PRIVATE INTERNATIONAL LAW CODIFICATION IN THE QATARI CIVIL CODE(1)

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I. Preamble.

The State of Qatar is a hereditary Emirate, located on the Persian Gulf and ruled by the *Al-Thani* family since the end of the 19th century. From its earliest history, the country has come under Persian, Ottoman, Bahraini and British influence. In 1916, Britain and Qatar signed a Treaty of Protection by which Qatar became a British protectorate. Qatar declared its independence in 1971 and became a member of the United Nations.

Despite the short history of the country, the Qatari legal system is quite developed. The sources of the law in Qatar are in fact both ancient and modern.

On the one hand, Article 1 of the Constitution (*Permanent Constitution of the State of Qatar*) declares Islam to be the State religion and provides that the "*Shari'a* shall be a main source of the legislation". The law is therefore mainly based on the Islamic legal teachings, and more precisely on the *Hanbali* School which is, under the influence of Saudi Arabia, the predominant *madhab* in Qatar.

On the other hand, Qatar has engaged since 1961 in a modern legislative process, which began with Law n°1 establishing the Official Gazette (for law reporting). Since then, several modern laws – often inspired by the French legal system – have been adopted in various fields of law: Regulation of the Courts of Justice (Law n°13/1971), Criminal Code (Law n°14 of 1971), Law of Civil and Commercial Matters (Law n°16/1971), Civil and Criminal Procedure Code (drafted and published in 1972, but never officially promulgated), Civil and Commercial Procedure Code (Law n°13/1990)…

This modernisation process has developed further since 1995, the State being headed from that time by the Emir Hamad Bin Khalifa Al-Thani, who appears to

(1) This study resumes the essence of an article published in the *Yearbook of Private International Law*, volume 8 (2006), p.249.

be more liberal than his father and predecessor Khalifa Bin Hamad Al-Thani. The new ruling Emir has initiated several social and political reforms. In 2003, he gave the State a new Constitution, which creates a consultative council – *Majlis al-Choura* – of which 45 members are elected by direct public vote, and guarantees freedom of religion. He also created the famous *Al-Jazira* satellite TV channel, known as the "Arab CNN": the first on-going news channel in the Arab world, based in Doha and entirely funded by the State of Qatar, *Al-Jazira* is watched by over 45 million Arabs in the world; with its latest English edition, it also became the first and only English-speaking Arab channel broadcasting throughout the world.

The legislative process has also been in continuous development.

In 1999, Qatar enacted a new law governing the organisation of the judiciary (Law n°6/1999, which took effect in 2003 and supplanted Law n°13/1971). The traditional dual judicial structure, composed of religious (*Shari'a*) courts staffed by *qadis* and of civil (*Adli'a*) courts – thus reflecting the duality between ancient religious law and modern secular law – is unified by the new law into a single structure. At the base of the new judicial system, are the Courts of Justice and the *Shari'a* Courts of First Instance: the Courts of Justice try civil, criminal, and commercial cases, while the *Shari'a* Courts adjudicate cases involving personal status(1). The judgments made in these courts may be appealed to the Appeal Court of Justice and to the *Shari'a* Court of Appeal. The Court of Cassation is the third tier of the judicial system: there is a chamber for *Shari'a* cases and another for Court of Justice appeals.

Following the development of economic international relations, Qatar enacted in 2000 a new law regulating the participation of foreign capital in the economic activities in Qatar (Law n°13/2000).

Most importantly, the Law of Civil and Commercial matters, issued in 1971, has recently been redrafted into two separate laws: the Civil Code and the Commercial Code. The latter, covering all aspects of commercial transactions, is to be promulgated imminently. As for the Civil Code, it was enacted by Law n°22/2004 and promulgated on August 8, 2004. It regulates contracts and obligations and does not include any provisions related to family law. It does, however, regulate conflicts of laws in time and space. The third section of its first chapter, entitled "Conflict of Laws in space" and composed of twenty-nine articles (article 10 to 38), is the first codification of Private International Law in Qatar. The Law of Civil and Commercial matters (Law n°16/1971), previously applicable, made no reference to Conflict of laws, this being one of its major lacunae, at a time where the expansion of trade beyond the borders of Qatar, and the contemporary

(1) However, pursuant to Article 4 of the Civil and Commercial Procedure Code (Law n°13/1990), the Civil Courts shall have jurisdiction in personal status cases involving non-Muslims.

evolution of means of communication between people in different countries, made it necessary to regulate relations that included a foreign element.

