

Local Arbitration Laws and Institutions

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Overview

- Qatari jurisprudence on arbitration has in recent years entered a phase of important evolution.
- Legislators working within the legislative council of the Emiri Diwan developed a new arbitration law in 2017, which is largely based on the UNCITRAL Model Law. The international legal community was also consulted for their input during the development of this 2017 law.
- The Arbitration Law, Qatar Law No. 2/2017, was issued on 16 February 2017 and published in the Official Gazette on 13 March 2017. As provided for in the Constitution of Qatar, it came into force 30 days after its publication, on 12 April 2017.
- Qatar Law No. 2/2017 applies to all arbitration proceedings in Qatar. This means that arbitrations commenced before 12 April 2017 must also have been conducted in accordance with the Arbitration Law as of 12 April 2017.
- Since the 2017 Arbitration Law is based on the UNCITRAL Model Law, the way arbitration works does not differ much from other jurisdictions.
- Since Arabic is the official language of the State of Qatar, most of its laws are only officially published in the Arabic language. In this instance, however, the QICDRC was granted the authority to translate the Arabic text of the Arbitration Law into the English language.
- This Practice Note summarises some of the salient provisions of the Arbitration Law and explains how these provisions might affect arbitrations carried out in Qatar.

Definitions

- *CCPL*: Qatar Law No. 13/1990 promulgating the Civil and Commercial Procedure Law.
- *CIArb*: Chartered Institute of Arbitrators.
- *Civil Code*: Qatar Law No. 22/2004 promulgating the Civil Code.
- *Constitution of Qatar*: Permanent Constitution of the State of Qatar.
- *Emiri Diwan*: The administrative office of the Emir H H Tamim bins Hamad Al Thani.
- *GCC Convention for Execution of Judgments*: [GCC Convention for the Execution of Judgments, Delegations and Judicial Notifications](#)^[1 p.12] (1996).
- *ICC*: International Chamber of Commerce.
- *ICSIC Convention*: Convention on the International Centre for Settlement of Investment Disputes (1966).
- *Arbitration Law*: Qatar Law No. 2/2017 promulgating the Civil and Commercial Arbitration Law in 2017.
- *New York Convention*: Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958).
- *Qatari Court of Cassation*: The court of highest appellate jurisdiction in Qatar.
- *QFC*: Qatar Financial Centre.
- *QFC Law*: Qatar Law No. 7/2005 promulgating Qatar Financial Centre Law.
- *QICCA*: Qatar International Centre for Conciliation and Arbitration.
- *QICDRC*: Qatar International Court and Dispute Resolution Centre.
- *Public and Private State Property Law*: Qatar Law No. 10/1987 with regard to Public and Private State Property.
- *Riyadh Convention*: Convention on Judicial Cooperation between States of the Arab League (1983).
- *Singapore Convention on Mediation*: United Nations Convention on International Settlement Agreements Resulting from Mediation (2018).
- *UNCITRAL*: United Nations Commission for International Trade Law.
- *UNCITRAL Model Law*: UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006.

Practical Guidance

The Arbitration Law

- Qatar Law No. 2/2017 repealed articles 190-210 of Qatar Law No. 13/1990, which addressed general topics such as the formation of the arbitration agreement, appointment and dismissal of arbitrators, anti-suit injunctions, granting and challenging the award and costs.
- The respective provisions of the CCPL that are applicable to arbitration and post-arbitration proceedings, that are not repealed by Qatar Law No. 2/2017, and that do not contravene the provisions of the Qatari Arbitration Law still govern arbitration and post-arbitration proceedings in Qatar.

