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Research article

Establishment of specialist commercial courts in the State of Qatar: A comparative study

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ABSTRACT

The social and economic progress witnessed in Qatar, similar to other countries in the world, has led to the emergence of commercial transactions that were not previously known, thus the need for establishing specialist commercial courts to address commercial cases in a fast and efficient manner has become crucial.

Indubitably, the question is no longer whether the establishment of such courts is needed; the discussion now is about the mechanisms that shall be adopted in order to establish these courts, in line with the existing legislative and judicial structure in the State of Qatar to avoid introducing radical amendments thereto, particularly to the judicial authority law.

The present study will highlight the mechanism of composition of commercial courts and the determination of jurisdictions and procedures thereof, within an analytical study benchmarking the experiences of a number of countries around the world. In conclusion, the study will propose the most important recommendations for the establishment of specialist commercial courts in the State of Qatar.

Keywords: commercial courts, jurisdictions of courts, proceedings, composition of courts, commercial business, case preparation panel

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INTRODUCTION

The economic boom witnessed in Qatar is considered a key factor in attracting national and international investments. It has a significant impact on the livelihood growth and the prosperity rates of commercial activity in the region, as established in the World Bank's "Ease of Doing Business 2014" report ranked Qatar 40th worldwide, whether per nationals or expatriates.¹ This report indicated that in order to support national and international investments in the region, the procedures of establishing companies are fast and less complex, and financial institutions provide the necessary guarantees for the establishment of any types of commercial companies. Moreover, the tax collection rate on commercial activities in Qatar is very low, thus ranking it the second country with the lowest tax rate on trade in the world.² Furthermore, Qatar is highly ranked in the list of countries in terms of total fixed investments as a percentage of the gross domestic product (GDP); according to the US Central Intelligence Agency, Qatar was ranked first in the world in terms of purchasing power per capita in 2012.³

Thereupon, all indicators show that Qatar is moving steadily ahead to achieve the highest economic growth rates across all commercial activities. Furthermore, the State will embark on a range of megaprojects that require more commercial business and many local and international investments, hence the need for balancing this rapid growth with the commercial legislative movement in Qatar.

There is no doubt that ensuring the appropriate legal environment is one of the most significant factors in guaranteeing the success of investments and investors. Following the independence of the State of Qatar in 1971, the legislative authority adopted a set of legislations of a commercial nature, starting with the Civil and Commercial Law No. 16 of 1971 which was repealed with the issuance of the new Commercial Law No. 27 of 2006, the Commercial Companies Law of 1981 which was repealed with the issuance of Law No. 5 of 2002 and its amendments. Only ten years ago, the State promulgated more than 25 economic legislations, including the Consumer Protection Law; the Qatar Financial Center (QFC) Law; the Anti-Money Laundering Law; the Protection of Competition and Prevention of Monopolistic Practices Law; and the Law on Combat of Covering up Illegal Practices Carried out by Non-Qataris in commercial, economic, and professional activities. All these legislations were established to keep up with the economic mobility rate, and the development of the existing legislations effectively aims to align the law with the modernization phenomena in the country.

As with other factors in guaranteeing the success of investments, the judicial system is concerned with the social and economic changes emerging in this era, and its contributions to the community and the State makes it at the forefront of future challenges. Amidst the economic progress witnessed worldwide and the rise of investment companies, new commercial transactions have surfaced which require the judiciary be knowledgeable thereof and conduct a deep-dive study of the related provisions in order to properly adapt them. Whereas the rule provides that judgment is partly based on the perception of the matter under judgment, the judge, however, cannot rule on commercial cases unless he understands and identifies their dimensions and effectively perceives them. Thus, there is a heightened need to establish a specialized judicial system wherein the judge is knowledgeable of all the provisions of old and new commercial transactions in order to accurately and quickly settle them. Certainly, the judge – as well as all practitioners in the judicial field - who dedicate their efforts in theory and practice to a particular specialization will be headed towards perfection and excellence. Furthermore, the existence of a specialist commercial judiciary that ensures companies and traders quick access to their rights, as required by the nature of commercial business, will constitute a competitive element to the means of commercial arbitration, which has become a very common approach in the settlement of commercial disputes.

Many countries are familiar with the specialist commercial judiciary, and perhaps the establishment of the French commercial courts is the most reputable, since its development stems

¹See, the World Bank Report of 2013, pg. 190, at: <http://www.doingbusiness.org/~ /media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB13-full-report.pdf> (last visited, 25/12/2013).

²*Id.* at 81.

³See, U.S. CIA World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2004rank.html> (last visited, 25/12/2013).

back many centuries ago. In fact, some Arab countries, including Egypt, Morocco, Yemen, UAE,⁴ and KSA, have adopted the segregation principles of the commercial judiciary from the civil judiciary and the establishment of specialist judicial panels to settle commercial disputes. As for the State of Qatar, the Civil and Commercial Procedure Law No. 13 of 1990, amended by Law No. 7 of 1995, and Law No. 13 of 2005 were issued to stipulate the qualitative jurisdiction and jurisdiction of value with respect to civil and commercial disputes, without distinction between the civil or commercial nature of the dispute, such that the same court will settle cases of both types. Furthermore, commercial and civil disputes are equally subject to the same procedural rules. Thus, we may pose here the following question: is the Qatari judiciary able to overcome these changes and challenges under the applicable legal texts, whether in relation to the jurisdictions or composition of the courts and the applicable procedural rules? Or is there a need to establish a specialist commercial judiciary able to escort the developments?

To have a clear answer, the experiences of different countries must be benchmarked in this respect, whether in terms of composition or jurisdictions of courts (First Section) or in terms of court proceedings therein (Second Section). We have chosen to examine the experiences of France, Morocco and Egypt - France, given its well-established experience in this domain and because the Qatari legal system belongs to this school; Egypt and Morocco, since their legal systems are very similar to the Qatari legal system and they are among the most experienced Arab countries in this specialized field.

I. COMPOSITION AND JURISDICTIONS OF COMMERCIAL COURTS

This section will discuss the composition of commercial courts, while the second half of the section is dedicated to the jurisdictions of commercial courts.

A. Composition of commercial courts

Not only does Qatar lack specialist commercial courts with qualitative jurisdiction in commercial cases, but it also lacks independent commercial circuits within the Court of First Instance, Appeal or Cassation, or even an internal procedure that aims to administratively assign commercial cases to the court's circuits as is the case in some other countries.⁵ The Civil and Commercial Procedure Law of Qatar⁶ has granted jurisdiction to the Court of First Instance (whether a Summary Court or a Plenary Court) to examine commercial cases and conflicts along with civil cases and conflict lawsuits, as per the value thereof. Whereas the Summary Court examines commercial and civil cases and conflicts whose value does not exceed one hundred thousand Qatari Riyals,⁷ the Plenary Court shall be competent to examine commercial and civil cases and conflicts whose value exceeds one hundred thousand Qatari Riyals, in addition to a jurisdiction of value in lawsuits of bankruptcy and bankruptcy prevention conciliation irrespective of their value.⁸ Furthermore, the Court of Appeal examines the lawsuits referred thereto from the Plenary Court,

⁴See, the report of the Judicial Department of Abu Dhabi, <http://www.adjd.gov.ae/portal/site/adjd/commercialCourts/?fontSize=S> (last visited, 17/11/2013).