This article seeks to give an outline of the Private International Law rules in the Qatar Civil Code, while adopting a comparative approach to Private international law rules in other Arab countries as well as in Western countries. The paper is divided into two main parts. The first consists of an overview of the Private International Law codification, addressing the origins, method and scope of the codification (II). The second contains an analysis of the Private International Law provisions in the new law, addressing the conceptual approach, general rules and special rules of Conflict of laws (III).

II. Overview of the Private International Law Codification.

The idea of a new codification of Civil Law (and thus of Private International Law) was born during the past decade, together with the set of reforms initiated by the new ruling Emir of Qatar. It comes therefore as a reflection of the on-going economic situation in Qatar.

The Private International Law codification in the Qatari Civil Code is inspired, almost copied, from the Egyptian Civil Code of 1949. A considerable number of neighbouring countries (Syria, Iraq, Koweit, Lybia, Jordan, Yemen, Bahrein, Algeria…) had previously also imitated the Egyptian model. Like other Arab states, Qatar did not really adopt a Private International Law code in the full sense of the word, but simply introduced into the body of its civil legislation, and following the rules relating to "Conflicts of laws in time", provisions on "Conflicts of laws in space". Compared to other contemporary acts – for instance those of Switzerland, Germany, Italy, Spain or of ex-socialist countries – the Arab Private International Law codifications appear to be very brief(1).

The Egyptian origins of the Qatari Private International Law codification (A) thus explain both the method (B) and scope (C) of the codification.

A. Sources of the Private International Law Codification: the Egyptian model.

As in most Islamic countries, the religious nature of the legal system in Qatar has considerably delayed the birth of a Conflict of laws system(2). After the fall of

(1) On the Arab Private International Law codifications : GANNAGÉ P., '*Observations sur la codification de droit international privé dans les Etats de la Ligue arabe*', in: *Mélanges R. Ago*, 1987, p.105 ; '*Regards sur le droit international privé des Etats du Proche-Orient*', in: *Revue internationale de droit comparé* 2000, p.417.

(2) ARMINJON P., '*Le droit international privé en droit interne, principalement dans les pays de l'Islam*', in: *Clunet* 1912, pp.698 et 1030 ; CARDAHI Ch., '*La conception et la pratique du droit international privé dans l'Islam (Etude juridique et historique)*', in: *Recueil des cours de l'académie de droit international*, 1937. II. 507.

the Ottoman Empire, the political presence of western powers and the development of international economic relationships, mostly in the second part of the 20th century, have opened the Islamic countries to foreign systems and required the emergence of relevant legal instruments. The western influence was decisive, in the absence of a local tradition of Private International Law.

The Qatari Civil Code imitated, almost literally copied, the Egyptian Civil Code of 1949, whose first version was initially drafted by Abdel-Razzak Al-Sanhuri, a judge with the mixed courts, with the assistance of Dean Edouard Lambert of the University of Lille (which explains the influence of the French model on the Egyptian Civil Code).

Since the Conflict of laws provisions in the Egyptian Civil Code of 1949 were themselves inspired by the Italian Civil Code of 1942 (articles 17 to 31, abolished by the Italian Private International Law Code of 1995), the Conflict of laws provisions in the Qatari Civil Code of 2004 come from the same source. The 2004 Qatari rules derive their inspiration, thus, not from the Italian provisions of 1995, but from those of… 1942.

Furthermore, since the Egyptian Civil Code was imitated in numerous countries of the region, the Qatari provisions on Private International Law are very similar to those adopted in other Arab countries and contain no major innovation in comparison with the latter.

One might wonder why Qatar followed the Egyptian model, rather than a more recent act. In point of fact, this is not at all surprising, since most Qatari codes are drafted by jurists from Egypt and Sudan. Furthermore, the Qatari civil courts are very often staffed with judges from other Arab countries (mainly from Egypt, but also from Sudan, Jordan and Syria), and these judges even tend, in cases where a point is not covered by legislation, to apply legal principles inspired by the law of their native State. The Egyptian influence is thus very important, and Qatari court decisions often include references to Egyptian doctrine(1).

The poorness of the Qatari legal tradition therefore explains the current situation of legislation and judiciary. It also explains the lack of Qatari references in this paper. There is indeed no doctrine on Private International Law (discussion regarding this subject matter is inexistent), and decisions of the Qatari courts are not published (which is sometimes explained by the fact that there is no doctrine of binding precedent under Qatari law).

(1) For example: Court of Appeal of Doha, 3 Feb. 1997, *Lebanese Review of Arab and International Arbitration*, n°7, p.98 [in Arabic].

B. Method of the Private International Law codification: incorporation of Private International Law provisions in the Civil Code.

