

## **QATAR INTRODUCES NEW ARBITRATION LAW – A SUMMARY**

### **Summary**

Qatar’s Law No. (2) of 2017 Promulgating the Law of Arbitration in Civil and Commercial Matters (the “New Law”) substantially reforms arbitration law in Qatar, replacing Articles 190-210 of the Code of Civil and Commercial Procedure. It is modelled on the UNCITRAL Model Law, albeit with some significant changes.

We understand that the New Law will come into force on 13 April 2017. It will apply to any arbitration still ongoing at the time that the law enters into force.

This note provides a brief summary of the key provisions of the New Law, and is based on an unofficial English translation circulated by the QFC on 22 March 2017. In addition, as further detail becomes available as to the interpretation and operation of the New Law, both in the national courts and the QFC court, this note will be updated.

The New Law consists of 38 articles. The summary below will adopt the following structure:

- A. Scope
- B. Arbitration agreement
- C. Service of documents
- D. Arbitrability
- E. Arbitrators
- F. Liability of arbitrators
- G. Provisional and interim measures
- H. Proceedings
- I. Award
- J. Annulment of awards
- K. Recognition and enforcement
- L. Oversight by the “Competent Court”
- M. Oversight by the Ministry of Justice

A copy of the New Law can be found [here](#).

### **A. Scope**

The New Law will apply to any arbitration (institutional or ad hoc) which is seated in Qatar, or any international commercial arbitration taking place abroad where the parties agree that it will be subject to the New Law (Article 2(1)).

Definitions of both what constitutes “commercial” and “international” in the context of arbitration have been included at Article 2(3) and (4).

Public entities are precluded from settling disputes between themselves by way of arbitration (Article 2). In addition, agreements to arbitration in administrative contracts – not defined in the New Law – are to be approved by the Prime Minister or his delegate.

## **B. Arbitration agreement**

An arbitration agreement must be in writing or it will be invalid (Article 7). Such an agreement will be considered to be in writing where it is contained in a document signed by the Parties, or in an exchange of letters in paper or electronic format, or other means of communication whose receipt can be recorded. Parties should be aware that an arbitration agreement may be considered to have been concluded where it is agreed in correspondence (whether written or email/other electronic form) and be alive to the possibility that they may inadvertently create an arbitration agreement through such correspondence.

In addition, an arbitration agreement will be considered to be in writing where one party makes a claim in its lawsuit/response memorandum and the other party does not deny the exist of such an agreement in its defence.

## **C. Service of documents**

The New Law specifically includes provisions relating to the service of written notice, including manner and time of serving documents (Article 4). As always, and given the strict time limits set out in other provisions of the New Law, parties should be aware of and comply with the notice provisions and time limits set out in the New Law. Parties should also note that pursuant to Article 35, failure to notify a party as to the appointment of an arbitrator or of the arbitration proceedings can result in refusal to recognize an arbitration award, so every effort should be made to comply with such requirements.

## **D. Arbitrability**

Whereas the old law provided that arbitration was not possible for disputes which, by virtue of their subject matter, could not as a matter of law be referred to conciliation, the New Law provides simply that “arbitration may not be used in disputes of a type that the parties would not be legally permitted to settle themselves” (Article 7(2)). As referred to above, the New Law contains definitions of “commercial” disputes and thus the New Law appears to envisage that those disputes will be arbitrable. For other types of disputes, however, parties should give thought to the question of whether the subject matter of their disputes can legally be referred to arbitration in Qatar.

## **E. Arbitrators**

An arbitrator can either be chosen from the list of arbitrators registered on the Arbitrators List at the Ministry of Justice, or from off the list provided they meet certain conditions:

- Is of full legal eligibility and capacity;
- Not have been convicted of a felony or misdemeanor relating to honesty or character, even if rehabilitated, and

- is of good reputation and conduct.

(Article 11)

It is not clear whether an arbitrator who satisfies those conditions can be automatically listed on the Register of Arbitrators with the Ministry of Justice, or whether there is an additional requirement.

As to nationality, Article 11(8) provides that in appointing an arbitrator or a third arbitrator, the Other Authority or the Competent Court shall have due regard to the nationality of the arbitrator while taking into consideration the nationality of the Parties. It may be that this is intended to reflect Article 11(5) of the UNCITRAL Model Law which focuses on nationality of a sole or third arbitrator to avoid perceptions of bias with reference to the nationality of one or more of the parties.

