

Reform of Qatar's arbitration framework

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Qatar's long-awaited Civil and Commercial Arbitration Law, Law No. 2 of 2017 (the "New Arbitration Law") has recently come into force. It applies to all Qatar-seated arbitrations. The New Arbitration Law aims to align the country's arbitration framework with international best practices, such as the UNCITRAL Model Law on which it is based, and make Qatar a leading player in the Gulf's burgeoning disputes market.

Key Changes to the Existing Regime

The New Arbitration Law effects reform in a number of important areas. In particular:

- **Separability / competence-competence:** it expressly recognises, in Article 16(1), the well-established arbitration principles of separability (whereby the arbitration clause survives the invalidity of the underlying agreement) and competence-competence (which provides that an arbitral tribunal has competence to determine its own jurisdiction, albeit here subject to appeal to the Competent Court or relevant arbitral institution).
- **Writing:** the New Arbitration Law confirms that an enforceable arbitration agreement must be recorded in writing, whether in paper or electronic form, and reached between parties with legal capacity (sufficient authority) to consent to arbitration being used to settle any disputes between them, per Article 7. The previous arbitration regime, under the now-repealed Articles 190 to 210 of Law No. 13 of 1990 (the "Old Arbitration Law"), made no allowance for electronic writing, and limited arbitrability to contractual disputes.
- **Appeals:** appeals against awards on the merits are precluded, by providing that they may only be appealed by way of a nullification application on limited grounds (such as the invalidity of the arbitration agreement, failure to properly notify a party of the proceedings, where the award exceeds the scope of the arbitration agreement, or where the award contravenes public policy in Qatar) – Article 33. Under the Old Arbitration Law, awards could be appealed on the same basis as court judgments. Although the new regime requires that challenges to awards must be filed within one month of the parties' receipt of the award (rather than three months under the UNCITRAL Model Law), this time limit is longer than the fifteen days previously allowed.
- **Enforcement:** the procedure for recognising and enforcing arbitral awards is simplified, irrespective of where an award is issued. The New Arbitration Law also limits the circumstances in which the courts of Qatar may refuse enforcement (Articles 34 and 35), whereas previously the execution court had broad authority to decline enforcement.

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- **Interim relief:** the New Arbitration Law expressly empowers arbitral tribunals to grant such interim relief as may be required by the nature of the dispute or for the purposes of preventing irreparable damage – for example, an order for the preservation of assets which might be used to satisfy a future award – and reinforces this by requiring the Qatar courts to enforce measures so ordered unless they run afoul of the law or public policy (Article 17). Under the Old Arbitration Law, power to order interim relief was reserved for the court of original competence.

Additional Features of the New Arbitration Law

While the New Arbitration Law generally allows parties the freedom to determine the rules and procedures to be applied to their arbitration – including opting to have the arbitration supervised by an institution or court, such as the Qatar International Court or the International Chamber of Commerce – it does provide a detailed default procedural framework which may be of guidance to parties in the context of ad hoc arbitrations.

Permitting parties to agree that the Qatar International Court is to be the “Competent Court”, for the purposes of supervising an arbitration and any enforcement proceedings, is a welcome measure. The Qatar International Court consists of eminent and experienced judges, from local and international backgrounds, some of whom have great expertise in the arbitration field.

Furthermore, Article 11(11) of the New Arbitration Law confers general immunity from suit upon arbitrators, except where in the performance of their duties an arbitrator acts in bad faith, engages in collusion or commits gross negligence. This is especially welcome in light of recent developments in neighbouring UAE, where the recent amendment to Article 257 of the Penal Code subject arbitrators and experts who issue biased decisions or opinions to criminal liability, without limiting the scope of the law’s application to instances of intentional or conscious bias. It is noteworthy, however, that the reference to “gross negligence” goes beyond the exceptions to arbitrator immunity in other major jurisdictions: in the UK, for example, section 29(1) of the Arbitration Act 1996 confers a general immunity on arbitrators unless the arbitrator acted in bad faith.

Local Variations

Although the New Arbitration Law largely follows the UNCITRAL Model Law, there are certain local features of the new law that merit consideration. Two examples are:

- First, arbitral tribunals are required to file an electronic copy of any award with the relevant department at Qatar’s Ministry of Justice within two weeks of its issuance.
- Secondly, the New Arbitration Law also provides that arbitrators may only be selected from a list of accredited arbitrators maintained by the Ministry of Justice, but goes on to suggest that the appointing authority has discretion to choose from its own or other lists.

A Positive Step

Overall, the New Arbitration Law represents a significant step in the right direction for arbitration in Qatar and should provide a large measure of comfort to parties considering Qatar as their place of arbitration.

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