Foreign practice shows two main methods of codification of Private International Law:

- either by incorporating its provisions into the civil codes, within the narrow scope of civil relations. This approach prevailed for almost two centuries, beginning with the French Civil Code of 1804 which contained a few rules of Private International Law, leaving to the courts the primary role in developing such rules. The German BGB, promulgated a century later (but considerably modified in 1986), as well as the Italian Civil Code of 1942, contained many more Private International Law rules.

- or by adopting separate laws on Private International Law. This approach is more common in the second part of the 20th century, as may be seen, for example, in the latest acts adopted in Switzerland, Austria, Turkey and the ex-socialist countries. Italy has also adopted in 1995 a separate law on Private International Law, and the relevant articles of the Civil Code were abolished.

Instead of establishing a separate code of Private International Law, Qatar, like most Arab countries, introduced provisions related to Conflicts of laws in space into its civil legislation. Based on the legal history of the State of Qatar, and of the codification of Civil law following the Egyptian model of 1949, one is not surprised to see that the codification of Private International Law was done within the framework of the new Civil Code. Such classical thinking reflects the conceptual approach dominating in the middle of the 20th century. The same can be said of the scope and contents of the codification of Private International Law rules.

C. Scope of the Private International Law codification: limitation to Conflict of laws.

The scope of the Private International Law codification in the Qatari Civil Code is limited to Conflict of laws. Issues relating to nationality and the status of foreigners, to international civil procedure (procedural rights of foreigners, grounds for jurisdiction of Qatari courts, cases of exclusive jurisdiction, recognition and enforcement of foreign judgments, etc…) and to international commercial arbitration, are to be found in different laws.

One might prefer a full codification, including international civil procedure, as is prevalent in the latest acts. For instance, the Canadian province of Quebec incorporated, in its Civil Code, both conflict of law rules and rules of international civil procedure. But the issue was most probably not discussed in Qatar, since the model followed was the Egyptian one which goes back to 1949.

Even in the scope of Conflict of laws itself, the Qatari Code, while addressing general rules of Conflict of laws, neglects some important issues, such as the legal grounds for applying foreign law and the role of the judge in this respect (for instance, is the judge compelled to put into force the applicable foreign law before the silence of the parties?), the determination of the contents of foreign applicable law (should foreign law be determined in accordance with its official interpretation, and with the practice and the doctrine of the foreign country? Does the Qatari law apply when the court or the parties fail to determine the content of the provisions of the foreign law?), the application of mandatory rules (*lois de police*) or the evasion of law (*fraude à la loi*). Thus one can say that, compared to modern European acts, the Qatari law on Private International Law contains many gaps in regulation.

III. Provisions of the Private International Law codification.

This part addresses the conceptual approach to the Conflict of laws in the Qatari Civil Code (A), before analysing the few articles dealing with general rules (B) and the others establishing special rules of Conflict of laws in respect of the various institutions (C).

A. Conceptual approach to the Conflict of laws.

In order to perceive the theoretical approach to the Conflict of laws in the Qatari Civil Code, it is necessary to consider both the sources of the rules governing Conflict of laws (1) and the methods and techniques underlying the rules of Conflict of laws (2).

1. Sources of the rules governing Conflict of laws.

Private International Law rules derives its sources from both internal law (a) and international law (b), to which must be added a specific source, namely, the Principles of Private International Law (c).

a) Internal sources: the relevant provisions of the Civil Code.

The rules of Conflicts of laws are derived from the relevant provisions of the Civil Code, which are addressed in this paper (*below*, part III-B and III-C).

b) International sources: International conventions and treaties.

International conventions are also a source of Private International Law in Qatar: article 33 of the Civil Code gives their provisions precedence over national Private International Law rules layed down in the Code. Qatar shall indeed, as provided for in article 6 of its Constitution, “respect the international charters and conventions, and strive to implement all international agreements, charters, and conventions to which it is party”.

But the international conventions signed and ratified by Qatar are usually tempered by a general reservation on any provisions "incompatible with Islamic Law", which considerably reduces the impact of conventions. This is the case, for instance, with the Convention on the Rights of the Child (adopted by a General Assembly Resolution of the United Nations on 20 November 1989 and entered into force on 2 September 1990), signed by Qatar in 1992 and ratified in 1995. Upon signature of the CRC and upon its ratification, Qatar entered a general reservation concerning provisions inconsistent with Islamic Law.

c) A specific source: the Principles of Private International Law.

Article 34 of the Qatari Civil Code provides that "The principles of private international law apply in the case of a conflict of laws for which no provision is made in the preceding articles". This article, as well as most others, is literally copied from the Egyptian legislation (and also exists in other Arab civil codes(1)). The reference to principles of Private International Law is justified – as mentioned in the preparatory works of the Egyptian Civil Code (Part I, p.308) – by the fact that these principles "possess the attributes of precision and clarity which makes them more favourable than the principles of natural law due to their specialized concern with a specific aspect of law".