⁵In Syria, for instance, a single judge at the Court of First Instance of Damascus is competent to settle commercial issues. However, this assignment is purely administrative given that the judge is not specialized in commercial issues in the strict sense of the term.

⁶Civ. and Com. Proc. Law No.13 (1990) (Qatar) amend. by Law No.7 (1995) and Law No.13 (2005).

⁷Proc. Law, art. 22 (1990) (Qatar), "A court of first instance, which consists of a single judge (referred to as "Summary Court" shall have the jurisdiction to hear in first instance all lawsuits, civil and commercial disputes and administrative contracts whose value does not exceed one hundred thousand Qatari Riyals (QR 100,000)".

⁸Proc. Law, art. 24 (1990) (Qatar), states: "The Court of First Instance composed of three judges (referred to as the "Plenary Court" shall have the jurisdiction to hear in first instance all lawsuits, civil and commercial disputes and administrative contracts whose value exceeds one hundred thousand Qatari Riyals (QR 100,000) as well as lawsuits of unknown value. It shall also have the jurisdiction to decide on casual claims or claims associated with the original claim irrespective of its value or type. It shall be also exclusively competent to settle lawsuits of bankruptcy, bankruptcy prevention conciliation, acquisition and other lawsuits provided for in the Law irrespective of their value. It shall also have the jurisdiction to deliver judgments on appeals filed thereto against judgments issued from the Summary Court or from the summary judge therein."

It is worth mentioning that both the Penal Plenary Court and Summary Court are no longer competent to settle administrative contract disputes pursuant to Law No. 7 of 2007 on the administrative disputes, published in the official gazette, issue No: 4 of 13/05/2007, page 23, particularly Articles 2 and 3 thereof, whereby an administrative appeal and first instance circuit has been established to exclusively hear administrative lawsuits, including administrative contract disputes.

irrespective of whether they are of a commercial or civil nature, and without assigning specific circuits to decide on commercial lawsuits. The same applies to the Court of Cassation, where the Civil and Commercial Circuit examines appeals filed in both civil and commercial matters without differentiating in terms of composition of the circuit wherein they are examined in terms of proceedings before these circuits.

However, if we are seeking to establish specialist commercial courts whose composition, jurisdiction and proceedings are defined by an independent law or amendments to the present legislation, many questions arise in this regard: Would it be more appropriate for Commercial Courts to have one or more circuits within the Court of First Instance and for the Appellate Court to settle commercial cases? Or shall commercial courts with different structure and composition from other courts be established? Does the commercial judiciary require in this instance a special qualification for the judges?

Perhaps the above questions can be answered in the following sections; the composition of commercial courts in comparative law is covered in the first half, while in the second, the experiences of those countries and what would be appropriate for the State of Qatar is assessed.

1. Composition of the commercial courts in comparative law

This section examines the composition of commercial courts in the comparative legislation of France, Egypt and Morocco.

a. France: The French Commercial Law defined commercial courts as a first-instance judiciary composed of elected judges and a clerk. Their jurisdiction is specified in Commercial Law and in other relevant rules, and they are governed by all texts regulating the judicial bodies which are provided for in the Code of Judicial Authority.⁹

In accordance with the previous text and the consequent texts of the French Commercial Law, the justices of the French Commercial Courts have a special status as they are not professional justices in the technical sense of the term;¹⁰ they are either traders or industrialists who are elected by their peers to act as counselor justices. These counselor justices are elected in each commercial court by an electoral congregation within the scope of this court, comprising of the current and former members of the commercial court, in addition to consul commissioners elected by the traders.¹¹ The mandate of the counselor justices shall be temporary as they are elected for two years and re-elected for four years of three terms such as the total would be fourteen years; they are only re-elected for a new term after the lapse of one year from the end of the previous terms.¹² The counsel justice shall receive no fees in consideration of their work in the court as their work is voluntary and per gratis. It is important to keep in mind that the counselor justice is originally a trader who remains practicing trade even during his mandate as a justice. The commercial court has a general assembly comprising of court justices, and it elects a court president for four years from among the judges who have served at least six years.

It is noteworthy that there are no commercial courts of appeal composed of elected justices; they are rather ordinary courts of appeal constituted of professional justices among whom no counselor justice is elected.

⁹Code de Commerce [C. Com.] arts. 1-721 (Fr.), the French text is as follows:

“Les tribunaux de commerce sont des juridictions du premier degré, composées de juges élus et d'un greffier. Leur compétence est déterminée par le présent code et les codes des lois particuliers. Les tribunaux de commerce sont soumis aux dispositions comme à toutes les juridictions du livre 1er de code de l'organisation judiciaire.”

See, http://www.legifrance.gouv.fr/affichCode.do;jsessionid=235C84EC52EA7F1B85221FD0F82DB462.tpdjo11v_3?cidTexte=LEGITEXT000005634379&dateTexte=20140129 (last visited, 13/12/2013).

¹⁰There are many exceptions to this rule, as in some regions of France there are commercial courts formed of professional judges in addition to elected judges, including Alsace-Lorraine; the commercial court is a chamber within the Grand Court of First Instance chaired by a professional judge with two elected counsel justices. For further details: Jean-Luc Vallen, *Juridictions commerciales, Jurisclasseur Commercial*, Fasc. 195, no 1 et s.

¹¹C. Com. arts. L 1-723 to L 14-723 (Fr.). It is noteworthy that these congregations were formed after the traders abstained from elections. For more insight:

Alain Bernard, *Tribunaux de Commerce, Rep. Pr. Civ., Dalloz*, 2009, no. 38 et s.

¹²C. Com. art. L 6-722, para. 2 (Fr.).

b. Egypt: In Egypt, with an increased number of economic cases, and in a step described as an enactment of the justice specialty principle so as to have qualified, specialist justices in the economic matters and its arising complexities to achieve justice, Law No. 120 of 2008 was issued to establish economic courts.¹³ Under the nomenclature, “economic courts”, the Egyptian legislator has taken a more advanced step from the French or Moroccan nomenclature. The term “economic courts” has a far more extensive range and scope as compared to the term of commercial courts. The commercial lawsuits are always economic lawsuits however, not every economic lawsuit is necessarily a commercial lawsuit.¹⁴

This Law has stipulated the establishment of a court (named the economic court) within the jurisdiction of each court of appeal. The economic court shall be formed of first instance and appeal circuits.¹⁵ Each of the economic circuits of first instance shall be formed of three presidents of the courts of first instance. Each of the circuits of first instance shall be formed of three justices of the courts of appeal, one of whom has at least the rank of a president of a court of appeal.¹⁶

A president of a court of appeal shall be commissioned to chair the economic court for a renewable year upon the approval of the Supreme Judicial Council. One or more justices shall be appointed for the court to rule on urgent matters that fall within the jurisdiction of the economic courts.¹⁷ Moreover, economic courts shall be competent to examine the execution of conflicts, relevant decisions and orders.¹⁸

In consecration of the principle of specialty, the Economic Courts Law stipulates that one or more circuits shall be formed within the Court of Cassation to be exclusively competent to settle appeals in cassation. In the court of cassation, one or more circuits shall also be established to examine these appeals and settle the valid appeals in terms of wrongfulness or inadmissibility for rebuttal or void of its procedures.¹⁹

