

QATAR LAW FORUM
30th May 2009

**From Delaware to Doha: the Legal Environment Necessary
for Corporate Centres and Thriving Financial Markets**

A session facilitated by Harvey J Goldschmid (Dwight Professor of Law, Columbia University School of Law, USA), with contributions from Sir Anthony Evans (Chief Justice, Dubai International Financial Centre Court, United Arab Emirates), Randy J Holland (Justice of the Supreme Court of Delaware, USA), Anne-Marie Leroy (Senior Vice-President and Group General Counsel, The World Bank Group, USA), Jane Thorpe (Chief Legal Officer, QFC Authority, Qatar), Sau-Ngan Wong (General Counsel, Securities Commission, Malaysia), and the attendance of further global leaders in law.

Session overview and conclusions

The session addressed the following questions: Can Doha become the next Delaware? In general, what legal elements contribute to a successful financial center?

Each panelist added to an extensive list of legal requirements. *Sir Anthony Evans* emphasized equal strength of civil, administrative and criminal law. He likened the elements to a “three-legged stool” in that one weak leg can destabilize or cause total collapse of the structure. In addition, that courts should not defer to regulators where they have a vital role to play, for example through 1) appeals and enforcement of administrative orders; 2) provision of civil remedies in market transactions; 3) criminal proceedings and 4) supporting and intervening where necessary in arbitration and alternative dispute resolution.

Anne-Marie Leroy illustrated how financial centers can benefit from the lessons of the current financial crisis, and underscored the following: 1) disclosure rules, especially related to off – balance accounting and hedge funds; 2) balancing legal certainty with flexibility; 3) integrity of the judges and regulators; 4) jurisprudence based on stable principles which are shared and documented; 5) clear rules to establish investor trust, such as rules on short-selling, non-traditional financial products and taxes. *Professor Goldschmid* highlighted the need to rebuild trust, as after Enron. “*Investor trust is at the heart of making these systems work.*”

Justice Holland advised that if Doha aspired to the Delaware model, it would need expert justices with integrity and independence, which bring credibility, sitting in specialized courts, rendering prompt decisions and clear guidelines. He noted the existence of many similarities between the two jurisdictions even at this early stage, and encouraged the QFC to keep consistency and speed as priorities.

Jane Thorpe’s experience as a regulator at the Qatar Financial Centre helped to broaden the discussion from remarks focused on financial regulatory laws and the judiciary to equally important employment/labour, immigration, and companies law, from an operational perspective.

In addition to elements already mentioned, *Sau-Ngan Wong* provided an emerging market perspective, noting that a successful financial center needs a robust property rights infrastructure, a free media to provide high quality market information to the public and strengthen financial literacy, and effective enforcement with respect to judicial rulings and regular, swift action by regulatory authorities. Too often these elements are taken for granted in developed markets, but they should be salient features in any discussion of emerging markets, where they may be deficient or missing altogether.

Preempting mention of a Qatar Financial Centre – Dubai International Financial Centre “rivalry”, *Sir Anthony* remarked, “*DIFC and QFC are neighbors, friends, share the same objectives. To use an Old English expression: ‘We are brothers in law’, but I must spoil that by saying we are in Dubai, at least, the older brother.*” *Thorpe* confirmed the cordial relationship, adding, “*We are both centers of excellence, and to my knowledge, there can be no quotas on centers of excellence.*”

Rapporteurs: Kristin Mendoza (USA/Qatar) and Yang Zhao (China/UK)