The "principles of private international law" are a subsidiary source of law. But the brevity of the Private International Law codification, and its many lacunae, may increase their importance, giving the judge a way of ruling through non-written principles. Reception of such informal sources of Private International Law in Qatar may be compared to the on-going evolution in some European countries, mainly France, where courts rely, more and more, on general principles of Private International Law, either to strengthen solutions already established or to justify changes deemed necessary.

The recourse to the Private International Law "principles", where the law is silent, is all the more significant since article 1, § 2 of the Qatari Civil Code (following here also the Egyptian Civil Code) already establishes a hierarchy of the sources of law in the absence of statute: first, *Shari'a* law; failing that, Custom; failing that, rules of equity. The combination of article 1 (general provision, opening the Civil Code) and of article 24 (special provision, related to the « principles of Private International Law ») reveals the importance of the latter. The general provision of article 1 indicates to the judge the path to follow in the absence of legal provision. If the drafters of the Code deemed it necessary to lay

(1) For instance, article 26 of the Syrian Civil code, article 25 of the Jordanian Civil code, article 24 of the Libyan Civil code, article 69 of the Kuwaiti law n°5/1961. Article 34 of the Yemeni Civil code, article 13 of the Sudanese Code of civil transactions and article 30 of the Iraqi Code also adopt similar provisions.

down another provision related to the sources of law, specific to Private International Law, this means that article 1 did not appear sufficient in this field, which requires its own, distinctive, principles. Judges are therefore invited to draw solutions from principles that are specific to Private International Law.

But the question is how to determine such principles. By giving judges the possibility to rule according to non-written principles of Private International Law, doesn't the legislator rely on the discretion of the judge? Egyptian doctrine prescribes in this respect the recourse to a comparative approach: the principles must be found in the various legal systems existing in the world, but in a manner respecting the tradition and the distinctive character of the forum legal system(1). The same can be said of the Qatari system. Having to fill a gap in legislation, a judge in Qatar can hardly choose a rule which would ruin the harmony of his own system. For instance, he would hardly oppose the *Shari'a* teachings. As mentioned in the preamble, article 1 of the Qatari Constitution provides that the *Shari'a* shall be "a main source of the legislation".

This issue actually raises an important and wider debate related to the role of the *Shari'a* in the Qatari Civil Code, which was addressed by the doctrine, under Law n°16/1971, in the following terms: "The vital point at issue here is, of course, the extent to which in the Qatari system, the *Shari'a* must, in view of the wording in the Constitution, be regarded as paramount: that is to say, must the sources of law referred to in the Civil and Commercial Code be read subject to the provision that they be not contrary to the *Shari'a*? (…) The matter is, of course, controversial. However, the *Shari'a* is not prescribed in the Qatari Code to be the sole source of law and in my opinion to give absolute paramountcy to the *Shari'a* in the context of the CCC would be a false interpretation of the provisions of Qatari law"(2). Thus, if the law is silent, then the *Shari'a*, as the principal source of law, must fill the lacunae. This view can also be justified by the content of article 1 of the Civil Code, by virtue of which *Shari'a* is applicable in the absence of a relevant legal provision.

2. Methods and Techniques governing Conflict of laws.

Methods and techniques underlying choice-of-law rules in the Qatari Civil Code reflect classical western tendencies of Private International Law (a). But it also reveals – whenever personal status is involved – its own particularities, often linked to the religious nature of the State (b).

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(1) ABDALLAH E., '*Présentation du droit international privé égyptien*', in: *Bulletin du CEDEJ*, n°13, dec. 1981, sp. p.198. *Adde*: YASSEN M. K., '*Principes généraux du droit international privé*', in: *Recueil des cours de l'Académie de droit international,* 1965. III. 387, sp. p.400.

(2) BALLANTYNE W. M., *Essays and addresses on Arab Laws*, Curzon Press 2000, p.66.

a) Classical choice-of-law methods.

The Qatari Civil Code contains only choice-of-law rules, not substantive ones. Besides, these choice-of-law rules are established on the model traced by Savigny: by their bilateral character, they can lead to the application of a foreign law as well as to the application of the *lex fori*, respecting the equality between the laws in presence.

b) Particularities in personal status issues.

(i) Global vision of categories and institutions.- Contrary to modern western Private International Law systems, where the evolution is towards the parcelling of the institutions, the Qatari legislation groups the institutions in wide unified categories. The various elements of family law – for instance, consequences of marriage and divorce, as well as matrimonial settlements – all fall under the same law. The explanation of this global vision of categories and institutions, which can be seen in most Arab Private International Law systems, probably lies in the impossibility for the religious law to coexist with foreign laws.

