



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

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

**Neutral Citation: [2024] QIC (F) 52**

**IN THE QATAR FINANCIAL CENTRE  
CIVIL AND COMMERCIAL COURT  
FIRST INSTANCE CIRCUIT**

**Date: 17 November 2024**

**CASE NO: CTFIC0019/2023**

**QATAR FINANCIAL CENTRE AUTHORITY**

**Claimant**

**V**

**HORIZON CRESCENT WEALTH LLC  
(IN LIQUIDATION)**

**Defendant**

**AND**

**QATAR FINANCIAL CENTRE REGULATORY AUTHORITY**

**First Interested Party**

**AND**

**MOHAMED ABDULAZIZ MOHAMED EL-EMADI**

**Second Interested Party**

**AND**

**OPUS RESTRUCTURING LLP**

**Third Interested Party**

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**JUDGMENT**

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**Before:**

**Justice Sir William Blair**

**Justice Ali Malek KC**

**Justice Dr Muna Al-Marzouqi**

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**Introduction**

1. In this judgment, the Court gives directions for the future conduct of these proceedings.
2. For the facts and background, we refer to our previous decisions in particular *Qatar Financial Centre Authority v Horizon Crescent Wealth LLC and others* [2024] QIC (F) 1 (the ‘**January 2024 Judgment**’). Horizon Crescent Wealth LLC and others (In Liquidation) (‘**HCW**’) was refused permission to appeal by the Appellate Division on 15 April 2024 ([2024] QIC (A) 5).
3. On 15 August 2024, the Liquidator of HCW issued a Directions Application pursuant to article 95(1) Qatar Financial Centre Insolvency Regulations 2005. This was undoubtedly the correct course to take.
4. In her witness statement of 15 August 2024, the Liquidator summarises the material she has reviewed at that time. As well as Mr El-Emadi’s claims, this includes pre-

liquidation Court applications, various “Purported Trust” instruments in relation to nine trusts, a Trust Schedule, information provided to her by Mr Baeriswyl in a 1 August 2024 letter, HCW’s bank statements, and correspondence from Chabrier Avocats SA (a Geneva law firm) which acts for four of the “Purported Beneficiaries”.

5. The Court will follow the Liquidator’s practice of referring to “Purported Trusts” and “Purported Beneficiaries”, etc. This does not indicate that the Court has formed any view as to the validity or merits of the claims.
6. The documentation reveals that there had been an additional trust, but as the Court understands it, HCW has retained no funds in relation to this trust. So, there are nine “Purported Trusts” in all.
7. The nine “Purported Trusts” are:
  - i. Malaya Trust
  - ii. Criteria Trust
  - iii. OA Trust
  - iv. Sebti Trust
  - v. Sertissage Trust
  - vi. Mountain Trust
  - vii. Colombus Trust
  - viii. Global Dynamic Trust
  - ix. Horizon Trust

8. The Court understands from the Liquidator's statement that the list of potential trust Claimants can now be considered closed.
9. The Court understands from the Liquidator's statement that the list of unsecured creditors can also now be considered closed, unless any of the trust claimants are found to have an unsecured claim.

### **The Liquidator's application for directions**

10. The Liquidator asks the Court to provide directions regarding the treatment of the HCW funds.
11. It appears that all available funds have been recovered, except for funds with Mashreq Bank and XNT Ltd. These funds must be paid over the Liquidator now, and if necessary the Court will make a further order to that effect.
12. The potential options for distribution of the funds identified in the Liquidator's witness statement at paragraph 121 are:

*.... (1) to treat the Realisable Funds as an asset of the Company and to distribute the net balance (following the payment of the liquidation expenses) to the Liquidation Creditors in the order of priority as set out in the Qatari Insolvency Regulations, (2) to remit the net balance following the payment of the liquidation expenses to the Purported Beneficiaries of the Purported Trusts on a pro rata basis in accordance with the quantum of their respective claims, or (3) to deal with the Realisable Funds in any other manner which the Honourable Court deems appropriate.*

13. On 13 October 2024, the Court directed the parties to state the issues that in their opinion arise for decision.
14. The Court has received statements as to the issues from the Liquidator, Mr El-Emadi's legal representatives, Mr Baeriswyl's legal representatives, Chabrier Avocats LLC, the QFCRA, and QFCA. We have carefully considered all of them.
15. The parties raise a number of issues, mostly relevant, but including some that are either irrelevant or abusive. It is clear that there are two main issues.