- Generally, Qatar Law No. 2/2017 is considered a welcome development by the legal community in Qatar.
- One of the key highlights of the 2017 Arbitration Law is the inclusion of the QFC Court as one of the supervising courts with jurisdiction to set-aside or enforce arbitral awards.
- The “competent court” is defined in Qatar Law No. 2/2017 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.
- The default position is that where the parties fail to agree on the competent court, the local courts assume jurisdiction.
- It is recommended that parties agree on the competent court at an early stage of the arbitration if they wish to designate the QFC Court as the competent court.
- The QFC Court is primarily an English language court and most of the judges have a common law background.
- The QFC Court also widely adopts common law practices and procedures. These judges have the same powers as the local courts to decide matters such as the appointment, replacement or challenge of an arbitrator; suspension of arbitral proceedings; jurisdictional challenges; interim measures; and perhaps most importantly, the enforcement and nullification of arbitral awards.
- Qatar Law No. 2/2017 also does away with the requirement that awards need to be lodged with the local courts and it also limits the grounds for nullification of the award.

Application

- The scope of Qatar Law No. 2/2017 is very broad and includes essentially all matters of a commercial nature.
- It also provides that in respect of administrative contracts, the approval of the Prime Minister (or their delegate) is required before the parties can agree to settle their disputes through arbitration.
- Although the term “administrative contract” is not defined in Qatar Law No. 2/2017, references to administrative contracts appear in other Qatari legislation (such as the public procurement legislation), and is a well-understood concept to lawyers and students from civil code jurisdictions; this provision is based on French Law concept of *droit administratif*, it provides that disputes involving public entities are non-arbitral.
- The Arbitration Law provides that arbitration is not permitted in matters in which conciliation is not permitted.
- It also gives guidance on when an arbitration will 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 is intended to operate in practice. Since the grounds for annulment and refusal of enforcement under the 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”.

Arbitration agreement

- Arbitration agreements shall be in writing in order to be valid. This will include a signed agreement between the parties which incorporates an arbitration clause, or an electronic document or other form of written communication referencing an agreement to arbitrate.
- Qatar Law No. 2/2017 also provides that parties can agree on the existence of an arbitration agreement in their pleadings.

The arbitral tribunal

- In ad hoc arbitrations, arbitrators shall be appointed from the (pre-approved) registry of arbitrators at the Ministry of Justice.
- However, the Arbitration Law also provides for the appointment of other individuals as arbitrators, provided that they meet certain criteria as laid down in the law.
- The Arbitration Law provides that a register will be established at the Ministry of Justice to record arbitrators approved by a decision of the Minister. Minister of Justice shall issue decisions to determine the conditions and rules for registering and striking off arbitrators in the aforementioned register.

- The authors are not aware of any such decision having been issued yet; however, we understand that the relevant department at the Ministry of Justice has been informally compiling names of arbitrators.
- Article 11 of Qatar Law No. 2/2017 indemnifies arbitrators from liability for exercising their duties, unless this was done in bad faith, collusion or gross negligence.

Jurisdiction of the tribunal

Qatar Law No. 2/2017 recognises the kompetenz-kompetenz principle, which means that the tribunal has the authority to rule on its own jurisdiction, subject to the parties' right to challenge this decision before the Competent Court. This is another positive development for arbitration in Qatar, which did not exist under the old law.

Interim relief

- Unless the parties agree otherwise, the tribunal is empowered to issue provisional measures or interim awards. A similar provision did not exist under the old law. If the party against whom the interim measure is issued fails to comply with it, the other party can also approach the competent court for enforcement of the interim award.
- In situations where the arbitral tribunal, or any other person to whom the parties have granted certain authority, does not have jurisdiction, or is incapable to act effectively at the time, the competent judge, on the application of one of the parties, may order interim measures, either before the commencement of or during the arbitral proceedings.

Proceedings

The tribunal can decide on the matter based on the documents alone or by way of an oral hearing, as per article 24 of Qatar Law No. 2/2017. Another interesting change from the previous law is that witnesses and experts are no longer required to give evidence under oath at the oral hearing. However, the hearing shall be recorded in some form (e.g., by way of minutes) unless otherwise agreed by the parties.

