

Enforcement of arbitral awards in Qatar

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

An introduction to enforcement of awards in Qatar

Depending on where the arbitral award is made, award creditors can rely on Qatar Law No. 2/2017 promulgating the Civil and Commercial Arbitration Law (New Arbitration Law) or certain international treaties (primarily the New York Convention) for recognition and enforcement of arbitral awards in Qatar.

In particular, domestic and international arbitration are governed on a practical level within Qatar by the New Arbitration Law. This positive step was taken in recognition of the need to update Qatar's arbitration legislation so as to bring it in line with modern day practices elsewhere in the world.

As a Contracting State, Qatar is bound by the provisions of the New York Convention. In accordance with Articles 2 and 3, Qatar is obliged to recognise a written arbitration agreement and to recognise arbitral awards as binding and enforce them in accordance with its domestic rules of procedure under the conditions set out in the New York Convention.

While the New Arbitration Law and international treaties (the application of which is protected by the New Arbitration Law itself) set out the legal framework for recognition and enforcement of arbitral awards, the practical aspects of recognising and enforcing foreign arbitral awards in Qatar has undergone something of an evolutionary process in recent years.

In 2017, the New Arbitration Law expressly repealed the old arbitration law, contained in Articles 190–210 of Qatar Law No. 13/1990 promulgating the Civil and Commercial Procedure Law ('**CCPL**'), which was enacted in 1990: 'Articles 190–210 of the first Book of the aforementioned Civil and Commercial Procedures Law are repealed, as well as any provision that contravenes the provisions of the [New Arbitration] Law'.

Although the New Arbitration Law is generally viewed as a welcome change, it also contains a number of unresolved issues, particularly insofar as it relates to the enforcement of arbitral awards.

As to the local laws, Qatar appears to have two pieces of legislation which deal with the topic of enforcement of judgments and/or arbitral awards. Articles 379–381 of the CCPL deal with the enforcement of judgments, orders and official foreign documents. Article 379 of the CCPL provides for the conditions under which a foreign judgment may be executed in Qatar, while Article 380 of the CCPL sets out various grounds under which the local Qatari courts may refuse to enforce a foreign judgment. Article 381 of the CCPL then simply provides that 'the provisions of the preceding two articles shall apply to the arbitration decisions passed in a foreign country'. At the same time, we also have Articles 34 and 35 of the New Arbitration Law which govern the enforcement of arbitral awards and differ to some extent from the grounds set out in Article 380 of the CCPL.

While it is possible that the New Arbitration Law may also have repealed Articles 379–381 of the CCPL (if considered a provision that contravenes the provisions of the New Arbitration Law), it would have been preferable for the New Arbitration Law to have expressly stated that it has also repealed these articles. Only time will tell whether Articles 34 and 35 of the New Arbitration Law (in addition to the international treaties) will in future be regarded as the only provisions governing the enforcement of arbitral awards in Qatar.

The distinction between enforcing domestic, international and foreign awards

The New Arbitration Law now defines the circumstances in which an arbitration would be considered international:

- where the principal place of business of the parties is located within different countries
- where the place of arbitration, the place where a substantial part of the obligation is performed or the place with which the subject-matter is most closely connected with is located outside the country where the parties' principal place of business is
- if the subject matter of the dispute is related to more than one country, or
- if the main office of the arbitration institution to which the parties have agreed to is located inside or outside the country

It still remains to be seen how this last provision — which does use the phrase *'inside or outside'* is intended to operate in practice. Since the grounds for annulment and refusal of enforcement under the New Arbitration Law mirror those provided under the New York Convention, the authors do not expect any difference in enforcement of arbitral awards where the arbitration is or is not considered 'international'.

Having said that, it is not perfectly clear under which circumstances an award would be considered purely domestic and its enforcement would not be governed by the New Arbitration Law with complete disregard to the relevant provision in the CCPL. The fact that the Arabic text of the new Arbitration Law continues to use the Arabic word for judgment, *hukum*, or in the plural, *ahkam*, instead of the Arabic for arbitral award, *kharār takhimi*, does not help the practitioners to make an easy distinction.

As to the enforcement of arbitral awards made outside of Qatar—ie foreign awards, there is no doubt as to the inapplicability of the CCPL provisions in Article 69 CCPL.

Enforcement of awards in Qatar

The New Arbitration Law provides that an arbitral award shall have the status of *res judicata* and shall be enforceable, in accordance with the provisions of that Law, regardless of the country in which the award was issued.

