



New Qatar Arbitration Law

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Introduction

On 16 February 2017, Qatar adopted a new arbitration law (Law No. 2 of 2017) promulgating the Law of Arbitration in Civil and Commercial Matters (the "**Qatar Arbitration Law**"). The Qatar Arbitration Law supersedes Articles 190 to 210 of the Code of Civil and Commercial Procedure (Law No. 13 of 1990, as amended) (the "**Old Law**") and any law which conflicts with the provisions of the Qatar Arbitration Law. The Qatar Arbitration Law will come into force 30 days after it was published in the Official Gazette on 13 March 2017.

The Qatar Arbitration Law is permissive in nature, in that it expressly gives greater freedom and flexibility to parties to determine their arbitral proceedings.

In this article, we set out:

1. a brief overview of the Qatari legal system and the current arbitration landscape;
2. the main characteristics of the Qatar Arbitration Law;
3. the significant departures from the Model Law; and finally
4. the impact of the Qatar Arbitration Law on the dispute resolution landscape in Qatar and the wider GCC region.

Legal System Overview and Arbitration Landscape

Qatar is a civil law jurisdiction and, consistent with other jurisdictions in the Gulf, Sharia law and Civil law co-exist as separate legal systems in Qatar. In April 2005, Qatar adopted a new Constitution which implemented the separation of powers and created executive, legislative and judicial branches of government. Qatar has both a three-tiered civil court system (the Courts of Justice) and a Sharia Court system. The latter deals mainly with personal matters and has little, if any, impact in the commercial sphere.

Qatar also has a separate quasi-common law jurisdiction. The Qatar Financial Centre ("**QFC**") opened for business in 2005 and operates as a financial free zone, led by the QFC Authority, which acts as a supervisory body regulating companies established in the QFC. The QFC has its own arbitration law ("**QFC Arbitration Law**") based on the UNCITRAL Model Law on International Commercial Arbitration (the "**Model Law**"). A draft amendment to the QFC Arbitration Law was circulated in 2015, however this has not been adopted as at the date of publication.

Arbitral Institutions

The most popular institutions are the ICC and the LCIA. In addition, there are two arbitration centres in Qatar: the Qatar International Court and Dispute Resolution Centre ("**QICDRC**"), which deals with civil and commercial disputes arising in connection with contracts concluded under QFC legislation and businesses established within the QFC; and the Qatar International Centre for Conciliation and Arbitration ("**QICCA**"), established in 2006 under Qatar's Chamber of Commerce and Industry, which offers a set of institutional rules for both domestic and international commercial arbitration.

Both ad-hoc and institutional arbitrations are conducted in Qatar.

Qatar Arbitration Law - Scope and Characteristics

The introduction of the Qatar Arbitration Law has reformed the Old Law, most notably by expressly providing for:

- the requirements of a valid arbitration agreement;
- a regime for recognition, enforcement and challenge of arbitral awards;
- the capacity for arbitrators to grant interim measures and make preliminary orders;
- the power of the parties to govern the arbitral proceedings (as to venue, language, method of appointment of experts by way of example), failing which the Qatar Courts have authority to address the issues and govern the procedural rules; and
- rules on the appointment of arbitrators, including a list of accredited arbitrators held by the Qatar Ministry of Justice.

When and where does it apply?

- The Qatar Arbitration Law will be applicable with immediate effect to arbitrations underway as at the date of it coming into force.
- The Qatar Arbitration Law applies to any arbitration between the persons governed by public or private law, irrespective of the nature of the legal relationship from which the dispute arises. The Qatar Arbitration Law applies to both domestic and international arbitrations seated in Qatar.

Is there a valid Arbitration Agreement?

Demonstrating the existence and validity of the arbitration agreement is the starting point in any arbitration, the failure of which could result in the dispute being resolved in courts rather than through arbitration. It is therefore crucial for parties wishing to arbitrate to ensure that the arbitration agreement is valid and enforceable. Article 7 of the Qatar Arbitration Law clearly sets out the requirements for a valid arbitration agreement, namely:

- the person (whether juridical or natural) entering into the agreement must have legal capacity to contract (Article 7(1));
- it must be in writing (whether in the contract under which the dispute arises or in the form of a separate agreement) (Article 7(3)); and
- it need not necessarily be signed by the parties, so long as there is a record of transmission between the parties (in paper form or electronic) (Article 7(4)).

Selection of arbitrators and composition of the Arbitral Tribunal

- The default position under the Qatar Arbitration Law is that the Arbitral Tribunal shall be composed of three arbitrators, unless the parties agree for a sole arbitrator or another odd number of arbitrators to be appointed.
- As with the Model Law, there are no requirements as to the nationality of the arbitrators.
- Article 16 of the Qatar Arbitration Law adopts the international legal principle of "*Kompetenz-Kompetenz*" affirmed by the Model Law, whereby the Tribunal has jurisdiction to rule as to the extent of its own competence on issues presented before it.

- The Model Law does not set conditions as to the selection of arbitrators. By contrast, the Qatar Arbitration Law provides that the arbitrator must be selected from a list of accredited arbitrators entered in the Arbitrators Register with the Ministry of Justice.
- An arbitrator can be held liable if he or she acts in bad faith, collusion or gross negligence (article 11(11)), while the Model Law remains silent on this point.