(ii) Importance of the national connection.- The determination of the connecting factor in personal status cases is also a result of the religious nature of family law in Qatar. The personalist tradition, which always prevailed in Middle Eastern countries, explains the importance of the national connection, not only for classical institutions of personal status such as capacity and family relationships, but also for successions, marriage settlements and donations. National law still plays a considerable role, at a time when modern codifications of Private International Law, both at the national (Italy, Switzerland, Germany…) and international (mainly the Hague conventions) levels, tend more and more to favour the domicile or the place of residence.

(iii) Unilateral connections.- Although most choice-of-law rules are bilateral, unilateral ones prevail in some issues. For example, notwithstanding the bilateral choice-of-law rule established for the substantive requirements of marriage (*below*, part III-C-2-a), article 13, parag.2 of the Qatari Civil Code states that, if one of the spouses is Qatari at the time of the marriage, such substantive requirements are governed by Qatari law. The Qatari nationality of one of the spouses leads to the imperative application of Qatari law. Thus, as long as a Qatari is involved, the courts will apply all *Shari'a* requirements, including discriminatory ones, such as the prohibition of marriage between a Muslim woman and a non-Muslim man. This example illustrates the looming presence of the *Shari'a* underneath the Conflict of law rules.

The unilateral choice-of-law rule of article 13, parag. 2 – which lays down a privilege of nationality, and, implicitly, a privilege of religion – is used to extend the scope of the *lex fori*, in order to guarantee the application of religious law to the Qataris even within international relations. But this is not necessarily a

protective law for the benefit of Qatari citizens, because the application of the law may be against the interests of the national party in the specific issue. In any case, such unilateral choice-of-law rules, though exceptional and attached to bilateral ones, are not appropriate. Serving the sole interest of the forum State – here through the application of the *Shari'a* to the legal requirements for marriage – they are internationally inefficient.

Luckily, Qatar limited this unilateral rule to the scope of substantive requirements of marriage, whereas the Egyptian model extended it also to the consequences of marriage and divorce (art. 14 of the Egyptian Code[(1)]). It nonetheless remains inappropriate, and we hope, in the interests of harmonisation, for the suppression of such rules in future changes to the law.

(iv) Obsolete connections.- Some of the connections applied in family issues reflect the traditional structure of the Qatari family and society, for example the national law of the husband (articles 16.1 and 17 of the Code) or of the father (articles 19 and 20 of the Code). Such connections appear nowadays to be obsolete compared to modern codifications of Private International Law, where the use of the common domicile, in case the spouses have different nationalities, is seen as more respectful of the principle of equality between spouses.

B. General rules of Conflict of laws.

1. Legal qualification.

Pursuant to article 10 of the Civil Code, the process of qualification – sometimes also referred to as classification or characterization – must be made in accordance with the law of the forum. The Qatari Civil Code therefore establishes the classical rule of *lege fori* qualification.

2. Reverse reference (renvoi).

According to article 37 of the Civil Code, a reference to an applicable foreign law means a reference to the substantive law of the State concerned, not a reference to the Private International Law (choice-of-law rules) of that State. Therefore no effect is given by the forum to the Conflict of laws' rules of another State: neither reverse reference to Qatari law (*renvoi au 1er degré*), nor reference to the law of a third country (*renvoi au 2ème degré*), is accepted in Qatar.

This rule, taken from the Egyptian Civil Code (article 27), was inspired by the Italian Civil Code of 1942 (article 30). It also exists in most other Arab codifications, which categorically reject *renvoi* (article 29 of the Syrian law, article

(1) The same provision exists in other Arab codes following the Egyptian model, such as article 15 of the Syrian Code.

31-2 of the Iraqi law, article 27 of the Libyan law, article 28 of the Jordanian law, article 16-1 of the Sudanese law, article 72 of the Kuwaiti law)[1].

The rejection of *renvoi* is justified, in cases of personal status, by the wish to avoid the application of Muslim law to persons or families totally foreign to Islam. It is difficult indeed to submit foreigners, by reverse reference to the Qatari law, to a religious law. Even the new Tunisian Code of Private International Law rejects *renvoi*, whereas Tunisian law, unified and to a large extent secularized, may well be applied to foreigners. This rule indicates that Islamic law, even modernized, remains too specific to be extended to foreigners.