Challenges to arbitrators may be made only where there are circumstances which give rise to justified doubts about his impartiality and independence, or if the arbitrator does not possess the qualifications that the parties agree upon (Article 12). Arbitrators are under a continuing obligation to disclose any circumstances that may give rise to concerns about their independence or impartiality (Article 11(3)). No party can challenge an arbitrator that the party has appointed save for reasons discovered/identified after the appointment has been made.

Parties may agree the procedure for challenging an arbitrator (Article 13). Where no such procedures have been agreed by the parties, the default procedures set out in the New Law will apply – namely that such challenge is to be brought within 15 days of the challenging party’s knowledge of formation of the tribunal or reason justifying the challenge, and shall be determined by the “Other Authority” or “Competent Court” if the challenged arbitrator fails to withdraw or the other party objects. A decision by the Other Authority or Competent Court is final and not subject to appeal.

## **F. Liability of arbitrators**

Under Article 11(11), arbitrators may not be held liable except in cases of bad faith, collusion or gross negligence. Note that this is in contrast to the much-discussed UAE law which allows for criminal sanctions to be imposed on arbitrators in breach of their duties of impartiality and independence following a recent modification to Article 257 of the UAE Federal Penal Code.

## **G. Provisional and interim measures**

Both the arbitral tribunal (Article 17) and the Competent Judge (Article 9) have the ability to order interim or provisional measures.

The arbitral tribunal can make provisions that are dictated by the nature of the dispute or for the purpose of preventing irreparable damage, and the Competent Judge must order implementation of these unless such order or judgment violates the law or public order. The party requesting such measures shall bear responsibility for any costs or compensation if the arbitral tribunal subsequently decides that the measures were not warranted by the circumstances. It is not clear whether, under Article 17(1), ex parte hearings are permitted.

In the case of the Competent Judge, such measures can be ordered either before the commencement of proceedings or during arbitral proceedings where the tribunal does not have jurisdiction or is unable to act effectively.

## **H. Proceedings**

Article 24 provides for the conduct of proceedings, including the holding of oral hearings, and expert and witness evidence. This provision does not contain any express provision relating to confidentiality, and it is therefore assumed that this is to be left to the parties themselves. Pursuant to Article 24(6), all Parties to the dispute may appoint one or more attorneys to represent them.

Under Article 26, the Tribunal has the power to appoint its own expert. This gives rise to various questions, including from where the names of potential experts will be derived, how their expertise and independence/impartiality will be assessed, and whether there is any potential for challenge by one or more of the parties. In addition, whilst an oral session to hear the statements of the experts is envisaged there is no express reference to cross examination of experts and therefore it is not clear whether this is contemplated or excluded.

## **I. Award**

Pursuant to Article 31, awards are to be delivered in writing and signed by a majority of the Tribunal. In contrast to the provisions of the UNCITRAL Model Law, the date and place of arbitration, the New Law requires that the arbitral award include the names and addresses of the parties; names, addresses, nationalities and capacities of the arbitrators; a copy of the arbitration agreement; date of the award and seat of arbitration; a brief accounting of the claims, statements, arguments and documents of each party, in addition to the conclusion and (where applicable) the grounds thereof. In addition, unless the parties agree otherwise, the award shall state the costs of the arbitration in terms of fees and expenses, the party to whom such costs are charged, and the payment procedure.

Unlike in the UNCITRAL Model Law, a strict time limit is imposed for the handing down of awards, with the arbitral tribunal required to issue a decision within one month of the date of closing the hearing unless the parties otherwise agree. The tribunal may extend such period for one month at the latest, unless the parties agree.

Article 31(7) allows the Tribunal to make a decision as to whether to continue or suspend the arbitral proceedings in certain circumstances, including where a matter is brought to the Arbitral Tribunal which is outside its jurisdiction, or if a document submitted to the Arbitral Tribunal has been challenged as a forgery, or if any criminal proceedings have been taken regarding a forged document or any other criminal action. It is not clear whether a decision of the arbitral tribunal under this provision can be challenged, and if so, when, how and where.

Parties are to be served with the award within 15 days of it being handed down (Article 31(8)), and an electronic copy must also be sent to the Ministry of Justice within two weeks of being handed down (discussed further below). The arbitral award shall not be published, in whole or in part, without the agreement of the parties (Article 31(8)).

