

Challenging arbitral jurisdiction and stay of court litigation in favour of arbitration in Qatar

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For an introduction to arbitration in Qatar, see Practice Note: [Arbitration in Qatar—an introduction](#).

Challenging arbitral tribunal jurisdiction in Qatar—overview

There is little jurisprudence available on the issue of challenging an arbitral tribunal's jurisdiction in Qatar. This Practice Note, therefore, focuses on the (limited) available legislative aspects concerning this topic.

Jurisdictional challenges are typical examples of disputes arising from an agreement to arbitrate. The very nature of arbitration—being an alternative dispute resolution forum, as opposed to the local courts with inherent jurisdiction over disputes in their own country—creates an interesting question: do arbitral tribunals have the power to rule on their own jurisdiction or should such challenges be decided by the local courts?

In response to this question, international arbitration has adopted the doctrine of *Kompetenz-kompetenz*—empowering arbitral tribunals to rule on their own jurisdiction, in addition to the doctrine of separability of the arbitration agreement.

Jurisdictional challenges are often brought on the basis that the arbitration agreement/clause was not properly executed, or that the dispute is incapable of being settled by arbitration and is accordingly not binding on the parties.

The effect of such a challenge is that it may cause the arbitration proceedings to be stayed, until such time as the jurisdictional challenge is finally dealt with.

The previous arbitration law, contained in Articles 190–210 of Qatar Law No. 13/1990 promulgating the Civil and Commercial Procedure Law (CCPL), did not provide an express provision concerning an arbitral tribunal's power to rule on its own jurisdiction. However, Qatar Law No. 2/2017 promulgating the Civil and Commercial Arbitration Law (New Arbitration Law) expressly recognises both the doctrine of *Kompetenz-kompetenz* and the doctrine of separability.

In line Article II(3) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention), the New Arbitration Law provides that the local court before which a substantive claim is brought in a dispute subject to arbitration clause must, upon the other party's request, dismiss that claim in favour of arbitration.

The doctrine of *Kompetenz-kompetenz* and separability principle in Qatar

The *Kompetenz-kompetenz* or Competence-competent is a jurisprudential doctrine whereby a judicial body has the authority to rule on its own jurisdiction. The doctrine of severability or separability of the arbitration clause refers to a principle whereby the validity of an arbitration clause is not affected by the validity or invalidity of the underlying contract.

While the old arbitration law, contained in Articles 190–210 of the CCPL, did not include an express provision for arbitral tribunals to rule on their own jurisdiction, the New Arbitration Law specifically provides for the *Kompetenz-kompetenz* and separability doctrines.

Arbitral tribunals have the power to determine issues related to their jurisdiction, including pleas based on the non-existence of an arbitration agreement, its validity, nullity, expiry or its inapplicability to the subject-matter of the dispute.

Arbitration clauses are considered as agreements independent of the other clauses of the contract. The nullity, rescission or termination of the underlying contract has no effect on the arbitration clause contained in it, as long as the clause is itself valid.

The New Arbitration Law provides a time limit for challenging the tribunal's jurisdiction. Jurisdictional challenges must be raised no later than the date for submitting the statement of defence. A party is not precluded from raising a jurisdictional challenge by the fact that it has appointed or participated in the appointment of an arbitrator. However, a claim that the arbitral tribunal has exceeded the scope of its jurisdiction during its hearing of the dispute shall be presented as soon as the issue arises during the arbitral proceedings. In all situations, the arbitral tribunal may admit a later challenge if it believes that there is a justifiable reason for the delay.

The New Arbitration Law further provides that arbitral tribunals may rule on jurisdictional challenges as a preliminary issue or in a final award. If the arbitral tribunal dismisses the jurisdictional challenge, the party whose challenge was dismissed may, within 30 days of the date of notification of the dismissal, submit an appeal before the competent court, as the case may be, whose decision shall be final and not subject to any form of appeal. The said appeal shall not prevent the arbitral tribunal from continuing the arbitral proceedings or from issuing its award.

The 'competent court' is defined in the New Arbitration Law as 'the Civil and Commercial Arbitral Disputes Circuit in the Court of Appeals [i.e. the local courts], or the First Instance Circuit of the Civil and Commercial Court of the Qatar Financial Centre, pursuant to the agreement of the Parties [i.e. the QFC Court]'. This means that where the parties have agreed to designate the QFC Court as the competent court, this court will have exclusive jurisdiction to deal with all matters relating to that dispute.

Qatar also has its own arbitral institution. The Qatar International Centre for Conciliation and Arbitration (QICCA) is the only permanent arbitration institution in Qatar, administering arbitrations under (i) the QICCA Rules, which are based on/inspired by the UNCITRAL Arbitration Rules, and (ii) the UNCITRAL Arbitration Rules (or providing some administrative services). QICCA also acts as appointing authority under the UNCITRAL Arbitration Rules.

References:

[United Nations Commission for International Trade Law](#)

The Qatar International Court and Dispute Resolution Centre and the Chartered Institute of Arbitrators (CIArb), both based in the QFC, also market arbitration as a form of dispute resolution pursuant to, respectively, the QFC Arbitration Regulations and the CIArb Arbitration Rules; however, neither of them formally administers arbitrations within Qatar itself.

The QICCA Arbitration Rules and the Qatar Financial Centre (QFC) Arbitration Regulations also contain express provisions—which are similar to those in the New Arbitration Law—for the tribunal to rule on its own jurisdiction.

Dismissal of court proceedings in favour of arbitration in Qatar

Under Article 8 of the New Arbitration Law, in instances where an agreement between two parties contains an arbitration clause and one of the parties has commenced substantive legal proceedings in the local courts, upon the other party's request the court shall decide not to accept the former party's claim and refer the parties to arbitration unless the court finds that the arbitration agreement is null and void, inoperative or incapable of being performed.

Article 8 of the New Arbitration Law mirrors Article II(3) of the New York Convention (the application of which is protected under Article 2 of the New Arbitration Law)—providing that the court of a contracting state, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

A party's filing of a claim before the local courts does not prevent the commencement or continuation of arbitral proceedings and the issuance of an arbitral award.

The authors are aware of a case where the local court dismissed a case brought before it based on the existence of an arbitration agreement (Case No 427 of 2017) (not reported by LexisNexis® UK).

Positive developments

As part of its plans to emerge as a regional arbitration hub, Qatar adopted an entirely new and modern arbitration law (ie the New Arbitration Law) which has in many respects been modelled on the UNCITRAL Model Law.

References:

[UNCITRAL Model Law](#)

The New Arbitration Law introduced the doctrine of Kompetenz-kompetenz, together with the doctrine of separability, into Qatar law, and permits all arbitral tribunals constituted under the auspices of this law to rule on their own jurisdiction. This development is indicative of the Qatari legislature's support for a quick and efficient alternative dispute resolution method without the need for intervention by the local courts.

The introduction of the New Arbitration Law is certainly a step in the right direction and likely to change previous negative perceptions about arbitration in Qatar that was evident from a local court decision in which it was ruled that 'arbitration is an exceptional method for disputes settlement' (Case No 918/2015) (not reported by LexisNexis®).

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