But the absolute refusal of *renvoi*, as stated in the Qatari Civil Code as well as in other Arab legislations, seems exaggerated. If selectively used, the technique may be a useful instrument of cooperation. For instance, reverse reference to the law of a third country, or more generally reverse reference in fields other than personal status, could easily be implemented. This is indeed the position of the Lebanese courts, which only refuse *renvoi* in cases of personal status[2].

3. Conflit mobile.

Conflit mobile designates a situation combining a conflict of laws both in time and space, due to a change occurring in the connecting factor (for instance, change of nationality or of domicile, change of the *lex situs*…).

The Qatari Civil Code tends, in general, to maintain the application of the original law. For example, pursuant to article 16.1 of the Civil Code (reproducing article 13.1 of the Egyptian Civil Code), the national law of the husband at the time of the celebration of the marriage, continues to govern the consequences of marriage even if the nationality of the husband happens to change. This rule increases the stability of the matrimonial status, since it avoids changes in the rules governing the marriage and its effects as a result of a change in the nationality of the spouses. The rules applicable to the consequences of marriage are therefore definitively determined at the time of celebration of the marriage. But article 16.2 of the Code introduces another rule which is not found in the Egyptian Code: if the change of nationality occurring after the marriage unifies the nationality of the spouses, then the law of their new common nationality shall govern the consequences of marriage.

Qatar also did not follow the Egyptian Code with respect to separation and divorce. In this subject matter, and pursuant to article 13.2 of the Egyptian Civil Code, the nationality of the husband to be taken into consideration is the one

(1) With the exception of the "heretical" provisions of article 26 of the United Arab Emirates law, which states the application of the *renvoi au premier degré*.

(2) Lebanese Court of Cassation, 21 Sept. 1961, *Clunet* 1966, p.870, obs. P. Gannagé; 11 Feb. 1970, *Al-Adl (Review of the Beirut Bar)* 1970, p.449.

existing at the time of the institution of legal proceedings. This differentiation, with respect to the *conflit mobile* rule, between the consequences of the marriage and divorce (which is also, in a way, a consequence of marriage), does not seem convincing. On the contrary, according to article 17 of the Qatari Code, most probably inspired by the Kuwaiti law (article 40), the law applicable to divorce is the law of the most recent common nationality of the spouses, and, failing that, the nationality of the husband at the time of the marriage. Thus Qatari law, in the absence of a common nationality of spouses, gives prevalence to the law of the original nationality of the husband, both for the consequences of marriage and for divorce.

4. Ordre public.

Pursuant to article 38 of the Qatari Civil Code, where the application of foreign law would be in conflict with *ordre public* and moral standards of good behaviour (*bonnes moeurs*), Qatari law should be applied instead. Foreign law shall therefore not be applied in cases where this is incompatible with the fundamental principles of the legal order of Qatar.

This classical *ordre public* provision, found in almost all Private International Law codifications in the world, is to be understood in Qatar in reference to the importance of the *Shari'a* in Qatari law and society. Article 22 of the Constitution strongly states that "a Qatari family is founded on religion, ethics and patriotism". The Qatari society is attached to the protection of the legitimate family and refuses liberal family models (cohabitation, same-sex unions, etc…). One might therefore easily expect that western laws, authorising the judicial ascertainment of natural paternity, fully recognizing children born of adultery or giving legal effects to transexualism, will be rejected in Qatar.

If the *ordre public* provision is to apply as far as traditional family values are involved, we should note that foreign law will not be deemed contrary to *public order* in Qatar merely because it differs from the provisions of *Shari'a*, at least as long as the parties concerned are not Muslim.

***5.* Multiple legal systems.**

The Civil Code also provides, in article 36, special rules regarding cases where the law applicable is that of a State with multiple legal systems. In such cases, the relevant legal system is to be chosen in accordance with the law of this State.

C. Special rul es of Conflict of laws.

The Civil Code also establishes specific choice-of-law rules for the principal institutions of private law. Compared to choice-of-law rules existing in most western codifications, Qatari rules show many resemblances in the laws of property, contracts and obligations: for instance, property is governed by the *lex rei sitae*, the form of legal acts by the *lex loci actus*, extracontractual obligations

by the *lex loci delicti*… The differences lie rather in family law, where tradition and religion are still very strong. We shall demonstrate this while setting down the various choice-of-law rules, following the order of the articles of the Code itself.

1. Legal capacity and capacity to act.

a) Natural persons.