It is worth noting that economic courts have a dual jurisdiction: on one hand, they have a criminal jurisdiction to examine criminal lawsuits arising from the crimes stipulated, exclusively, in seventeen laws. On the other hand, they have a civil and commercial jurisdiction.²⁰

The economic courts in Egypt remain an integral part of the regular judiciary despite being regulated by an independent legislation as in the case of family courts.²¹

c. Morocco: Morocco sought to create specialist judiciary panels to settle disputes pertaining to business and commerce, in order to provide a sound legal and judiciary climate for investment. As a result, in 1997, Moroccan legislators issued a law stipulating the establishment of commercial courts.²²

Courts are composed in accordance with this Law, of commercial courts (of first instance) and courts of appeal. The commercial courts are composed of a president, vice-presidents and judiciaries, a public prosecution constituted of a Crown Procurator and one or more deputies,

¹³This Law was published on the Official Gazette on 22/5/2008; for detailed information see, Ahmed Al Sayed Al Sawi, Economic Courts, *Legal and Economic Research Journal*, Alexandria University, 1 2010, at 429; see also, Sahar Abdul Sattar Imam, Economic Courts in Egyptian Law, *Legal and Economic Journal*, Alexandria University, 2010, at 265; see also, Talaat Mohamed Duwaidar, Economic Courts: Another Step Into Judicial Specialization (Dar Elgamaa El gadida, Alexandria, 2009); see also, Sayed Ahmed Mahmoud, Comments on the Draft Law No. 120 of 2008 on the Establishment of Economic Courts, *Legal and Economic Research Journal*, Alexandria University, 1 2010 at 345; see also, Khaled Mamdouh Ibrahim, The Limits on the Jurisdiction of the Economic Courts in the Matters of Arbitration, *Legal and Economic Research Journal*, Alexandria University, 2010 at 239; see also, Abdul Mawla Mohamed Mursi, Illustration of the Real Estate Funding Law- Illustration of the Economic Courts Law, (Dar Al Nahda Al Arabia, Cairo, 2009).

¹⁴Talaat Duwaidar, Economic Courts, *ibid.* at 64.

¹⁵Economic Courts of Law [Econ. Cts. Law] art. 1 (2008) (Egypt).

¹⁶Econ. Cts. Law, art. 2 (2008) (Egypt).

¹⁷*Id.* at art. 3.

¹⁸*Id.* at art. 7.

¹⁹*Id.* at art.12.

²⁰Econ. Cts. Est. Law, (2008) (Egypt).

²¹Al Sawi, *supra* note 13, at 440.

²²A Commercial Courts Establishment Law No. 53–95 (Morocco) dated 12/2/1997 and executed by the Honorable Daheer (Royal Decree) No. 1-97-65 of 18/2/1997; see also, The Moroccan Commercial Courts: Badruddeen BenAudah, Lawsuit according to the Civil Procedure Code, *Jurisprudence and Law Journal*, 8 2013 at 131; see also, Shamsuddin, Investment Issues and Obstacles and the Role of the Commercial Courts, *Al Qasr Journal*, 2 at 95; see also, Abdul Salam Zuwair, Estimation Judiciary before the Commercial Courts, *Al Qasr Journal*, 9 at 172.

and registrars and public prosecution registrars in addition to an execution justice appointed by the President of the Commercial Court upon the proposition of the general assembly.²³

The Commercial Courts of Appeal are composed of a Senior President, Presidents of Chambers and Counselors, in addition to a public prosecution composed of the Crown Procurator and his deputies as well as registrars and prosecution registrars.²⁴

According to the Law, the commercial court and the commercial court of appeal may be divided into many chambers according to the type of presented cases; however, each chamber may examine all the cases presented before the court.

In contrast with the French legislator and similarly to the Egyptian legislator, the commercial courts judiciaries in Morocco are not elected, they are rather chosen by appointment from among the professional justices and pursuant to the judicial authority law, after having provided them with the required training and with the economic, technical and social knowledge peculiar to commercial cases.

The commercial courts and the commercial courts of appeal hold their hearings and issue their decisions through a panel of three justices (a president and two members) in addition to a registrar.

2. Assessment of the experience of commercial courts in comparative law

The concept of composition of commercial courts of non-professional justices (as is the case in the French commercial courts where these courts, as we have witnessed, are formed of traders and industrialists who are elected by their peers which has many advantages. It provides the commercial judiciary with more flexibility to examine the various commercial cases in view of the expertise and knowledge of these justices in all intricacies of the commerce and respective customs. The fact that they are traders elected by traders themselves means trust is established between the litigants and the judiciaries, which is positively reflected on the performance of the judiciaries themselves, whose tasks are not limited to settling the disputes but also to converging the points of view between litigators and attempting conciliation between them before referring the dispute to justice, through the appointment of agents and conciliation officers.

The mere success of the French practice in the formation of commercial courts with elected non-professional justices does not necessarily guarantee the success of the same practice in other countries, including the State of Qatar. This is exemplified in the complaints expressed even within France and the legal and judicial environment of the State of Qatar. Among the criticism that France has faced, is that the competences of a trader or an industrialist who becomes a commercial court justice are limited to certain areas of the commercial or industrial activities; consequently, his knowledge of the other activities outside the scope of his competence remain inadequate and insufficient. This will thus mean that the justice will seek the support of experts on other fields of competence, which in turn extends the duration of lawsuits. Where one of the most important objectives of establishing the commercial court in France is the fast settlement of lawsuits, this will not be attained if the trader is unaware of other commercial business practices. On the other hand, when the commercial court is formed of trader justices who are not specialists in the law, the registrar or justice assistants will control the itinerary of the proceedings, thus leaving a negative impact thereon.²⁵ Finally, having a trader as a justice in the commercial court in France will inevitably influence his impartiality and objectivity, as the judge and the opponents will be of the same profession and it is normal that they will compete, which contradicts with the nature of his position as an impartial justice.²⁶

In addition to the previous criticism, the State of Qatar has its own particular reasons that leave the implementation of this matter impractical. On one hand, the circumstances surrounding the establishment of the French commercial courts are totally different than the circumstances of any Arab country including Qatar; a direct or indirect election of justices is uncustomary in Qatar and in the legal Arab systems in general. It is such an exceptional case even in France to an extent

²³Com. Cts. Law (Morocco), *supra* note 22 at art. 2.

²⁴Com. Cts. Law (Morocco), *supra* note 22 at art. 3.

²⁵See, Sahar Abdul Sattar Imam, Commercial Courts in French Law, 46 (Dar Al Nahda Al Arabia, 2012).