16. The first is as to the status of the nine “Purported Trusts”. In broad terms, it is said that beneficiaries under trusts have priority over all other creditors because the funds received from them by HCW are in law the assets of the beneficiaries and not HCW’s assets, and cannot be used to pay HCW’s debts.
17. The second issue is as to priority between the unsecured creditors, the main issue being whether Mr El-Emadi is a preferential creditor who has priority over the other creditors by virtue of his employment by HCW.
18. It is no surprise that these should be the main issues. They were identified as such in the January 2024 Judgment (e.g. paragraph 24), and ascertaining the classes of creditor was one of the reasons for placing HCW in liquidation.
19. The question for decision now is as to how these two issues are to be decided. In reaching its decision the Court has considered all the submissions made by the parties and has had regard to the Overriding Objective.
20. The Liquidator has indicated that she cannot make any payments until the first matter is resolved. She therefore wants this issue to be decided before moving on to other questions.
21. She goes on to state that it is the Court that must settle the issue. It must decide, she says, whether the “Purported Trusts” constitute valid trusts under Qatari law and whether any of the “Purported Trust” funds should be returned to the “Purported Beneficiaries”. This is in view of concerns regarding contraventions of Qatari laws combatting money laundering and terrorism financing.
22. The QFCRA also considers that this is the first issue. The issue, it states, is whether the “Purported Trusts” are valid, considering whether the way they were formed or used is in a manner contrary to the laws of the QFC or public policy. It expresses a readiness to assist the Court in the process.

## **Previous proceedings**

23. In relation to two of the trusts, as pointed out in the Court’s January 2024 Judgment, proceedings for the return of their funds have already been brought against HCW by Ms Ileana Mercedes D’Lacoste Agudelo and Ms Eniluz Jhoana Aponte.
24. The then officers of HCW (Mr Baeriswyl and Mr Mantegani) were also Defendants. They counterclaimed on the basis that it was the Claimants who had caused HCW loss because the origin of their funds was considered suspicious (*D’Lacoste Agudelo & Gonzalez Aponte v Horizon Crescent Wealth LLC and others and Qatar Financial Centre Regulatory Authority* [2019] QIC (F) (the ‘**October 2019 Judgment**’).
25. Those proceedings could have been brought to a conclusion. The Court made disclosure orders against the QFCRA to give the Claimants access to documentation that was not being provided by HCW ([2020] QIC (F) 11). If that had happened, the issues now arising could have been largely settled.
26. But the proceedings were discontinued. In *Qatar Financial Centre Regulatory Authority v Horizon Crescent Wealth LLC* [2022] QIC (F) 15 at paragraph 5, the Court recorded that:

*On 8 June 2022, on an application for discontinuance by Ms Ileana Mercedes D’Lacoste Agudelo and Ms Eniluz Jhoana Aponte, the Court ordered that Claims 6 and 7 of 2018 be discontinued. Accordingly, their proprietary claims against HCW are no longer pursued; they no longer claim any interest in the sums held in HCW’s accounts; there is no longer any potential proprietary interest (of which the Court is aware) which may need to be protected.*

27. That is how the Court understood the matter at the time. In fact, no claim has been advanced by any other of the “Purported Beneficiaries” until now.
28. There are further matters relevant to these previous proceedings which are set out below.