Additionally, the New Arbitration Law provides that an application for enforcement of the arbitral award shall be submitted in writing to the competent judge, with a copy of the arbitration agreement, and the original award or a certified copy of it in the language in which it was issued, along with a certified Arabic translation if it was issued in a foreign language, unless agreed otherwise by the parties. An application for enforcement cannot be brought unless and until the time limit has lapsed for an application for setting aside of the award.

The competent judge is the enforcement judge in the First Instance Circuit, or the enforcement judge in the Civil and Commercial Court of the QFC, pursuant to the agreement of the Parties.

In accordance with Articles 263 and 264 of Qatar Law No. 22/2004 promulgating the Civil Code ('Qatar Civil Code') parties are generally able to request full indemnity for actual damages suffered. Such damages include moral damages and loss of profits as a direct result of the other party's breach or delay to perform its obligations under the contract. Interest on such amounts is usually not recoverable under Qatari law, although it may be possible to recover other similar types of losses (such as financing charges) relying on Articles 263–268 of the Civil Code.

Qatar's current arbitration law is silent on the issue of allocation of costs. As to costs, bearing in mind that under Article 198 of the CCPL, all other provisions of the CCPL do not apply to arbitration, it follows that costs are a matter reserved solely to the tribunal's discretion. Costs are usually not awarded in litigation in Qatar, despite the wording of Article 131 the CCPL, which could be seen as supporting the concept of costs shifting. In practice, the authors are unaware of a court seeking to set aside an arbitral award because of the findings of the tribunal on costs, although parties should bear in mind Article 37 of Qatar Law No. 23/2006 promulgating the Code of Legal Practice ('**Code of Legal Practice**'), stating that the parties may agree that the value of the fees be equal to no more than (10%) of the value adjudged in the lawsuit—which may restrict certain forms of contingency or conditional fee arrangements.

Challenges to enforcement of awards in Qatar

Chapter 7 of the New Arbitration Law deal with the topic of recognition and enforcement of arbitral awards—setting out the requirements for the application to enforce an arbitral award and providing the grounds on which enforcement of an arbitral award may be refused.

The courts' approach towards the enforcement of awards has undergone a process of evolution. While arbitration is not the customary method for settling of disputes in Qatar, and the country is still in a developmental phase in terms of arbitral jurisprudence, there are also several recent success stories and positive developments.

In a domestic arbitration in which the authors were involved, an award was obtained almost entirely in favour of the claimant against a Qatari state-owned company. The parties were able to agree the procedure for the issuance and lodging of the final award with the court and the claimant received its money (including costs) without needing to proceed to enforcement. It is worth mentioning that this arbitration was conducted under the old arbitration law contained in the CCPL.

Practitioners in Qatar have had different views as to whether, with the enactment of the Arbitration Law, there is still a requirement for the Qatar-seated arbitral awards to be issued in the name of His Royal Highness, the Emir of the State of Qatar. Although there is no explicit legal requirement under the abolished arbitration law or any other law, or in the Constitution of Qatar, there were several court decisions which ruled that Qatar-seated arbitral awards must be issued in the name of His Highness the Emir. Those judgments cited Article 69 of the CCPL as creating the legal basis on which arbitral awards had to be issued in the name of His Highness the Emir. While the New Arbitration Law expressly repealed Articles 190–210 of the CCPL, it did not repeal Article 69. With a judgment issued in July 2020, the Court of Appeal clarified this issue by dismissing a challenge against an arbitral award that was not issued in the name of His Highness the Emir. The authors nevertheless envisage that, out of an abundance of caution, arbitral tribunals may continue to issue awards in the name of His Highness the Emir where they are arbitrating a Doha-seated arbitration.

The New Arbitration Law has only expressly repealed Articles 190–210 of the CCPL and thus, the requirement that all judgments must be issued in the name of the Emir of Qatar, has not been affected by the New Arbitration Law.

There are two grounds for refusal of enforcement listed in Chapter 7 of the New Arbitration Law that the competent judge must examine on his or her own motion: arbitrability and public policy/public order. On these points, in February 2023, the Qatari Court of Appeal confirmed that disputes arising from rental relationships between tenants and landlords are exclusively adjudicated by the Rental Disputes Settlement Committee—as a matter of public policy. Accordingly, rental disputes are non-arbitrable.