²⁶See, Jean-Luc Vallens, Constitutionnalité des tribunaux de commerce, *RTD Com.*, 621 (2012); *see also*, Alain Lienhard, L'Etat est-il responsable de la paralysie des tribunaux de commerce?, *Recueil Dalloz* 1154 (2001).

that led some to question the constitutionality of this system.²⁷ On the other hand, the legal and judiciary environment in Qatar in the meantime does not allow the appointment of tradesmen who act as justices and who are simultaneously engaged in the trade business. Contrastively, the Qatari Judiciary Authority Law prohibits justices from practicing trade as it is considered a business that contradicts with the independency and dignity of justice.²⁸ Therefore, the concept that was adopted by the Egyptian and Moroccan laws concerning the appointment of professional justices according to the stipulations of the Judicial Authority Law (while providing training programs prior to joining courts) is far more convenient than the French experience, provided that these programs are more in-depth and specialized in the commercial laws that fall within the jurisdiction of commercial courts. Moreover, continuous formation programs will allow justices to keep abreast with the latest developments and updates in the various areas falling within their jurisdiction.²⁹

Another observation regarding the experiences of these three countries is that they issued independent legislations on the introduction of commercial courts and descriptions of their jurisdictions and the proceedings before them. The establishment of these courts in France was a unique precedent not only in comparison with the Arab countries alone, but with the Western legal systems too. Nevertheless, in Egypt and Morocco, there was, as previously noted, an independent law whereby economic courts were established in Egypt and in Morocco and the compositions, jurisdictions and the proceedings of these courts were determined.³⁰

The State of Qatar does not have a dual judiciary system (i.e., the ordinary judiciary and the administrative judiciary). The ordinary courts are the judicial entities with absolute jurisdiction and original mandate to examine all kinds of disputes, whether civil, commercial, administrative, personal status or criminal. The Family Law issued in 2006 established in the court of first instance and court of appeal one or more circuits called the family court to settle lawsuits and disputes pertaining to family and inheritance matters,³¹ and permitted that the family court within the court of first instance be handled by a single judge (summary family court) to examine family and inheritance disputes as specified by the Supreme Judiciary Council.³² The Qatari legislator introduced in Law No. 7 of 2007 administrative circuits that are exclusively competent to examine the administrative disputes specified in this Law,³³ in addition to a circuit in the court of appeal called the appellant administrative circuit which is competent to examine appeals and claims stipulated in the Law.³⁴ Based on the previously mentioned, and similar to the family court and the administrative circuits, nothing can prevent the promulgation of a law that establishes a specialized commercial circuit within the court of first instance (called “the commercial court”) and given the exclusive competence to examine commercial disputes and lawsuits specified in the

²⁷Vallens, *supra* note 26.

²⁸Article 41 of the Judiciary Authority Law No. 10 of 2003 (Qatar) stipulates: “... [J]udges shall not practice commercial business or any work that contradicts with the independency and dignity of the judiciary whether in against consideration or not ...”.

²⁹In Egypt, the Ministry of Justice held training courses for justices to appoint them in economic courts through the National Center of Judicial Studies as well as to qualify them in foreign languages. See, Sahar Imam, *supra* note 13, at 284. In Morocco, continuous formation courses were held for the commercial courts justices whether through the Higher Judiciary Institute in Rabat or international development institutions. See, <http://inara.canalblog.com/archives/2008/02/04/789045.html>, (last visited 22/11/2013); see also, <http://www.maghress.com/almassae/28577> (last visited 22/11/2013).

³⁰Com. Cts. Est. Law No. 53–95 (of 12/2/1997) (Morocco); see also, Econ. Cts. Law No. 120 (2008) (Egypt).

³¹Article Two of the Family Law (Qatar) Issuance Articles No. 22 of 2006.

³²The Supreme Judiciary Council in Qatar has issued according to the previously mentioned Article Two its decision No. 23 of 2006 which determined the Family Law issues that the summary court is competent to examine, as follows: lawsuits relevant to child custody, care, visitation, joinder, movement and permission to travel; lawsuits related to alimonies and equivalent wages and expenditure of all types; lawsuits related to the authorization of women to practice their rights when the law requires that the woman obtain the permission of the husband or custodian to obtain such rights; lawsuits related to dowry and bride's trousseau; correction of data related to civil status in marriage and divorce documents; documentation of the consensus of the interested persons on what is legally permissible; permission for marriage for those without a custodian; investigation of death and inheritance; lawsuits and disputes related to custody, guardianship, quarantine, absence and missing as stipulated in “Law No. 40 of 2004 on the custody of the funds of minors and the like”; these are examined in the premises of the Minor Affairs Authority.

³³See, Article 2 of 2007 (Qatar) on the administrative disputes as well as Article 3 that specifies the disputes that fall within the jurisdiction of the administrative circuits.

³⁴Article 2 of the previously mentioned Administrative Disputes Law; Article 8 specifies the jurisdiction of the appeal administrative circuit.

same law, as well as the establishment of a circuit in the court of appeal (called the “appellant commercial circuit”).

It is to be noted that the Judiciary Authority Law in the State of Qatar granted the Supreme Judiciary Council the authority to issue a decision to establish circuits within the Court of First Instance, the Court of Appeal and the Court of Cassation and to determine their jurisdictions.³⁵ If that is the case, why is there a need to issue a law on the establishment of specialist circuits called “Commercial Courts”, as we have previously indicated?

The circuit, as per its definition in the Judiciary Authority Law, is a part of the court and not an independent entity. In addition, the division of the court into circuits, even if certain circuits were assigned to examine certain conflicts, is a sort of administrative division aimed at organizing work and assigning similar cases to ensure sound functions and fast settlement of lawsuits. These circuits do not have specialist judges; any judge can work therein and all proceedings remain subject to the Code of Civil and Commercial Procedure Law and not to special rules and provisions.³⁶ Consequently, no argument can be used against the circuit on the ground of lack of qualitative or value jurisdiction; the lawsuit will instead be administratively referred to the competent circuit. Perhaps the reason for setting this procedure—which drove the Qatari legislator to establish administrative circuits or competent family courts through an independent law providing for the competence to settle specific lawsuits exclusively—is that these specialist circuits act as independent courts, where no other circuit may decide on the same matters. In case other departments decided on such matters and lawsuits, then the lack of value or qualitative jurisdiction can be pleaded in any phase of the lawsuit considering them a matter of public order.³⁷

B. Jurisdiction of commercial courts

It is to be noted that our discussion of the jurisdiction of commercial courts will be limited to the qualitative jurisdiction, that is, specifying matters and cases that fall within the jurisdiction of these courts, as well as the jurisdiction value, if existent. Therefore, we will not examine the other types of jurisdiction such as the territorial or regional jurisdiction given the inapplicability thereof to the State of Qatar.

The establishment of the commercial courts system requires discussing the mechanism of determining the qualitative jurisdiction of the courts. Does its jurisdiction cover lawsuits arising from the enforcement of specific laws, or shall the jurisdiction be determined based on the type of disputes, whether of a commercial or non-commercial nature?

1. Jurisdiction according to specific legal topics

As indicated above, the economic courts in Egypt have a dual jurisdiction, criminal and economic. The criminal jurisdiction of these courts was referred to in Article (4) of the Economic Courts Establishment Law, which granted jurisdiction to first instance and appeal circuits to examine lawsuits arising from the crimes stipulated, exclusively, in seventeen laws.³⁸ First-Instance Circuits are competent to examine offences, whereas Appeal Circuits are competent to examine crimes.³⁹

With respect to non-criminal conflicts and lawsuits that economic courts are competent to examine, Article (6) of Economic Courts Establishment Law provided, after excluding from the scope of jurisdiction the lawsuits that fall within the competence of the State Council, that

³⁵Jud. Auth. Law, Law No. 10, arts, 6, 10, 11 (2003) (Qatar).

³⁶See, Duwaidar, *supra* note 13, at 38.

³⁷Proc. Law No. 13, art. 73, (1990) (Qatar) and its amendments stipulates that the court shall decide, at its own initiative, on its non-jurisdiction due to the lack of its mandate, the type of lawsuit or its value, independently of the status of the lawsuit.