Lex personalis governs legal capacity and the capacity to act. For a natural person, the main connecting factor in this respect is nationality (article 11 of the Qatari Civil Code). But if, in a pecuniary transaction concluded and having effect in Qatar, one of the contracting parties is a foreigner without legal capacity, and such lack of capacity is due to a reason that cannot be easily detected by the other party, the legal capacity of such a foreigner shall be subject to Qatari law. This unilateral choice-of-law rule is, in reality, almost a substantive rule, since it maintains the validity of the act (under the condition that the foreigner has the capacity to act under the Qatari law of the place of conclusion of the act) despite the incapacity of the foreigner according to his personal law, when this incapacity cannot be easily detected by the other party. It reproduces, albeit in a different way, the rule laid down in the *Lizardi* case in France(1). It remains however a unilateral and incomplete rule, since it does not extend to the acts concluded abroad by a Qatari (incapable according to Qatari law but capable under the foreign provisions of the place of conclusion of the contracts). The unilateral nature of the rule thus diminishes its international effect, limiting it to the preservation of the stability of internal commerce. It today appears obsolete, compared to the provisions of many modern acts establishing bilateral rules in this respect, to preserve the needs of international commerce(2).

b) Legal entities.

For legal entities, the personal law governing capacity is, according to article 12 of the Code, the law of the country in which such legal entities have established their effective principal seat of management. By way of exception, Qatari law shall be applied if the legal entity carries out its main activities in Qatar.

2. Family law.

a) Marriage.

The legislation subjects the objective conditions of marriage – such as capacity, consent, abiding by legal prohibitions – to the national law of the spouses at the time of the celebration of the marriage (article 13, parag.1). The right to enter into a marriage shall thus be defined by the personal law of each person entering into the marriage. But if one of the spouses is Qatari at the time of the marriage, such

(1) Req., 16 Jan. 1861, *Dalloz Périodique* 1861. 1. 193, *Sirey* 1861. 1. 305, note Massé.

(2) See article 2 of the Rome Convention of 1980 on the law applicable to contractual obligations.

objective conditions – except the capacity condition – are governed by Qatari law (article 13, parag.2). Thus, if Qatari law is designated, the courts will have to apply all discriminatory rules of the Shari'a: for instance, a marriage between a Muslim woman and a non-Muslim man is null and void. The scope of the unilateral rule set forth in article 13, parag.2 of the Qatari Civil Code, is luckily more limited than its Egyptian model (see above, part III-A-2-b), where the marriage relationship itself is governed by Egyptian law if one of the spouses is Egyptian. It nevertheless remains inappropriate.

Pursuant to article 14 of the Qatari Civil Code, the formal conditions of marriage – such as religious forms – are governed by the law of the State where the marriage was celebrated (by application of the *Locus regit actum* rule) or by the national law of one of the spouses or by the law of their common domicile. Therefore, for the marriage to be valid in form, it is enough to satisfy the formalities of any of these designated laws.

The consequences of marriage – both personal and financial – are governed by the national law of the husband at the time of the celebration of the marriage (article 16.1), even if the nationality of the husband happens to change afterwards. But if a change of nationality occurring after the marriage unifies the nationality of the spouses, then the law of their new common nationality shall govern the consequences of marriage (article 16.2).

As for separation, divorce and repudiation, they are governed by the law of the country of which the spouses, or the husband in case the spouses are of different nationality, are nationals at the time of the divorce or of the institution of legal proceedings (article 17).

b) Filiation.

Filiation issues such as the recognition or disputing of fatherhood – but not the judicial ascertainment of fatherhood, forbidden by the *Shari'a* – shall be determined by the national law of the father at the time of the birth of the child, or at the time of the death of the father if it occurs before the birth of the child (article 19).

c) Tutorship and guardianship.

The national law of the father is also applicable to personal tutorship and to guardianship (article 20). But the law applicable to the protection of minors, or of adults having no capacity or a limited capacity (for instance, appointment and rescinding of tutors or curators), is the national law of the person needing protection (article 22).

d) Maintenance.

Maintenance obligations arising from family relationships shall be determined in accordance with the law of the debtor (article 21).

3. Inheritance and wills.

Qatar does not differentiate between movables and immovables with respect to succession issues. Inheritance is subject to the national law of the legator prevailing at the time of his death (article 23.1). This law shall apply to all matters related to the determination of the shares in the estate and their ranking, the elements of the inheritance and its conditions, the means of transmitting the estate, etc… Pursuant to article 23.2, Qatari law – i.e. the *Shari'a*, according to article 51 of the Constitution which states that the right of inheritance shall be governed by *Shari'a* law – is applicable to inheritance in Qatar in the absence of any heirs.

As to wills (and other acts having effects after death), the law differentiates between the substance and the form. The substance of the will is subject to the national law of the testator prevailing at the time of his death (article 24.1). The form of the will is governed by the national law of the testator at the time the will was made or by the law of the country in which it was made (article 24.2). It is therefore sufficient that the form of a will meets the requirements of one of these two designated laws.