### **The approach to be adopted**

29. In the light of the above, the Court has decided that the following approach will be adopted.

30. The status of such of the trust claims as are pursued will be decided first, as the Liquidator has requested. Again, as the Liquidator has requested, they will be decided by the Court, with her assistance, in accordance with the procedure indicated below.
31. Following that, the position of the unsecured creditors (and any other outstanding issues which require resolution) will be decided – their case is likely to be much more straightforward factually and legally.
32. We consider that this approach is in accordance with generally recognised principles of international law and practice, as well as the applicable provisions of Qatari legislation on Combating Money Laundering and Terrorist Financing, the Insolvency Regulations 2005 of the Qatar Financial Centre, the common law, and public policy.
33. We note that there is a clear obligation as to due diligence in the Qatari legislation on Combating Money Laundering which contains in article 11(3) provisions on obtaining information on, and understanding, the purpose and nature of a business relationship or transaction.
34. The factual narrative set out in the Liquidator’s witness statement and the relatively small number of documents exhibited is useful, but obviously falls far short of what is required for the Court to decide a disputed case such as the present as to whether or not the “Purported Trusts” are valid and the “Purported Beneficiaries” entitled to priority.
35. In this regard, the onus is on those who wish to advance trust claims to prove their case.
36. As regards such proof, in a disputed case a document such as declaration of trust is likely to require evidence as to its authenticity, validity and effect according to the law that governs it, as well as the surrounding circumstances, including issues which may be relevant to a proprietary claim such as segregation of funds.
37. Further, the present case has a history which is particularly troubling and which any Claimant may have to address.

38. In the January 2024 Judgment, the Court referred to the appeal by HCW against the financial penalties imposed on it by the QFCA and QFCRA for its failures as regards anti-money laundering and counter-terrorism financing procedures.
39. In paragraphs 22-24 of the decision of the Regulatory Tribunal on HCW's appeal (*HCW v QFCRA and QFCA* [2020] QIC (RT) 1), reference was made to three examples which raised, the Tribunal said, obvious causes for serious concern.
40. These "*highlight[ed] some of the more astonishing features*" of the case against HCW, the Tribunal describing HCW's AML/CFT procedural failures as "*egregious*", and its "*oblivious attitude to be astonishing and dangerous*".
41. In dismissing HCW's appeal, the Appellate Division noted that "*HCW ... wholly failed to have regard to its responsibilities to put in place arrangements for due diligence before handling monies from abroad which were, on any view, highly suspect*" ([2020] QIC (A) 2 at paragraph 6(a)).
42. Against that background, as the Court indicated in the January 2024 Judgment, indicated earlier in the October 2019 Judgment, and repeats now, in the circumstances of present case, in the case of any trust claim now pursued, it requires to know the source of the funds.
43. The Court will only consider claims where the Claimant: (i) fully discloses the source of the relevant funds; and (ii) provides satisfactory evidence of their legitimate origin. This requirement reflects the Court's obligation to uphold public policy against money laundering.
44. Further, the Court draws attention to paragraph 22 of the decision of the Regulatory Tribunal. We do not know to whom the initials refer, but if they are those of the Claimants in the previous proceedings set out above, there will have to be an explanation as to why further claims by these persons would be acceptable in any event.

**The procedure to be followed in establishing trust claims**



45. We consider that the case of HCW is very different from the position that can arise in the case of the collapse of an investment manager, where numerous investors have to be identified and a method found of representing their interests. Here, the trust claimants have been identified, and are capable of representing their own interests. The following procedure must be followed.

46. Any person wishing to bring a trust claim must bring it under the Court's Regulations and Procedural Rules which are set out on the website along with Practice Directions and the Maroon Book. These will apply subject to further directions by the Court or the Registrar, and with adaptations to meet the particular features of these claims as set out above and below:

- i. The claimant's legal representatives must produce powers of attorney, unless already provided.
- ii. Given the need to prove the claims, the Claim Form must attach all documents relied on, not just those of particular importance. In addition, the Claim Form must plead and identify all facts and matters relied upon in support of the trust claim including all propositions of law.
- iii. The Court's jurisdiction arises from the fact that HCW is a QFC company.
- iv. The Registrar will decide whether the existing Case Number CTFIC0019/2023 should be retained for all claims, or individual numbers given for each claim.
- v. The Defendant should be named as Horizon Crescent Wealth LLC (In Liquidation).
- vi. No claim will be accepted for consideration by the Court unless the source of the funds is properly disclosed, with evidence of proof of its legitimacy.
- vii. There will be a time limit for bringing a claim to be fixed by the Registrar.