Issuing and challenging arbitral awards

- An arbitral award should be issued within the timeline agreed upon or if there is no such agreement, within one month from the conclusion of the proceedings. In all cases, the arbitral tribunal may extend the time limit on its own motion for only an additional month, unless the parties agree otherwise.
- Article 31 of Qatar Law No. 2/2017 sets out the formal requirements for issuing of the award:
 - the award shall be issued in writing and shall be signed by the arbitrator or, if more than one arbitrator, by the majority of the arbitrators;
 - the award shall state the reasons upon which the decision is based;
 - the award shall also state the name of the parties and their addresses, nationalities and the capacity of the arbitrators, a copy of the arbitration agreement, the date of the issuance of the award and the place of arbitration. The award shall also include a summary of the requests, statements and documents submitted by the parties; and
 - the award shall state the costs and fees of the arbitration, the party responsible to pay such fees and the procedures for payment.
- An interesting provision in the Arbitration Law (article 31(11) of Qatar Law No. 2/2017) requires the tribunal to send an electronic copy of the award to the administrative department in the Ministry concerned with Arbitration Affairs. There is no obvious penalty for failing to comply with this requirement and it is yet to be seen how this will have practical effect in Qatar.
- The award also does not have to be signed in Qatar and does not need to be translated into Arabic in instances where it was issued in the English language.
- Additionally, article 33(2) of Qatar Law No. 2/2017 sets out limited grounds for challenging the arbitral award. An application for setting aside the award shall not be accepted unless the applicant provides proof of the following:
 - any party to the agreement was, at the time of concluding it, incompetent or under some incapacity, or the arbitration agreement is invalid;
 - the party making the application to set aside was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was unable to present its defence for any other reasons beyond its control;
 - the award has decided matters outside the scope of the arbitration agreement or in excess thereof; or
 - the composition of the arbitral tribunal, the appointment of the arbitrators or the arbitral proceedings was not in accordance with the agreement of the parties.
- Any such challenge must be made within one month from the date of receiving the award (article 33(4) of Qatar Law No. 2/2017), the date on which the party making the application is notified of the award, or from the date of issuing the corrected award.

- 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 Qatar Law No. 13/1990 as creating the legal basis on which arbitral awards had to be issued in the name of His Highness the Emir. Whilst the Arbitration Law expressly repealed articles 190-210 of Qatar Law No. 13/1990, it did not repeal article 69 of Qatar Law No. 13/1990. 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 Arbitration Law has only expressly repealed articles 190-210 of Qatar Law No. 13/1990 and thus, the requirement that all judgments must be issued in the name of the Emir of Qatar, has not been affected by the 2017 Arbitration Law.

Recognition and enforcement of arbitral awards

- Chapter 7 of the 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 an arbitral award can be refused.
- 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 a number of success stories and positive developments as mentioned above.
- 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.
- It is expected that the introduction of the 2017 Arbitration Law coupled with the fact that Qatar has two modern dispute resolution centres, will encourage the settling of disputes via arbitration in the State of Qatar. It is also hoped that this will pave the way for Qatar to become an internationally recognised and vibrant arbitration centre in the Middle East.

Enforcement of awards - 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, it 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 worth mentioning that Qatar has also ratified the Riyadh Convention and the 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 adjudications.
- Further, although it is not concerned with arbitration, Qatar has also signed the Singapore Convention on Mediation, which may speak to Qatar's willingness to embrace the enforcement of foreign awards / decisions / settlements in Qatar.
- Last but not least, Qatar is also party to the ICSID Convention, as well as to 55 bilateral treaties (23 of which are in force) and further 12 treaties with investment provisions (6 of which are in force).
- Depending on where the award is made, it may be recognized 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.

Institutional arbitration

- Qatar has its own arbitral institutions.
- 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.
- QICDRC and the 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.