³⁸These laws, as enumerated by Econ. Cts. Est. Law, art. 4 (2008) (Egypt) are: 1. Bankruptcy Crimes Penal Law; 2. Insurance Supervision and Control Law in Egypt; 3. Law of Shareholding, Joint Stock and Limited Liability Companies; 4. Capital Market Law; 5. Investment Guarantees and Incentives Law; 6. Lease Funding Law; 7. Securities Deposit and Central Registration Law; 8. Real estate Funding Law; 9. Intellectual Property Protection Law; 10. Law of the Central Bank, Banking Body and Monetary Body; 11. Law of companies that raise funds for investment; 12. Commercial Law on Bankruptcy Prevention Conciliation Crimes; 13. Law of the Economy Protection from Harmful Practices in International Trade; 14. Protection of Competition and Prevention Monopolistic Practices Law; 15. Consumer Protection Law; 16. Telecommunications Regulation Law; 17. Law of Regulation of Electronic Signatures and the Establishment.

³⁹Econ. Cts. Est. Law, art. 5 (2008) (Egypt).

economic courts shall be competent to examine the lawsuits that arise from the enforcement of the following laws: 1. The Law regulating the companies that raise funds for investment; 2. Capital market law; 3. Investment guarantees and incentives law; 4. Lease funding law; 5. The Law protecting the national economy from harmful practices in international trade; 6. Law of commerce on the transfer of technology, commercial agency, banking operations, bankruptcy and preventive conciliation; 7. Real estate funding law; 8. Intellectual property protection law; 9. Telecommunications regulation law; 10. Law of regulation of electronic signatures and the establishment of information technology industry development authority law; 11. Protection of competition and prevention of monopolistic practices law; 12. Law of shareholding, joint stock and limited liability companies, and 13. Law of the Central Bank, banking and monetary body.

Economic Courts Establishment Law assigned lawsuits arising from the enforcement of the previous laws between first instance and appeal circuits in economic courts according to the value of the conflict that is subject matter of the lawsuit. First instance courts shall have the jurisdiction to examine lawsuits where values are five million pounds or less, whereas appeal courts shall have the jurisdiction to examine, in first instance, lawsuits where values exceed five million pounds or where values are unspecified. At the same time, appeal courts shall be considered an appeal reference for the judgments issued in first instance circuits in the economic court.

The jurisdiction of economic courts faced much criticism and comments: One of the main comments to be picked up on was that the Egyptian legislator did not assign economic courts to examine criminal lawsuits, independent from economic courts that examine civil lawsuits, which resulted in many critics arguing that this contradicts with the principle of magistrate specialty, as civil matters and their procedures significantly differ from criminal cases, not to mention the delay this causes in the settlement of lawsuits as well as the lack of trust in its judgments. Therefore, in order to avoid such critics, circuits were designated to settle criminal lawsuits, and other circuits to decide on civil lawsuits.⁴⁰ As for non-criminal economic lawsuits, we notice that the Egyptian legislator did not determine the scope of jurisdiction of economic lawsuits based on the type of lawsuits referred to the court, but rather on the topics and matters evoked by specific laws.⁴¹ These cases are not of the same nature, as they may be administrative, criminal, commercial or civil, and we have seen that economic courts are competent to examine criminal lawsuits however, civil lawsuits do not fall within its competence but are within the jurisdiction of the State Council. In addition, non-criminal and non-administrative economic lawsuits are not all commercial lawsuits.⁴² Therefore, the economic court examines civil economic lawsuits and commercial economic lawsuits, and does not examine all commercial lawsuits as the settlement of commercial matters that are not provided for in the laws cited by Article (6) is the competence of commercial circuits in First Instance Courts. This has led some to argue that we cannot say that the Egyptian legislator knows until the present day any distinguished system for the commercial judiciary.⁴³ Therefore, we deem that it should be excluded from the Qatari judicial system with respect to the determination of the jurisdiction of commercial courts in case of their establishment.

2. Jurisdiction according to the type of case

There is no doubt that the essence and independence of the Commercial Law led to the establishment of specialist commercial courts to examine conflicts and cases relevant to this legal field. Although the jurisdiction of commercial courts is linked to conflicts of a commercial nature, it is not easy to determine whether the conflict is in fact commercial or non-commercial. Is the jurisdiction of these courts conditioned by the existence of a commercial transaction, irrespective of the parties thereto? Or shall we start by examining the parties to the transaction and verifying the existence of a “commercial trade”?

In France, Article L 721-3 of the French Commercial Law stipulates that conflicts that fall within the jurisdiction of commercial courts are those related to obligations between traders and banking

⁴⁰Al Sawi, *supra* note 13 at 435.

⁴¹Al Sawi, *supra* note 13 at 436.

⁴²Talaat Duwaidar, *supra* note 13 at 63–64.

⁴³Talaat Duwaidar, *supra* note 13 at 70–71.

facilities; conflicts related to commercial companies, and conflicts related to commercial businesses between all persons.⁴⁴

Pursuant to the previous text, it appears that the Commercial Law adopted two criteria in relation to the jurisdiction of commercial courts. The first criterion is related to the person who is practicing the commercial activity, as the French Commercial Court has jurisdiction to examine conflicts between traders resulting from obligations related to their commercial business, independently of their source. If both parties were not traders, the lawsuit would not fall within the jurisdiction of the commercial court. However, if the plaintiff is a trader and the respondent is not a trader, the plaintiff shall have the choice to file the lawsuit before the commercial or the civil court. On the other hand, commercial courts shall have jurisdiction to examine conflicts between partners due to the commercial company, whether in relation to the investment, profits or dissolution of the commercial company. The second criterion for jurisdiction of the commercial courts lies in the commercial nature of the business between all persons; if the business is of a commercial nature according to the criteria determined by the French Commercial Law, the commercial court shall therefore be exclusively competent to examine these conflicts, irrespective of the value of the judiciary request subject matter of the conflict. Article L 110-1 through Article 110-4⁴⁵ of the French Commercial Law determines commercial activities, including every purchase of products or goods for sale or lease purposes; any contracting or work related to the industry or an agency by commission; land and sea transport; banking and brokerage activities, and promissory notes.⁴⁶

The Moroccan legislator followed suit of the French legislator and adopted the approach of enumerating the types of cases that fall within the jurisdiction of commercial courts, from Article (5) through Article (9) of the Commercial Courts Establishment Law on the qualitative and value jurisdiction of these courts. Article 5 enumerates the matters and lawsuits that are the competence of commercial courts, namely: lawsuits related to commercial contracts; lawsuits arising between traders and related to their commercial activities; lawsuits related to commercial papers; conflicts arising between partners in a commercial company and conflicts related to commercial assets. However, the legislator added a value jurisdiction thereto by granting the commercial court the jurisdiction to examine original claims whose value exceeds 20,000 Moroccan Dirhams and counterclaims or clearance claims independently of their value,⁴⁷ which means that the commercial court does not examine lawsuits that fall within its qualitative jurisdiction if the value thereof is less than 20,000 Moroccan Dirhams.