47. As regards the Defendant, i.e. Horizon Crescent Wealth LLC (In Liquidation):
- i. The Liquidator will be responsible for conducting HCW's defence.
  - ii. The Liquidator has stated in her Witness Statement that she is neutral. Clearly, as an officer of the Court, in conducting the proceedings, she will seek to assist impartially the Court in its decision making, and make sure that the Court is properly apprised of the facts, and applicable legal provisions.
48. As creditors, the QFCA, QFCRA, Mr El-Emadi and the Sami Abushaikha Law Office may join the proceedings in any claims that may be brought as interested parties if they so wish. They may wish to do so in order to challenge any claims under the "Purported Trusts", including but not limited as to the existence and/or scope of such trusts and as to priority. The QFCA and QFCRA should join in any case, since in addition to the foregoing, they also have an interest as regulators in the outcome of the proceedings.
49. Mr Patrick Baeriswyl is a former director of HCW, but following the appointment of the Liquidator no longer has any authority to represent the company. He filed a list of issues along with MH Partners SA. The Court will consider an application to join as an interested party if he wishes to do so.
50. However, the Court will not allow matters extraneous to the issues for decision to be raised, such as allegations made in his list of issues alleging collusion between Mr El-Emadi and the QFCRA and QFCA, and challenges to the fines imposed on the company which have already been dealt with on HCW's appeals.
51. The above covers the bringing of any claims. The later stages leading to a hearing will follow the rules of procedure and be dealt with in further directions in due course.
52. The Court expects such claims as may be pursued to be pursued promptly. Any such claims have been outstanding for many years, and prospective claimants must be very familiar with all relevant facts, including the progress of these proceedings, which is a

matter of public record. If satisfactory progress is not made, the Court will impose a deadline.

53. Queries or comments on the above should be in writing and addressed to the Registrar.

#### **Deciding priority between the unsecured creditors**

54. As noted, decisions on priority between the unsecured creditors will follow decisions on any claims on the trust issues (the first issue). The Liquidator's outstanding application against Mr El-Emadi and Mr El-Emadi's outstanding application against the Liquidator will also be dealt with at that stage. In determining time limits as regards any trust claims, consideration will be given to the interest of these creditors in as speedy a resolution of the trust issues as possible.

#### **Liquidator's claim to reimbursement out of trust funds**

55. The Liquidator raises for decision the question whether, regardless of whether any of the "Purported Trusts" are legally valid, the Realisable Funds can be used to pay the expenses of the liquidation estate, including her remuneration, prior to making a distribution to any party for any reason.

56. The Court understands this question as concerning her rights as Liquidator to reimbursement out of trust funds, should the Court decide that any of the funds held by her are found to be trust funds. In our view, she is entitled to have that question settled now.

57. In this regard, the Court notes article 91(2) of the QFC Insolvency Regulations 2005. Nevertheless, the Court's preliminary view is that she is entitled to reimbursement out of trust funds on the basis of the Berkeley Applegate principle (named after *Re Berkeley Applegate (Investment Consultants) Ltd* [1989] Ch 32). This is because as Liquidator she is prima facie entitled to be remunerated from the trust assets for work reasonably carried out in identifying, preserving and dealing with those assets, to the extent such work would necessarily have been performed by or on behalf of the beneficiaries had the company not been in liquidation. The Liquidator should draw up a draft order for the Court's consideration, and the Court will consider any comments a party wishes to make on the terms of the draft.

58. The Court notes the Liquidator's application for costs against Mr El-Emadi and MH Partners SA, which will be dealt with at the appropriate time.

59. There is liberty to the parties affected by this Judgment to apply to the Court for further directions. Costs reserved.

**By the Court,**



**Justice Sir William Blair**

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

### Representation

The Claimant is represented by its in-house legal department.

The Defendant is represented by Jo Rolls in her capacity as Liquidator of Opus LLP (London, United Kingdom).

The First Interested Party was represented by its in-house legal department.

The Second Interested Party was represented by Mr Adel Chahine (Hassan Abdulaziz Al-Obaidly Law Firm & Legal Consultant, Doha, Qatar).

The Third Interested Party represented itself.