometimes arise in discerning the legislative intent.
32. Nonetheless, the language in Arts 77 and 80 of the *Insolvency Regulations* plainly derives from concepts that have formed part of the law of England and other common law countries for a very long time. In England, for example, the just and equitable ground for the winding up of a company has existed since the *Joint Stock Companies Winding Up Act 1848*: see *Ebrahimi v Westbourne Galleries Ltd* [1972] 2 All ER 492, 496, per Lord Wilberforce. Similarly, many jurisdictions allow public officials or regulatory bodies, in addition to persons such as creditors or directors, to apply to a court for the winding up of a company on the basis that it is just and equitable to do so.
33. The fact that Arts 77 and 80 of the *Insolvency Regulations* have antecedents elsewhere does not require this Court simply to follow the interpretation accorded to the just and equitable ground by the courts of other countries. No doubt the principles developed elsewhere may provide

useful guides to the interpretation of the Qatari legislation. But that legislation must be construed in the manner we have indicated, having regard to the circumstances in Qatar. It is the law of Qatar that this Court is applying, albeit legislation that has been adapted from statutes enacted in other jurisdictions.

34. The language of Arts 77 and 80 of the *Insolvency Regulations* is broad. It is intended to cover the very wide variety of circumstances in which it may appear to the Court “*just and equitable*” that a company be wound up. The breadth of the language reflects the impossibility of anticipating all the circumstances in which a winding up order may be required to prevent injustice or to resolve an otherwise intractable situation likely to cause hardship or unfairness, for example, to creditors or shareholders of a company.
35. Article 80 of the *Insolvency Regulations* entitles the QFCA to bring a winding up application on the just and equitable ground, provided that it forms the view that “*it is expedient in the interest of the QFC that a company should be wound up*”. This language strongly suggests that in determining whether it is just and equitable to wind up a particular company, the Court should take into account the objectives of the QFCA, as set out in Art 5 of the *QFC Law*. These objectives include developing the QFC as a leading location for international finance and business; establishing an appropriate legal and regulatory regime to govern both the QFC and the activities lawfully conducted by entities established in the QFC; and acting in accordance with and promoting international best practice.
36. In the present case, Silver Leaf was incorporated as the vehicle to facilitate the preparation and launch of a private equity fund in Qatar. The four shareholders and directors are described in the Business Plan and elsewhere as the “*founding partners*” or as “*partners*” in the venture. They each have identical shareholdings in Silver Leaf and each of the shareholders was appointed a director. Clearly, as subsequent events demonstrated, cooperation between the two sets of directors was essential to the success of the enterprise. Moreover, a certain degree of trust between them was a necessary prerequisite for that cooperation. Both trust and

cooperation, however, have completely broken down. The existence of a mechanism for resolving a deadlock at board level (the Chairman's casting vote) does not alter the fact of the breakdown. The evidence establishes that there is no realistic prospect of Silver Leaf achieving the objectives for which it was incorporated.

37. Silver Leaf's inability to pay its debts might well have formed an independent basis for a winding up order, had the application been brought by a creditor or director or by the company itself (see *Insolvency Regulations*, Arts 77 (2), 79). The significance of Silver Leaf's inability to pay its debts, for present purposes, is that there are creditors and persons claiming to be creditors whose position can be resolved only if Silver Leaf is wound up and a liquidator or liquidators appointed. Moreover, the evidence shows that it is not in the interests of the QFC to have a moribund company, devoid of assets and unable to pay its debts, continue in existence. To do so, among other things, would hardly be in accordance with international best practice.
38. It is not necessary for the Court to make findings as to the precise extent of Silver Leaf's liabilities. Nor, as we have noted, is it necessary or appropriate to resolve the truth or otherwise of the allegations that have been exchanged between the two set of directors. These matters can be addressed by the liquidators, if necessary, in the course of the liquidation.
39. In summary, the evidence demonstrates that Silver Leaf is effectively paralysed; it cannot achieve its objectives; there is practical deadlock between the two set of directors and shareholders; trust and cooperation between them have broken down; and the company is insolvent. The QFC's objectives, as stated in the *QFC law*, would be served if this unsatisfactory state of affairs is brought to an end by the liquidation of the company. For these reasons, the Court proposes to accede to the QFCA's application and to order that Silver Leaf be wound up and the joint liquidators proposed by the QFCRA be appointed.

Costs

40. At the adjourned hearing, the QFCA stated that it intended to seek an order for costs against Silver Leaf. The Doha directors, through Mr Qureshi QC, foreshadowed their intention to seek a costs order against the London directors, on the ground that the London directors had unnecessarily prolonged the proceedings by attempting to press issues irrelevant to the winding up application and continued to resist a winding up order until the adjourned hearing on 28 May 2009.
41. The foreshadowed costs applications raise important issues as to the powers of the Court in winding up proceedings brought under the *Insolvency Regulations* to award costs, including an order against persons who are interested in the proceedings but who are not technically parties to the application. Accordingly, we directed the parties (including the Doha and London directors) to make further written submissions on costs.

Orders

The formal orders of the Court are as follows:

1. Pursuant to Arts 77 (4) and 80 of the *Insolvency Regulations*, Silver Leaf be wound up.
2. Pursuant to Art 83 (1) of the *Insolvency Regulations*, Joanne Kim Rolls and Steven John Parker, both of whom are entered on the Register of the Official Liquidators issued at the QFC, be appointed to act as joint liquidators of Silver Leaf.

APPEARANCES

Applicant:

Counsel for Applicant: Mr Andrew Lowe

Mr Sami Abu Shaikha

Respondent:

Counsel for Respondent: Ms Chadia El Meouchi

Mr Michael El Meouchi

Mr Charbel Abou Charaf

Other Interested Persons:

Counsel for the London directors: Mr Walter White

Mr Mehboob R Dossa

Counsel for the Doha directors: Mr Khawar Qureshi QC

Solicitor for Q Invest: Mr Aarij Wasti

Solicitor for Ernst & Young: Mr Zaher Nammour

Solicitor for Nasser & Sons Holding: Ms Helene Tousignon

Mr Michael Frick: self-represented

Mr Mikko Suonenlahti: self-represented

Dates of Hearings:

3, 28 May 2009

Date of Judgment:

1 June 2009