Empowerment of Tribunal to grant interim measures

- Article 17 of the Qatar Arbitration Law mirrors the Model Law in terms of empowering the Tribunal to grant interim measures or issue preliminary orders in consideration of the nature of the dispute or for the prevention of harm that may not be reparable. These include but are not limited to:
 - maintaining or restoring the *status quo* pending determination of the dispute;
 - taking action that would prevent or refrain from taking action that is likely to cause current or imminent harm or prejudice the arbitral process itself;
 - providing a means of preserving assets out of which a subsequent award may be satisfied; or
 - preserving evidence that may be relevant and material to the resolution of the dispute.
- Similar to the Model Law, the Qatar Arbitration Law provides that the Tribunal may require the requesting party to provide security to cover the expenses of the interim measure granted or the preliminary order issued by it.
- Importantly, the Qatar Arbitration Law requires the Qatari Courts to enforce interim measures granted by a Tribunal, unless this violates Qatar law or contravenes public policy.
- The Qatar Arbitration Law is silent as to the requirements of disclosure and grounds upon which recognition and enforcement of interim measures can be refused. It is also noteworthy that there is no express requirement on the requesting party to satisfy that there is a reasonable possibility that it will succeed on the merits of the claim.

Arbitral Award: form and scope for challenge

- Absent any agreement between the parties, the Award does need to be supported by reasons (Article 31(2)), whereas the default position under the Model Law is that the award must state the reasons behind the award, unless the parties agree otherwise. The Qatar Arbitration Law is silent on where the parties' agreement as to the requirement of justifications in the award, but it is important that parties do set this out: either in the arbitration agreement or subsequently (e.g. in any Terms of Reference document).
- Parties should also be aware that the timeframe for correcting or amending the Award is significantly shorter than that provided under the Model Law (7 days from the date of receipt of the Award as opposed to 30 days).
- The Award may not be appealed, except by means of appealing for nullification before the competent Qatari Court. The grounds for nullification are, in large part, based on those listed in the Model Law and are limited to:

- a party's incapacity under the relevant arbitration agreement or the arbitration agreement's invalidity under the law to which the parties have subjected it or, absent any such designation, the Qatar Arbitration Law;
 - failure to provide proper notice of the appointment of an arbitrator or of the arbitral proceedings, or the inability to present its case for any reason beyond its control;
 - the Award dealing with matters not contemplated by or not falling within the terms of the relevant arbitration agreement. However, if the decisions on matters submitted to arbitration can be separated from those not so submitted, the latter parts shall be nullified; and
 - the composition of the Arbitral Tribunal, appointment of the arbitrators or the arbitral proceedings were not in accordance with the provisions of the Qatar Arbitration Law, which can be derogated from by agreement of the parties, or, failing such agreement, were not in accordance with the Qatar Arbitration Law.
- As with the timeframe for correcting the award, it is significantly shorter than that provided for under the Model Law (one month under the Qatar Arbitration Law as compared to three months under the Model Law). The Competent Court's decision in respect of the challenge is final and not subject to appeal.

Role of the Qatari Courts and Regional Considerations

The Competent Court and the Other Authority

Parties can elect either the Qatar Court of Appeal or the QFC Court of First Instance as the "*Competent Court*", which is the authority with the relevant curial powers under the Qatar Arbitration Law.

The parties can also appoint an "*Other Authority*", namely a permanent arbitration centre or organization whose role is to discharge certain supportive and supervisory duties over the arbitration. This allows the parties to submit to arbitration administered by a centre (e.g. under the auspices of the ICC or LCIA). As it is not mandatory to submit to a centre, on-going ad-hoc arbitrations in Qatar will not be disrupted by the coming into force of the Qatar Arbitration Law.

Witnesses

An important distinction between the Qatar Arbitration Law and the Old Law is that witnesses are no longer required to testify under oath in arbitral proceedings, which is a common requirement in the Gulf.

Powers of Attorney

It is common practice for powers of attorney to be required for representatives of parties in the Gulf and the Qatar Arbitration Law expressly states that such proof may be requested by the Arbitral Tribunal. While it is not clear whether this will mandatorily be required by the Arbitral Tribunal, parties should seek to obtain the requisite powers of attorney to err on the side of caution.

List of Arbitrators approved by the Ministry of Justice

- As stated above, the Qatar Arbitration Law provides for a list of candidates accredited by the Qatari Ministry of Justice to act as arbitrators. The Minister of Justice will issue a resolution which will set out the conditions and rules for registering and striking off arbitrators from the register, and determining the applicable arbitrator fees.
- Arbitration Centres in Qatar (i.e. the QICDRC and QICCA) and any other arbitration centre administering an arbitration where the Qatar Arbitration Law is applicable will be expected to comply with this requirement within six months from the date the resolution is issued.

Future of Qatar's dispute resolution landscape

The Qatar Arbitration Law is a positive development for Qatar – it is far more comprehensive than the Old Law and is largely based on the Model Law, which is internationally recognised and widely used by many States as the basis of their own arbitration law. There are however, some significant departures, as noted above. This development is in line with Qatar's efforts to become a more "*arbitration friendly*" jurisdiction in the region, as can be seen from its accession to the New York Convention in 2002; the creation of the QFC free zone and its arbitration centre, the QICDRC; and the onshore QICCA (whose latest rules published in 2012 are based on the UNCITRAL Arbitration Rules).

This should certainly encourage parties in Qatar – both foreign and domestic– to resolve their disputes out of court; as well as increase the attractiveness of Qatar as a place to conduct your disputes in the region.

Time will tell whether other jurisdictions in the region will follow suit by issuing their own standalone arbitration law with a view to providing parties, arbitrators and courts more guidance, particularly with regards to enforcement.

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