



## The new Arbitration Law in Qatar

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On 16 February 2017, Qatar issued a new law on arbitration (the "Arbitration Law"), inspired by the UNCITRAL Model Law (the "Model Law"), an international template for law on arbitration.

This new Arbitration Law comes at a time when Qatar (like other countries in the region) is seeking to drive confidence in investment by providing a modern arbitration law based on international standards. Although the Arbitration Law is a positive step towards support of the arbitration process, there remains room for further development.

The Arbitration Law will come into force thirty days after its publication in the Official Gazette, which was on 13 March 2017. Once in force, the Arbitration Law will apply to any arbitration proceedings ongoing at the time that it comes into force. In addition to requiring compliance (relating to the procedure of the arbitration or otherwise) with the Arbitration Law for ongoing proceedings, it brings into question the status of existing arbitration agreements that do not comply with the Arbitration Law.

The Arbitration Law also provides that disputes between public entities are nonarbitrable and that "administrative contracts" may not be subject to arbitration without the approval of the Prime Minister or his appointed delegates. This casts doubt on the validity of arbitration agreements, current arbitration proceedings or awards that have recently been issued where a Qatari Government entity is a party.

From a supervisory standpoint, the new law has now clarified the role of the courts in relation to an arbitration. The supervisory court will be either the Qatar Court of Appeal or the Qatar Financial Centre (QFC) Civil and Commercial Court of First Instance ("Competent Court"). For enforcement the parties would turn to the Qatar Court of First Instance or the QFC Civil and Commercial Court of First Instance ("Competent Judge").

Arbitrators shall be appointed from the Ministry of Justice's register. However, in apparently conflicting provisions, individuals who are not on the register, but fulfil certain criteria relating to reputation and capacity, can also act as arbitrators. It is not clear whether the registration requirement acts as an overarching pre-requisite for a person's appointment as an arbitrator and whether this could ultimately undermine a party's freedom to choose its own arbitrators.

There has been much discussion around the issue of arbitrator immunity in the region following recent updates to criminal legislation in the UAE. In a positive and welcome development, the Arbitration Law limits liability for arbitrators in the course of the performance of their duties, save in circumstances of bad faith, collusion or gross negligence. The Arbitration Law has also adopted the default position under the Model Law, where a party is deemed to have waived its right to object to the commencement or continuation of an arbitration where that party had grounds for such an objection under the Arbitration Law and failed to do so within a reasonable time.

Another positive development for the conduct of disputes gives a Tribunal the power to make interim orders or awards. Enforcement of such orders is done by application to the Competent Judge who has the power to refuse

such enforcement only where the interim order or award being enforced violates the law or public policy.

Awards are required to include the amount of arbitration costs and expenses along with identifying the party required to settle such costs and the procedure for settlement. As with many jurisdictions in the region, the Arbitration Law is silent on a Tribunal's ability to deal with or award costs other than arbitration costs, such as legal, expert and sundry costs of the parties, leaving parties who are considering embarking on arbitration uncertain as to whether they will be able to recover these costs if they are successful. Clarity on this issue would have set Qatar apart.

The Arbitration Law sets out a number of requirements that need to be reflected in the content of an award. Although a substantial number of these requirements will not be new to arbitration practitioners, there appear to be some unusual requirements, such as a requirement that arbitrators state their nationality on the award and a summary of the parties' requests, arguments and documents.

The Arbitration Law also uniquely requires the Tribunal to send an electronic copy of an award or the resolution settling the dispute to an arbitration affairs department at the Ministry of Justice within two weeks of the date of issue. This provision could raise a number of difficulties for Tribunals and arbitrators who may be based internationally and it is not yet clear whether the award or resolution must be translated to Arabic. Crucially, it remains unclear whether non-compliance creates a ground to challenge awards.

Whilst the Arbitration Law modernises the framework for enforcement and challenges to awards by adopting the position under the Model Law, it deviates from the Model Law in two key respects. It creates a distinction between the types of applications and the particular courts that can hear them (the Competent Court may hear annulment applications, whilst the Competent Judge may hear recognition and enforcement applications) and it imposes a one month time limit on applications to annul awards, unless otherwise agreed by the parties.

Importantly, the ability to appeal awards on the basis of fact or law has now been removed. However, the process of enforcement, although well intentioned, may still be protracted. While the Arbitration Law provides that only the Competent Court can hear applications for the annulment of awards, it also provides that the Competent Judge can only hear applications for the recognition and enforcement of awards after the time limit to annul the award before the Competent Court has expired.

Additionally, in circumstances where an award is in the process of being challenged in the courts of the seat, a Competent Judge is empowered to stay the enforcement for the period he sees fit and on the application of the enforcing party and request that the respondent provide adequate security pending resolution of the annulment application.

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