- QICCA was established in 2006 by Qatar Decree No. 5-8/2006 establishing QICCA in an attempt to create an efficient mechanism to settle disputes among Qatari companies or between Qatari companies and their foreign counterparts.
- It offers a competitive fee structure and user-friendly facilities available to parties interested in settling disputes in Qatar.
- QICCA published its own set of rules which came in force on 1 May 2012 and is modelled on the 2010 UNCITRAL Arbitration Rules.
- One noteworthy feature of the QICCA Rules is that they presume that the tribunal is appointed with the power to determine the dispute before it as an amiable compositeur, and/or by hearing the dispute on an ex aequo et bono basis, unless the parties agree that the tribunal should not enjoy such powers.
- QICCA shares a building with the Qatar International Chamber of Commerce, which is the local chapter in-country of the ICC - albeit operating more as the local commercial representative within Qatar, rather than directly involved with the work of the International Court of Arbitration of the ICC. In contracts involving international parties, the ICC Arbitration Rules remain the most popular choice of institutional rules to govern arbitral disputes within Qatar.
- Civil and commercial disputes arising out of contracts and transactions concluded under the QFC Law can also be conducted within the QFC through the QICDRC. The QFC is a freezone that has its own independent legal system with judges from a variety of common law backgrounds.
- The QICDRC (formerly known as the Civil and Commercial Court of the QFC) was established by QFC Law No. 2/2009. It operates as a first instance and an appellate court within the QFC.
- Since inception, QICCA and the QICDRC have presided over many disputes and serve as reliable and important stakeholders in the development of Qatar's arbitration laws.

State immunity

- The concept of state (sovereign) immunity is twofold: immunity from suit and immunity from execution.

Immunity from Suit

- In line with public international law principles, state waives its immunity from suit where it is entered into arbitration agreement. However, as noted under the Arbitration Law, the approval of the Prime Minister (or their delegate) is required before the parties can agree to settle their disputes through arbitration – in respect of administrative contracts.
- Additionally, under the CCPL, ministries, government institutions and public authorities can be sued in the courts of the state of Qatar.

Immunity from Execution

- The Civil Code (Qatar Law No. 22/2004) 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).
- The Public and Private State Property Law (Qatar Law No. 10/1987) 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.

- Accordingly, the state can waive immunity both from suit and execution.
- 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. 98-19 068, Gouvernement de l'Etat du Qatar c. Creighton Ltd.](#)^[2 p.12]]. 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.

Current trends and developments in Qatar

- There are also other factors that affect parties' decision to arbitrate in Qatar. Arbitration is generally seen as a more flexible and faster dispute resolution process than standard commercial litigation through the Qatari courts.

- Although the court process in Qatar is cheaper, it is invariably slower. In particular, there is little or no costs-shifting, which can discourage Claimants with strong claims from choosing to litigate in the local courts.
- The Arbitration Law has proven to be a major milestone – indicating that Qatar is taking a more lenient and open approach towards private dispute resolution.
- Enforcement is another 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 QFC Court as the Competent Court to enforce arbitral awards, is certainly a positive development as the judges are familiar with and supports private dispute resolution.
- It is not uncommon for parties in Qatar to apply to the local courts – seeking annulment of arbitral awards based on public policy considerations. However, the authors are aware that following the promulgation of the 2017 Arbitration Law and in light of the jurisprudential concept developed by the Qatari Court of Cassation, lower courts have been more cautious towards annulment requests. In a recent case, the Court of Appeals dismissed an annulment request advanced against an arbitral award that ordered the award debtor to pay interest – ruling that interest is not considered contrary to the public policy of the State (31-STH-2019).
- It is notable that some of the issues concerning arbitration in Qatar are language related. In the English language, the words ‘judgment’ and ‘award’ have different meanings and are easily distinguishable from each other.
- However, in the Arabic language (the official language of the courts and Qatar Law No. 13/1990), the same word *hukum* has been used to describe both “judgment” and “award” in different parts of the Procedural Code; notably, in article 69 of Qatar Law No. 13/1990 , requiring all court judgments to be issued in the name of His Highness the Emir. This has caused some confusion in the courts when it came to the question of enforcement of awards, as contrasted from the enforcement of judgments.
- The courts are naturally bound by the law (e.g., the CCPL) when it comes to issuing judgments. Given the linguistic challenges, it can easily be seen why the courts considered the requirement in the CCPL to extend to all forms of judgments and awards, without distinguishing between the two. Regrettably, the 2017 Arbitration Law did not resolve this issue as it was hoped it would.