Furthermore, the Commercial Court in Morocco has jurisdiction to examine all commercial conflicts of a civil aspect.⁴⁸ Therefore, commercial courts have jurisdiction to examine conflicts related to original and subsequent commercial activities even if they are civil. In order to determine the jurisdiction of the court, the nature of the disputed commercial work has to be determined. The Moroccan Appeal Court declared that the commercial court shall have jurisdiction even if the guarantee contract is a civil contract and the guarantors are civil persons, as long as they guaranteed a commercial company in the proper execution of its commercial work, and their obligations towards the bank shall derive from the original obligations, such that the commercial courts will continue to have jurisdiction to examine the entire conflict even if one of the parties is

⁴⁴French text of Article L 721-3 stipulates the following:

Commercial courts examine:

1. Conflicts related to engagements between traders, between banking facilities and traders;
2. Conflicts related to commercial companies;
3. Conflicts related to commercial business and acts between all persons.

However, parties may agree on the arbitration of their abovementioned conflicts upon the conclusion of contract, see <http://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000005634379&idArticle=LEGIARTL000006240388&dateTexte=&categorieLien=cid> (last visited, 12/11/2013).

⁴⁵This article was amended by Law No. 100 of 2013. See, <http://www.legifrance.gouv.fr/affichCode.do?idArticle=LEGIARTL000027012105&idSectionTA=LEGISCTA000006133171&cidTexte=LEGITEXT000005634379&dateTexte=20131221> (last visited, 12/11/2013).

⁴⁶See, Jocelyne Vallansan, *Compétence des tribunaux de commerce - Détermination des actes de commerce, JurisClasseur*, fasc. 37 (2001).

⁴⁷Com. Cts. Law, art. 6 (1997) (Morocco).

⁴⁸Com. Cts. Law, art. 9 (1997) (Morocco).

a civil person.⁴⁹ Finally, the law permits that the trader and a non-trader agree on granting jurisdiction to the commercial court to examine any conflict that may arise due to any of the activities of the trader.⁵⁰

The Egyptian legislator's approach in determining the jurisdiction of commercial courts was faced with many complaints requiring the exclusion thereof in the State of Qatar. The approach of the French and Moroccan legislators in determining the jurisdiction of commercial courts to examine conflicts arising between traders (provided that these conflicts are related to their commercial activity) or activities which are expressly defined by the legislator as commercial activities were adopted; especially as the Qatari Commercial Law followed the French Law approach as Articles 3 to 11 of the Qatari Commercial Law enumerated these commercial activities.⁵¹

The Qatari legislator adopted the speculation condition as a general criterion for commercial activities, and then enumerated the types of activities that are particularly considered commercial activities, including the purchase of goods and movables for sale or lease, purchase of real estate properties, constitution of commercial companies and contracting.⁵² The Commercial Law also provides a long list of works and activities that are considered commercial if conducted professionally or legitimately, such as banking transactions, money exchange, investment and funding, commercial agencies, brokerage and all types of insurance.⁵³ In addition to all activities related to maritime and air navigation, as well as commercial papers and contracts, the Commercial Law extends the scope of commercial activities to include transactions stipulated in the Commercial Law and activities facilitating them, as well as all activities performed by the trader for the purpose of his trade. The Qatari Commercial Law did not contend with mere statistics, but it further evoked future acts which could be suspicious under the Law. Therefore, the Commercial Law stipulates that the commercial activity is defined as any comparable activity with the previously mentioned activities on the ground of similarity in the characteristics and purposes.⁵⁴

The comprehensive and detailed definition of commercial activities stipulated in the Qatari Commercial Law helps, to some extent, identify the cases and matters that fall under the qualitative jurisdiction of the Commercial Courts. Perhaps it would be better to have a value jurisdiction where these cases are classified according to the value thereof, while entrusting the most important issue to a Plenary Court, and entrusting cases whose value is less than a certain amount to a single judge.

II. PROCEEDINGS BEFORE COMMERCIAL COURTS

It would be useless to establish commercial courts without a specific legislation to plead before these courts. The continuous application of the proceedings followed before the civil courts would obliterate the purpose of establishing commercial courts. These proceedings cannot be consistent with the nature of the conflicts filed before the commercial courts in terms of accurate and fast settlement thereof. However, from the practical perspective, it is found that most of the proceedings - with the exception of some texts related to proceedings and pleadings before the

⁴⁹Judgment issued by the Com. App. Ct.- Appeal No. 342 of 1998- Judiciary- Sess. 5/11/1998; see, <http://www.eastlaws.com/AhkamView.aspx?l=118086&H=&HM=1#257121>

⁵⁰Com. Cts. Law, art. 5 (1997) (Morocco).

⁵¹Com. Law No. 27 (2006) (Qatar).

⁵²*Id.* at art. 4.

⁵³*Id.* at art. 5, stipulates the following: "Commercial business includes the following activities if performed professionally: 1. bank transactions; 2. Money exchange, investment and funding activities; 3. Commercial representation and brokerage activities; 4. Procurement contracts; 5. Public storage and mortgages incurred on deposited funds; 6. Extraction of natural wealth resources such as mines, quarries, oil, gas and other; 7. Insurance of all types; 8. Store works and activities for the public such as public playgrounds, cinemas, hotels, restaurants, public auction stores; 9. Works and activities of educational establishments and private hospitals; 10. Franchises of public utilities, such as water, electricity and gas distribution, mail and telephone communications; 11. Land, air and sea transport; 12. Maintenance and cleaning works and other commercial services; 13. Business agencies, tourism, import and export offices, customs clearance and recruitment; 14. Printing, publication, press, radio, television, news or image broadcast, advertisements and book sales; 15. Manufacturing if associated with an agricultural investment, construction and manufacturing contracting; 16. Works related to construction, rehabilitation and demolition contracting."

⁵⁴Com. Law, art. 8 (2007) (Qatar).

commercial court- in terms of filing the lawsuit, trial procedures, verdict issuance, appeal and execution, remain subject to the rules stipulated in the Code of Civil Procedure. The French Code of Civil Procedure stipulates a number of rules related to the proceedings before commercial courts, under the name “special provisions peculiar to the Commercial Court.”⁵⁵ The purpose of these special provisions is to ensure simplicity, speed, and effectiveness of lawsuits before the commercial court, in line with the purpose for which they were established.⁵⁶ Furthermore, the Egyptian legislator did not stipulate provisions related to the proceedings before the economic courts, except in specific matters: first, the establishment of a panel to prepare the case file and present it to the court in order to accelerate the settlement of cases referred to economic courts (non-criminal cases);⁵⁷ secondly, the enablement of first instance and appeal courts to hire experts other than those listed on the experts list developed by the Ministry of Justice, given the insufficiency of this list in examining the nature of economic cases; thirdly, the regulation by the Egyptian legislator of provisions peculiar to economic courts, beyond the general rules in the methods of appeal against verdicts issued by economic courts. Notwithstanding the above, the economic proceedings in Egypt remain subject to the Code of Criminal Procedure, the Civil and Commercial Procedure Law, and evidence in civil and commercial articles. As for Morocco, proceedings before courts therein, where no special text is provided for in the Law of Commercial Courts,⁵⁸ are subject to the provisions of the Code of Civil Procedures.⁵⁹

