

## Qatar Court of First Instance refuses to enforce arbitration award on technical grounds raised by the court itself

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In *Case No 704/2/2015*, the Qatar Court of First Instance considered an application to enforce an International Chamber of Commerce (ICC) award rendered in Paris.

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### Speedread

The Qatar Court of First Instance has refused to enforce an International Chamber of Commerce (ICC) award rendered in Paris. The Qatar Court determined that the arbitration award had not been authenticated and certified by the competent authorities and further, no certificate proving that such award was final had been attached. Therefore, the court held that it was unable to determine whether the requirements of the New York Convention, read in conjunction with the Civil and Commercial Procedure Law, had been satisfied.

Regrettably, the court does not appear to have considered the procedure set out in the ICC Rules for issuing and notification of the award. Further and of greater concern to arbitration practitioners in Qatar, is the fact that the argument about authentication and certification was raised by the court itself, rather than by the respondent. (*Case No 704/2/2015*.)

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### Background

Articles 379-381 of the *Civil and Commercial Procedure Law (Law No. 13 of 1990)* (Procedural Code) are the articles that cover the "Enforcement of Judgments, Orders and Official Foreign Documents". Article 379 sets out the conditions under which a foreign judgment might be executed in Qatar, while Article 380 describes various grounds under which the Qatari court might refuse to enforce a foreign judgment. Article 381 then simply provides that "the provisions of the preceding two Articles shall apply to the arbitration decisions passed in a foreign country."

The provisions of the **New York Convention ( [www.practicallaw.com/6-205-5196](http://www.practicallaw.com/6-205-5196) )** form part of the canon of Qatari Law under *Emiri Decree 29/2003*.

Article 4 of the New York Convention requires that the original arbitration award or a certified copy thereof and the original arbitration agreement be presented to the court in which enforcement was sought. It also requires a translation of these documents into the language of the local court.

### Facts

In September 2014, the Qatar Court of Cassation, the court of final appeal in the State of Qatar, published a judgment clarifying which laws should apply in Qatar to international, rather than domestic arbitration. In so doing, the Court of Cassation confirmed that the jurisprudence relating to the New York Convention is to be applied to arbitration awards governed by procedural laws outside the State of Qatar (see *Legal update, Qatar Court of Cassation recognises applicability of New York Convention to foreign arbitration ( [www.practicallaw.com/8-582-0325](http://www.practicallaw.com/8-582-0325) )*). That decision related to an annulment action that the respondent had commenced in the Qatari courts, to have an International Chamber of Commerce (ICC) award rendered in Paris set aside on the grounds that the award had not been issued in the name of his Highness the Emir of Qatar.

At the same time that the respondent filed its annulment action, the claimant filed proceedings to have the award enforced. The enforcement proceedings were stayed pending the outcome of the case on annulment, which was finally dismissed in December 2014, once the Court of Cassation had remitted the case to the Court of Appeal for it to dismiss the annulment action (*Case ref. 38/2014, 29 December 2014*).

The claimant's application for enforcement was subsequently heard by the Qatar Court of First Instance on 21 September 2015.

## Decision

Having considered the Procedural Code and the New York Convention, the Qatar Court of First Instance rejected the claimant's application and refused to issue an order for recognition and enforcement of the ICC Award.

In a very brief judgment, the Qatar Court determined that the arbitration award submitted by the claimant had not been authenticated and certified by the competent authorities and further, no certificate proving that such award was final had been attached. Therefore, the court held that it was unable to determine whether the requirements of Article 4 of the New York Convention, read in conjunction with Articles 379 and 380 of the Procedural Code, had been satisfied. On that basis, the court refused to enforce the award.

## Comment

Regrettably, the court does not appear to have considered in any depth the procedure set out in Article 34 of the ICC Rules 2012 (or Article 28 of the version of the ICC Rules 1998, which applied to the arbitration in question) for issuing and notification of the award. Neither did the court consider whether the ICC rules should supplant the more traditional means of authentication and certification of judgments with which a Qatari court might be more familiar.

Of greater concern to arbitration practitioners in Qatar is the fact that the argument about authentication and certification was raised by the court itself, rather than by the respondent. It is not understood how the court determined it should raise these issues itself, in circumstances where it is an established principle in Qatar Law that questions as to the means of proof is not an issue that goes to public order.

It is understood that the claimant will look to appeal the court's judgment.

## Case

*Case No 704/2/2015* (Qatar Court of First Instance).

## Resource information

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