Related Content

Legislation

- Qatar Law No. 2/2017 on the Issuance of the Arbitration Law in Civil and Commercial Matters
- Qatar Law No. 2/2009 related to the Qatar Financial Centre (QFC) Law
- Qatar Decree No. 5-8/2006 establishing the QICCA
- Qatar Law No. 7/2005 promulgating the Qatar Financial Centre (QFC) Law
- Qatar Law No. 22/2004 promulgating the Qatari Civil Code
- Qatar Decree No. 29/2003 promulgating the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention)
- Qatar Law No. 13/1990 promulgating the Civil and Commercial Procedural Code.
- QFC Law No. 7/2005 on the QFC Law 2005
- QFC Law No. 2/2009 establishing the QICDRC

International regulation

- [Convention on Judicial Cooperation between States of the Arab League 1983 / Riyadh Arab Agreement for Judicial Cooperation / Riyadh Convention](#)^[5 p.12]
- [Convention on the International Centre for Settlement of Investment Disputes 1966](#)^[4 p.12]
- [Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 / New York Convention](#)^[5 p.12]
- [GCC Convention for the Execution of Judgments, Delegations and Judicial Notifications](#)^[1 p.12]
- [UNCITRAL Model Law on International Commercial Arbitration](#)^[6 p.12]
- [United Nations Convention on International Settlement Agreements Resulting from Mediation 2018 / Singapore Convention on Mediation](#)^[7 p.12]

Case decisions

- QCC 174/2016

- 31-STH-2019

International case decisions

- [Cass. Civ 1 \(France\), No 98-19068, Gouvernement de l'Etat du Qatar c. Creighton Ltd.](#)^[2 p.12]

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Areas of expertise

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- PG Dip, University of Reading, Reading, UK
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Memberships

- Barrister in England and Wales
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Biography

- Matthew, a partner in the Doha and London offices of K&L Gates, focuses his practice in construction law and dispute resolution. He has acted as advocate and counsel in ICC arbitrations in Qatar, the UAE, Saudi Arabia, Turkey, India and the United Kingdom, as well as in the Qatar International Court, the High Court of England and Wales, and an international adjudication on a gas facility in Tanzania. He has acted as sole arbitrator in a QICCA arbitration, in which he issued a final award, and has been appointed to QICCA's panel of arbitrators. He is a Fellow of the Chartered Institute of Arbitrators, a Fellow of the Chartered Institute of Building and has been accredited as a mediator by the Royal Institute of Chartered Surveyors.
- He also gives non-contentious construction advice, particularly in the rail sector. He has undertaken secondments to Qatar Rail and London Underground. He has advised on procurement for Doha Metro and has drafted construction contracts (including FIDIC, NEC, JCT, ACE, RIBA and bespoke forms) on construction projects of varying size and complexity. He has also been listed in Who's Who Legal 2015-2019 as one of the six leading construction lawyers currently working in Qatar.



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Biography

- Burak focuses his practice on international arbitration, energy & infrastructure projects and construction matters, and also advises clients on general Qatar, English and Turkish law issues relating to international arbitration, dispute resolution, and energy & infrastructure projects.
- Throughout his professional career, Burak has obtained extensive legal experience in commercial arbitration, construction arbitration, investor-state arbitration, gas price review arbitration, as well as energy & infrastructure projects – on top of his specialized education focusing on the same areas.
- Burak has worked as a visiting foreign lawyer and a foreign lawyer providing Turkish Law/Language assistance at two leading US/global law firms specializing in international arbitration, having previously worked as an associate for a highly-respected law firm in Turkey handling dispute resolution and international arbitration matters, as well as energy & infrastructure projects.

Notes

1. [^] [p.3] [p.8] http://arbitrationlaw.com/files/free_pdfs/GCC%20Convention.pdf
2. [^] [p.7] [p.9] <https://www.legifrance.gouv.fr/juri/id/JURITEXT000007043044/>
3. [^] [p.8] <http://www.refworld.org/docid/3ae6b38d8.html>
4. [^] [p.8] <https://icsid.worldbank.org/sites/default/files/ICSID%20Convention%20English.pdf>
5. [^] [p.8] <https://www.newyorkconvention.org/english>
6. [^] [p.8] https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09955_e_ebook.pdf
7. [^] [p.8] https://uncitral.un.org/sites/uncitral.un.org/files/singapore_convention_eng.pdf