4. Real rights.

The legislation subjects real rights to the *lex rei sitae*, without differentiating in this respect between immovables and movables. Thus, all rights *in rem* relating to immovable and movable property, and ownership in particular, shall be determined according to the law of the country where such property is located (articles 25.1 and 26). This rule should apply only to provisions related to real rights (their nature and scope, the ways in which they can be acquired and extinguished, and other provisions related to the regime of property itself).

The *lex situs* connection may be problematic concerning movable property, since the place of movables can change. Article 26 of the Code settles this problem by designating the law of the place where the movable was situated at the time of the occurrence of the event which resulted in the acquisition or loss of possession, ownership or any other real rights.

As to the determination of the movable or immovable nature of a property, it is to be made in accordance with the law of the country in which such property is located (article 25.2).

5. Contractual obligations.

a) Substantive provisions of a contract.

Pursuant to article 27, parag. 1 of the Code, contracts are governed by the law of the country in which the common domicile of the contracting parties is located, and, in the absence of a domicile in a common country, by the law of the country where the contract was concluded (this is also an obsolete connection in contracts law nowadays). These provisions are applicable unless the contracting parties agree otherwise, or unless circumstances indicate that they intended to apply

another law. Though using a different wording, the Qatari Civil Code guarantees the quasi-universal principle of the autonomy of will in determining the law applicable to international contracts.

As to the way in which the *lex voluntatis* must be expressed, the law adopts a liberal approach: the choice of applicable law must be expressed clearly by the parties, or result tacitly but certainly from the circumstances of the case. Thus, in the absence of an agreement, the judge shall have the power to ascertain the tacit intention of the parties from the circumstances, by virtue of his authority to interpret contracts.

The Code does not say anything on the determination of the moment when parties may choose the applicable law. It is also silent on the possibility for the parties, according to modern tendency in international commercial relations, to choose the transnational rules of *lex mercatoria*.

The Code lays down special rules for certain types of contracts. Pursuant to article 27, parag. 2, the law of the intention of the contracting parties does not apply to contracts related to immovables, which are subject to the law of the place where the immovable is situated. Also, according to article 28, labour contracts are subject to the law of the country in which the seat of management of the employer's business is located. If this seat is situated abroad and the branches, which concluded the contract, are situated in Qatar, then Qatari law shall govern the contract. These rules differ from the European approach to labour contracts, which gives parties the right to choose the applicable law, but states that this law should not deprive the employee of the rights enjoyed under the imperative rules of a country, of which the law would have been applied in the absence of a choice of law(1).

b) Formal requirements of a contract.

Article 29 provides an optional conflict of law rule relating to the formal requirements of a contract. The form of contracts is subject to the law of the place where they are concluded (*lex loci actus*), but can also be governed by the law applicable to the substantive provisions of the contracts (*lex causae*), or to the law of the domicile of the contracting parties or to their common national law. The contracting parties are therefore free to choose one of these designated laws to govern the form of the contract.

6. Extra-contractual obligations.

According to article 30, §1, extra-contractual obligations are governed by the law of the country in which the act that gave rise to the obligation took place (*lex loci delicti*). This provision however does not apply to a tort which has occurred abroad and which, although considered unlawful under the law of the country in

(1) See article 6 of the Rome Convention of 1980 on the law applicable to contractual obligations.

which it occurred, is considered lawful in Qatar (article 30, §2). This rule, leading to the non-application of the foreign *lex loci delicti* if the tort for which compensation in requested is not considered unlawful under Qatari law, is not justified in our opinion.

It must be noted that Qatari law does not follow the global modern tendency to strengthen the protection of the aggrieved party, by giving the plaintiff the right to choose between a wide range of laws, for example the law where the tort, or any of it circumstances, occurred, or the law of the State in which the damage occurred, or even the law of his permanent place of residence.

The law of the country where the act that gave rise to the obligation took place is also applicable, pursuant to article 31 of the Code, to obligations incurred because of unjust enrichment.

IV. Conclusion.

Notwithstanding the abovementioned disadvantages and lacunae, the new Private International Law rules in the Qatari Civil Code should be considered as a serious step towards modern Conflict of laws regulation. It includes the basic requirements of Conflict of laws, meeting in many aspects international standards thereof, and shall bring considerable progress to the legislative practice of Private International Law in Qatar.

With the on-going economic and social development of Qatar, Private International Law is expected to become an increasingly important area of law. The next step in this respect should be the further development of statutory law, but also of other sources, mainly court practice (which require that court decisions applying and interpreting the provisions of the new law be reported) and, above all, a doctrine of Private International Law.

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