## **J. Appealing of awards**

An award cannot be appealed, except by way of the limited grounds set out in the New Law (which broadly replicate those in the UNCITRAL Model Law) (Article 33). Those grounds are where:

- a party to the arbitration agreement lacked legal eligibility or capacity at the time of conclusion, except where the parties otherwise agree;
- the applicant was not notified of the appointment of an arbitrator or the proceedings, or failed to submit a defence for any reasons falling beyond the applicant party's control;

- the arbitration award decided issues outside the scope of the arbitration agreement;
- formation of the arbitral tribunal or appointment of arbitrators was in violation of the law or the agreement of the parties.

In addition, the Competent Court shall set aside the award of its motion if the subject of the dispute was not arbitrable; or where the arbitration award was in violation of the public policy of the State of Qatar.

An application has to be made within one month of receipt of the award (in contrast to the three month time limit under the UNCITRAL Model Law). The judgment of the Competent Court is final.

#### **K. Recognition and enforcement**

Refusal to recognize an award by a Competent Judge can be at the request of a party under the circumstances set out in Article 35, which are broadly the same as those appealable grounds identified in Article 33 – with the addition of a fifth ground, where the arbitral award is no longer binding on the parties, invalidated or stayed by virtue of an order of a court in the State where the seat of the arbitration is located or pursuant to the laws thereof. In addition, the Competent Judge can also refuse recognition on its own initiative where the dispute subject matter is such that it cannot be settled through arbitration as per the laws of State; or if recognition of the award or its implementation violates the public policy of the state.

#### **L. Oversight by the “Competent Court”**

Both the Civil and Commercial Disputes Arbitration Department in the Court of Appeals, or the First Instance Department in the Civil and Commercial Court of Qatar Financial Centre, are named as “competent courts” in the New Law, subject to the agreement of the parties. It is not clear which court has precedence where an arbitration is subject to the New Law, but no express choice has been made by the parties.

The competent court has various functions under the New Law, including appointment of arbitrators in certain circumstance (Article 11), and deciding on challenges/recalls to arbitrators (Article 13). It also decides on annulment applications within the terms of Article 33. Certain roles are also carried out by the Competent Judge, that being the Execution Judge in the Court of First Instance or the QFC Court.

The involvement and decision making by both courts leads to the question of whether diverging approaches may be adopted by the courts, with the Qatar national courts taking a civil law approach while the QFC courts take a more common law based approach. The impact that these two strands of jurisprudence have upon each other, and whether it affects the choice of the parties when drawing up their arbitration agreement, remains to be seen.

#### **M. Oversight by the Ministry of Justice**

The involvement of the Ministry of Justice manifests in the New Law in three main ways:

- Licensing of arbitration centres;
- Transmission of awards to the Ministry of Justice;
- Register of Arbitrators.

Addressing each of these in turn:

- Pursuant to Article 36, the Minister of Justice shall issue a decision setting forth the requirements to license the establishment of arbitration centres or branches of foreign arbitration centres in Qatar, along with the terms and conditions of such licenses and applicable fees. “Arbitration centres” are defined widely in Article 1 as “each and every legal body licensed to conduct arbitration proceedings pursuant to this law.” We understand that the licensing regime is intended to protect potential arbitrating parties and protect the integrity of arbitration proceedings, and will not be applied to arbitral institutions – however, we await further details.
- As set out in Article 31(11), the arbitral tribunal must serve upon the Ministry of Justice a copy of the arbitration award within two weeks from issuance (interestingly, the award has only to be served on parties within 15 days of being handed down). This provision is likely to be controversial, and raises a query as to the reason for the imposition of such a requirement. Various other matters associated with this requirement are also not clear, including the effect of not sending an award to the Ministry and whether this would invalidate the award or cause difficulties in enforcement; the compatibility of this requirement with the confidentiality provision set out in Article 31(8); and the use to which such awards will be put by the Ministry.
- The Ministry is to maintain a record of arbitrators approved by a decision of the Minister. A decree is to be issued setting out the requirements and procedures for approving, listing and removal of arbitrators, along with applicable fees.

## **N. Concluding observations**

The New Law is to be welcomed and provides a significantly clearer legal foundation for arbitrations seated in Qatar, as well as in respect of international awards brought to Qatar for recognition and enforcement

As always, parties should seek to ensure that their arbitration clause is clear and free from ambiguity, not least in terms of identifying the specific Competent Court with reference to the seat and/or for enforcement purposes.

**This note does not constitute legal advice.**

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