What we have noted is that applications to enforce awards under Article 34 of the Arbitration Law are not as expediently accepted by the local courts as the UNCITRAL Model Law drafters had envisaged. The competent court may accept an application as soon as the period to submit an application to set aside an arbitral award has elapsed, which is one month as provided by Article 33(4). The reality however is that, from our discussions with local counsel, this administrative process of accepting an application for enforcement of an award can take several months from the submission of the application until it has been accepted by the competent court. Hopefully this will improve in the near future.

International treaties

Pursuant to Qatar Decree No. 29/2003, Qatar ratified the New York Convention in March 2003 without any reservation under Article I(3). Qatar, as a signatory, is bound by the provisions of the New York Convention. Notably, Qatar (and the Qatari Court of Appeal/QFC Court) is obliged to recognise written arbitration agreements and to recognise foreign arbitral awards as binding, and enforce these awards in accordance with its own domestic procedural laws.

In line with Article III of the New York Convention, the Qatar Court of Cassation in 2016 confirmed that the Qatari courts, when seized with an enforcement action, cannot impose more onerous conditions or higher fees or charges on the foreign awards than it would impose on the enforcement of a domestic award (QCC 173/2016).

It is notable that Qatar has also ratified the Convention on Judicial Cooperation between States of the Arab League 1983 (Riyadh Convention) and the GCC Convention for the Execution of Judgments, Delegations and Judicial Notifications 1996 (GCC Convention for Execution of Judgments). These are regional instruments that provides for the recognition of civil and commercial judgments as well as arbitral awards and ad-

judications. Last but not least, Qatar is also party to the Convention on the International Centre for Settlement of Investment Disputes 1966 (ICSID Convention), as well as (as at April 2022) to 55 bilateral treaties (23 of which are in force) and further 12 treaties with investment provisions (six of which are in force).

Depending on where the award is made, it may be recognised under a different international treaty or the Arbitration Law. Having said that, given its geographical reach, most foreign awards are recognised and enforced under the New York Convention.

State immunity from execution

The Qatar Civil Code stipulates that the moveable and immovable property of the state or public juristic persons that is allocated for a public benefit is deemed to be public funds and such funds may not be disposed of, attached or acquired (unless for a public benefit).

Qatar Law No. 10/1987 with regard to Public and Private State Property (Public and Private State Property Law) provides that the Government may, under agreement or pledge, waive the immunity from execution for its public or private funds which are either invested in financial, commercial or industrial activities or deposited in the banks and the existing contractual terms in this regard are valid.

It is interesting to note that a French Court has on a previous occasion ruled against the state of Qatar in considering a waiver clause in an arbitration agreement (Cass. Civ 1 (France), No. 98-19068, *Gouvernement de l'Etat du Qatar c. Creighton Ltd*). The court held that the parties intended to waive immunity from execution by referring to the ICC Rules in their agreement.

The authors are not aware of any previous or existing cases in which someone has tried to enforce an arbitral award against the state in the Qatari courts; equally, however, the authors are aware of State or quasi-State entities complying voluntarily with the awards of arbitral tribunals, which may be why the issue has not yet arisen in the courts.

General comments on the role of arbitration in Qatar

Arbitration might not currently be the standard method for dispute resolution in Qatar, but it has certainly come a long way and has indeed accounted for a few success stories, such as the case described above. Additionally, the fact that Qatar adopted a new arbitration law shows that the country is putting more faith in arbitration as a reliable method of dispute resolution which sends out a positive message to parties who plan on arbitrating their disputes in Qatar.

Enforcement is an area which is continuing to evolve. The Qatari Court of Cassation has established the jurisprudential concept that the authority of the arbitrator and his or her power to issue an award is a result of an agreement between the parties, rather than an authority deriving solely from the State or its courts. Furthermore, the fact that parties can elect the Qatar Financial Centre (QFC) Court as the competent court to enforce arbitral awards, is certainly a positive development as the judges there are familiar with and supports private dispute resolution.

The 'competent court' is defined in the New Arbitration Law as 'the Civil and Commercial Arbitral Disputes Circuit in the Court of Appeals, 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.

With the world's eyes continuing to be fixed on Qatar thanks to its ongoing and upcoming major projects such as the North Field Expansion and the expansion of the Qatari railway system, it is vital that the country send across a message of trust and reassurance as to the reliability of its legal systems, especially where it concerns arbitration as an emerging method of dispute resolution and the enforceability of any awards that may emanate from that method of dispute resolution.

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