A. Case preparation phase

France has no special provision on proceedings before commercial courts stipulating the existence of a panel or judge responsible for the preparation of the lawsuit. The absence of such a panel is not without negative effects, particularly when the lawsuit is complicated whether in terms of facts of the case or law, thus leading to a delay in the settlement. Therefore, in order to avoid this delay, pursuant to a general provision in Article 861 of the Code of Civil Procedure, if the lawsuit is not ready for settlement, the court is authorized to defer the case to another hearing or to assign one of its members as a judge rapporteur tasked with the preparation of the lawsuit. Pursuant to Article 864, the judge rapporteur may join or separate the lawsuits, conduct all necessary investigation procedures, remove all difficulties related to the announcement and appearance of litigants, summon and hear the litigants and enable them to present their clarifications, (which could be necessary for the settlement of the conflict), or require them to submit their pleadings within a time period set by the judge rapporteur. Moreover, the judge rapporteur may seek conciliation between the two parties and establish the reached conciliation in the record, which shall have the power of a writ of execution after the Court’s endorsement thereof. However, the role of the judge rapporteur shall not only be restricted to investigation procedures and preparation of the lawsuit, but he may also prepare a “draft ruling” by developing a report containing all the defenses and claims of the litigants, in addition to the evoked facts and laws, then he may express his opinion on the lawsuit.⁶⁰

The Egyptian legislator, on the other hand, established a case preparation panel and regulated it under Article (8) of the Economic Courts Law and sought that such a panel be composed of experienced judges. The panel president shall be elected from among the judges of the appeal circuit of the Economic Court, while the members shall be from among judges in the rank of president of first instance court or a judge therein. The panel shall be responsible for studying the subject matter of the lawsuit and verifying the completeness of documents presented by the

⁵⁵Mentioned in Chapter 3 of the second book of the French Code of Civil Procedure, issued by Decree 75-1123 of 5/12/1975 and its amendments, from art. 853 to art. 878-1 thereof. See, Code de Procédure civile, Dispositions particulières au tribunal du commerce, *Dalloz*, 104 ed., 2013, 735–747.

⁵⁶See, Marc Bruschi, *Procédure Commerciale, Rep. Pr. Civ. Dalloz*, 1 2013.

⁵⁷Law of Econ. Cts., art. 8 (2008) (Egypt). For more information about the case preparation panel in the Commercial Courts Establishment Law, see: Ahmed Al Sayed Al Sawi, *supra* note 13 at 495 and Duwaidar, *supra* note 13 at 78. See also, Sahar Abdul Sattar Imam, *supra* note 13, at 303.

⁵⁸Com. Cts. Law, art. 19 (1997) (Morocco), “... the rules stipulated in the Code of Civil Procedure shall be applied before the Commercial Courts and the Commercial Courts of Appeal, unless otherwise stipulated.”

⁵⁹The Law of Civil Procedure is called Code of Civil Procedure in Morocco, issued by Royal Decree No. 477/1974 on the endorsement of the Code of Civil Procedure. Date: 30-09-1974.

⁶⁰See, Frédéric Peltier, Vigiuié Schmidt Peltier Juvigny, *Conciliation, Le juge commercial conciliateur: un juge engagé, La Semaine Juridique Edition Générale* n° 1-2 2012, doctrine. 32.

litigants, which the panel shall subsequently examine. Hearings and discussions will then be held with the parties, and then the panel shall prepare a statement comprising the litigants' claims, arguments and the areas of consensus and difference between them.⁶¹

The preparation of the non-criminal economic lawsuit is deemed an obligatory step before the referral of the lawsuit to the Court of Merits, considering it a part of a public order matter.⁶² The task of this panel is of a judicial nature, which means that appearance before it establishes litigation.⁶³

In addition to this jurisdiction, the Economic Courts Law in Egypt entrusted the case preparation panel with the authority to attempt conciliation between litigants and to offer them amicable settlement of the dispute. If conciliation is reached between all the parties to the lawsuit, this conciliation shall be established on a special record signed by the litigants and submitted by the case preparation panel president to the court, and if the latter approves it, this record shall have the power of a writ of execution.⁶⁴

The existence of such panel has, without doubt, numerous advantages, of which the fast settlement of cases, the completeness of the lawsuit elements and documents, acquaintance with litigants, and possible conciliation between the two parties, all save significant time and efforts for the Court. Nevertheless, the preparation panel was faced with many critiques, including the increased number of circuits in the Court of First Instance, as one circuit has become responsible for case preparation and another circuit for the settlement of the case, in addition to the disruption caused in lawsuits and procedures as the preparation has become a waste of time for the judge, litigants and lawyers.⁶⁵

In Morocco, upon the mere registration of the writ of summons, the President of the Court appoints a judge rapporteur and refers the case file thereto within 24 hours.⁶⁶ The judge rapporteur schedules the first available lawsuit hearing and summons all concerned parties. The judge rapporteur enjoys a broad authority in managing the proceedings for the purpose of quickly finalizing them without any delay; he may require expert *sua sponte*, order the concerned parties or others to submit any document in their possession, and close the investigation if he deems the lawsuit has become ready for trial.

B. Proceedings and rulings in lawsuits

While the French legislator wished to simplify the procedures, the filing of a lawsuit before a commercial court does not require the litigant to be represented by a lawyer. The litigants have the choice to appear in person before the court or to have a representative acting on their behalf, and it is not a requirement that such a representative be a lawyer. However, if a non-lawyer representative is delegated, the delegation must be under a special power of attorney.⁶⁷ The French legislator also adopted the principle of verbal procedures, as stipulated in Article (871) of the Code of Civil Procedures. The parties to the lawsuit are not obligated to submit their claims and defenses in writing but rather verbally. However, if a written statement is submitted without appearance, it will not be admitted. Given the complexity of many lawsuits, the principle of verbal procedures has thus become inappropriate; therefore from the practical perspective and in order to limit the adverse effects of this principle, the French Court of Cassation ruled that if the litigant appeared and referred to a written statement with his defense, the principle of verbal procedures is then considered fulfilled.⁶⁸ Therefore, the lawyer who appears and submits a written statement of defense is no more obligated to present it verbally.

⁶¹Law of Econ. Cts., art. 8, para. 3 (2008) (Egypt).

⁶²Law of Econ. Cts. Art. 8 (2008) (Egypt).

⁶³Al Sawi, *supra* note 13 at 464.

⁶⁴Al Sawi, *supra* note 13 at 466.

⁶⁵For more information, see Sahar Abdul Sattar Imam, Economic Courts in Egyptian Law, *Idem*, 305; see also, Ahmed Al Sayed Al Sawi, *supra* note 13, at 439, and article published in Al Masry Newspaper on 07/02/2007 on the comments of Professor Mohammed Fathi Wali on the amendment of the Procedural Law, <http://today.almasryalyoum.com/article2.aspx?ArticleID=47316> (last visited, 24/12/2013).

⁶⁶Com. Cts. Law, art. 14 (1997) (Morocco).

⁶⁷For more information on this principle and other principles of the procedures before Commercial Courts, see, Hervé Croze, *Tribunaux de commerce- Procédure, JurisClasseur Commercial*, fasc. 170, no 6 et s. -Marc Bruschi, *Procédure civile, op. cit.* no 7 et s.

⁶⁸See the decision of the French Court of Cassation, Cass. Soc. July 17, 1997: Bull. Civ., 1997, no. 281.

On the other hand, the Egyptian system does not provide for specific rules in the filing and procedures of lawsuits, while in Morocco lawsuits are filed before the Commercial Court by virtue of a written statement of claims signed by a lawyer registered at the Lawyers Commission of Morocco.⁶⁹ The law stipulates that the statement of claims must be obligatorily submitted in writing before the Commercial Courts, contrary to the general rule in the Code of Civil Procedures of Morocco which allows the submission of the statement of claims by virtue of a verbal declaration from the plaintiff established in the record.⁷⁰ Perhaps the purpose of the written statement is to accurately investigate the requirements of the plaintiff, particularly that the value of commercial cases is much higher than that of civil cases. After the registration of the writ of summons, along the investigation conducted by the judge rapporteur, the Law of the Commercial Courts obligate the parties to contribute to the investigation proceedings, to enable each party, contrary to the law of civil control, to directly address questions to the other party or any of the witnesses for clarifying the lawsuit facts.⁷¹

With respect to the issuance of verdicts by Commercial Courts and means of challenging them, the three countries typically follow the general rules in the Code of Civil Procedures. In France, the verdict is issued through deliberation between the judges and the pronouncement and writing of the judgment and its details. The verdict may be subject to challenge by opposition in case of trial in absentia. Verdicts issued by Commercial Courts may be subject to challenge if the value thereof exceeds €4000, and verdicts thereon shall be final if the value thereof does not exceed that amount.⁷² Verdicts issued by the Court of Appeal in second instance or final verdicts issued by Commercial Courts may be subject to challenge through cassation; the commercial circuit of the Court of Cassation shall examine such verdicts in terms of law.

The means of challenge against the verdicts of economic courts in Egypt are generally subject to the rules stipulated in the Code of Procedures.⁷³ Some provisions pertaining to the mentioned means were provided for in the Law of Economic Courts, based on the legislator's wish to accelerate the proceedings and avoid any delays therein. Article (10) of the mentioned Code stipulates that only verdicts issued by first instance circuits before the appeal circuits of the commercial court as second instance courts shall be subject to challenge by appeal. Therefore, if the appeal was filed before an ordinary court of appeal, the latter should declare its non-competency. As for verdicts issued in first instance from appeal circuits in the economic courts, they shall not be subject to appeal but rather subject to challenge through cassation. On the other hand, verdicts issued in second instance from appeal circuits shall not be subject to challenge through cassation.⁷⁴

In Morocco, verdicts of the commercial courts are issued after specifying a date for judgment pronouncement upon submitting the case for deliberation. The law stipulates that the verdict should be completely drafted before the pronouncement thereof⁷⁵ in order to accelerate the challenge procedures and execution of the decision. Verdicts issued by commercial courts may be subject to appeal within fifteen days from the date of notification of the verdict, in accordance with the rules applicable in the Code of Civil Procedures of Morocco.⁷⁶

As previously mentioned, proceedings before the Commercial Court of Appeal are subject to the general rules of the Code of Civil Procedures of Morocco, except for some special provisions indicated in the Code of Commercial Courts.⁷⁷ The Code of Commercial Courts do not stipulate the means of challenge through cassation, therefore the verdicts of the Commercial Court of Appeal shall be subject to all the provisions of the Courts of Appeal in Morocco, meaning that all final verdicts issued by the Courts of Appeal are subject to challenge through cassation.

⁶⁹Com. Cts. Law, art. 13 (1997) (Morocco).

⁷⁰C. Civ. Proc., art. 31, (1993) (Morocco), issued by Royal Decree No. 206 of 1993, stipulates that "lawsuits shall be filed to the Court of First Instance in the form of a written article signed by the plaintiff or representative thereof or by a statement declared by the plaintiff and written by one of the sworn registrar assistants in a record to be signed by plaintiff or a reference shall be made in the record that he cannot sign ...".

⁷¹Com. Cts. Law, art. 16 (1997) (Morocco).

⁷²Com. Law, art. R-721-6 (Fr.).

⁷³Econ. Cts. Law, art. 4 (2008) (Egypt).

⁷⁴Econ. Cts. Law, art. 11 (2008) (Egypt).

⁷⁵Econ. Cts. Law, art. 7 (2008) (Egypt).

⁷⁶Econ. Cts. Law, art. 18 (2008) (Egypt).

⁷⁷Com. Cts. Law, arts. 13–17 (2008) (Morocco), these provisions were stipulated in only these four articles.

Unlike the experience of the French Commercial Courts, the Moroccan Law entrusts the Commercial Courts with the execution of verdicts, by delegating the President of the Commercial Court to propose the assignment of a judge from among the General Assembly's members to follow up on the execution procedures, in order to accelerate the execution of verdicts, (provided that the execution rules in the Code of Civil Procedures are applied unless otherwise stipulated).⁷⁸ Similarly, the Egyptian legislator entrusts the first instance circuit in economic courts with the settlement of the time and substance execution disputes.

CONCLUSION AND RECOMMENDATIONS

The establishment of specialist commercial courts has become primordial in many countries of the world for the purpose of accelerating the settlement of commercial lawsuits, while ensuring the proper functioning of the judicial justice. Questions about the need of commercial courts in Qatar are no longer posed since this need exists not only in Qatar but also in each and every country wishing to keep up with progress in commercial and economic relations between countries. Thus, the question is about the objective circumstances surrounding the establishment of commercial courts to ensure their success and fulfillment of their objective, that is, to serve a fast and appropriate justice.

No matter the differences between the experiences of countries in the establishment of specialist commercial courts, the legislative and judiciary situation of Qatar must first and foremost be considered, as did the Qatari legislator when creating the administrative and family circuits. The law on the establishment of commercial courts must be essentially accurate and comprehensive as well as flexible enough to respond to the new developments following their establishment. Furthermore, the legislation on the establishment of commercial courts must be in compliance with the existing legislative and judiciary structure in Qatar, to avoid bringing radical amendments thereto.

After studying the need for establishing commercial courts, determining the jurisdictions and proceedings thereof, and after benchmarking this study with a set of legislations in other countries, we recommend the issuance of a law on the establishment of specialist commercial courts in Qatar, such that this legislation provides for the composition of these Courts, the scope of their jurisdiction and proceedings, similarly to the Qatari Law on the Settlement of Administrative Disputes. The legislation may include the following:

- Establishment of one or more commercial circuits in the Court of First Instance to be called "Commercial Courts", each composed of three judges, and exclusively specialized in settling commercial disputes provided for in the Law
- Determination of the jurisdictions of the commercial circuit in settling commercial disputes as stipulated in the Commercial Law, which can be summarized as follows: disputes between traders and disputes related to their business activities; disputes related to commercial activities; disputes related to commercial contracts; disputes arising between commercial companies; disputes between partners in a commercial company; disputes related to commercial papers; disputes related to banking activities
- Establishment of a commercial circuit in the Court of Appeal to settle the challenges against the verdicts of the Commercial Court of First Instance
- Adoption of the "judge rapporteur" system, where he is assigned by the President of the Commercial Court, tasked with the preparation of the case and all the necessary investigation procedures in the lawsuit, and entrusted with conciliation between parties and proposition of amicable settlement of conflict
- Development of specialized training programs on commercial laws and modern commercial transactions, making these programs mandatory for the appointment of judges in commercial courts, in order to achieve accurate and fast settlement of litigation to realize the desired justice from the establishment of specialist commercial courts in Qatar.

⁷⁸Com. Cts. Law, art. 23 (1997) (Morocco).