

# AMERELLER

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## Client Alert: Qatar's new Arbitration Law

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**After many years of consultations and several controversial enforcement decisions Qatar's new arbitration law (the "Arbitration Law") came into force on 12 April 2017. The Arbitration Law adapts the State's legal framework for arbitration to match its status as a growth engine in the region.<sup>1</sup>**

Prior to enactment of the Arbitration Law, Chapter 13 (Articles 190 – 210) of the Civil and Commercial Procedural Code<sup>2</sup> (the "CCP") regulated commercial arbitration in Qatar. The Chapter 13 regime was heavily criticized for allowing the Qatari courts to intervene excessively in arbitration proceedings, thus thwarting the advantage of arbitration over traditional Qatari court litigation.

The Arbitration Law is modelled on the UNCITRAL Model Law of 1985 (as amended) (the "Model Law"), the global standard for international arbitration legislation, but has important features that differ from the Model Law. This article looks at those and other salient features.

Overall, although the Arbitration Law remedies the biggest deficiencies of the previous regime, it is unlikely to cure all its shortcomings, such as, for example, tactics of 'form over substance', which are regularly used to frustrate the enforcement of awards in Qatar.

### Retroactive Application of the Arbitration Law

In accordance with Article 2(1) and Article (3), the Arbitration Law applies to any arbitration, whether domestic or international, ongoing as of 12 April 2017 or commenced thereafter. The new Law will thus apply retrospectively even to arbitrations proceedings that started under the old regime. Where recognition and enforcement or annulment is sought post 12 April, the Arbitration Law also affects awards issued prior to that date.

In accordance with Article 2, the Arbitration Law also applies, without prejudice to international conventions in force in Qatar, to arbitrations seated abroad where the parties agreed that the Arbitration Law should apply.

### Supervisory Powers of the Courts

The Arbitration Law clarifies the supervisory function of the courts and restricts their ability to interfere with arbitration proceedings, thus remedying the biggest defect of the previous regime.

Pursuant to the Arbitration Law, the parties may now choose between two supervisory court options, designated the 'Competent Court':

- The Civil and Commercial Arbitral Disputes Circuit of the Qatar Court of Appeals; or

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<sup>1</sup> Law No. 2 of 2017 issuing the Law of Arbitration in Civil and Commercial Matters

<sup>2</sup> Law No. 13 of 1990 issuing the Civil and Commercial Procedural Code

- The First Instance Circuit of the Civil and Commercial Court of the Qatar Financial Centre (the “CCCQFC”).

For enforcement related matters, the parties may choose the ‘Competent Judge,’ who may be either:

- the enforcement judge in the Qatar First Instance Circuit; or
- the enforcement judge of the CCCQFC.

The CCCQFC is a common law court akin to the DIFC Court in Dubai and is popular with foreign parties on account of its international competence. Overall, it is unclear which court is responsible where parties fail to agree. It is therefore important to decide this matter when entering into an arbitration agreement for arbitration under the Arbitration Law.

### **The Arbitration Agreement**

One of the criticisms under the old arbitration regime was that the Qatari courts had interpreted the requirement that the arbitration agreement be in writing in an excessively rigid manner, effectively requiring on paper evidence. Although the Arbitration Law retains the requirement that the arbitration agreement is in writing, Article 7(2) now suggests that the requirement is satisfied if the correspondences evidencing the arbitration agreement is in the form of electronic communication and receipt of the communication by the relevant parties can be proven.

### **Arbitrability of Administrative Contracts**

In accordance with Article 2(2) Arbitration Law, approval by the Prime Minister must be obtained prior to entering into an arbitration agreement relating to “administrative contracts.” Moreover, disputes where the only parties are public juridical persons are not arbitrable. The provision requires a distinction to be made between administrative and private law contracts, a distinction widely used in Arab civil law states, including Egypt, which heavily influenced Qatar’s legal landscape.

### **Appointment of Arbitrators**

The provisions of the Arbitration Law diverge from the Model Law regarding the appointment of arbitrators and their qualifications. The provisions lack clarity. Article 11(1) requires arbitrators to be chosen from a register of arbitrators maintained by the Ministry of Justice, but alternatively suggests that “any other person may be appointed if the person meets the conditions of full capacity, is without certain criminal convictions and of good conduct and reputation”. The provision is clearly cumulative in the Arabic original, leaving it open for the parties to appoint an arbitrator that is not on the Ministry of Justice register. This interpretation is supported by Article 11(10). Article 11(10) allows the ‘Other Authority’ which is defined as the authority that the parties may have chosen to perform certain supervisory functions, such as an arbitration institution, or the Competent Court to appoint an arbitrator from arbitrator lists of other Arbitration Centres or any other list they deem appropriate.

Article 11(11) guarantees the arbitrators immunity from suit, except where bad faith, collusion or gross negligence on the part of the arbitrator can be proven. Uncertainty however remains as to the interpretation of those concepts by a Qatari court. While the UAE recently amended its criminal code to make arbitrators criminally liable for breach of integrity and impartiality, the Arbitration Law does not introduce such penalties.

### **Separability and autonomy of the Arbitration Agreement**

Although the principle of separability and autonomy of the arbitration agreement has been one of the cornerstones of international arbitration, Qatari law did not recognize the principle explicitly. Where a contract was void, this left open the question whether the embedded arbitration clause followed the same fate. In accordance with Article 16, the Arbitration Law now affirms the international standard such that “[t]he nullity, rescission or termination of the contract has no effect on the arbitration agreement contained therein, as long as the clause is itself valid”.

### **Kompetenz-Kompetenz**

The same is prima facie true for the principle of Kompetenz-Kompetenz, affirmed in Article 16 of the Arbitration Law, which allows the arbitral tribunal to rule on questions of its own jurisdiction. However, although the tribunal may rule on its own jurisdiction, a party may appeal the tribunal’s decision to the Competent Court or the Other Authority.

### **Delivery of electronic copy of award to the Ministry of Justice**

As a unique and controversial requirement, Article 31(1) Arbitration Law necessitates arbitrators to deliver, within 14 days of issuance, an electronic copy of the award to the administrative unit specializing in arbitral affairs at the Ministry of Justice. The article does not impose an explicit confidentiality requirement binding the Ministry of Justice and fails to stipulate any sanctions for non-compliance. Thus far, no details have been made known about the unit and further clarification is awaited.

### **Setting aside an Award**

The Arbitration Law remedies the most controversial shortcoming of the Chapter 13 regime, whereby the Qatari courts were competent to hear appeals against arbitral awards on questions of both law and fact pursuant to Article 205 CCP and had the power to reconsider an award pursuant to Article 206. Article 33 Arbitration Law now enshrines the finality of the award in Qatari law and only allows challenges against the award in the form of annulment application before the Competent Court. The grounds for annulment largely match those under the Model Law, whereby the time limit to file proceedings following receipt of the Award under the Arbitration Law is one month as opposed to three months under the Model Law. All decisions made by the Competent Court on annulment are final (Article 33(6)).

Going beyond the Model Law, Article 33(5) Arbitration Law allows the Court to suspend the annulment proceedings, at the behest of one party, while the tribunal which issued the defective award may remedy it by “taking any other measure that the Arbitral Tribunal deems appropriate”, thereby making a setting aside of the award less likely.

### **Enforcement**

Enforcement proceedings may only be lodged following the expiration of the one month time limit allowed for filing for annulment with the Competent Court. Grounds of opposition to enforcement are the same as those under the Model Law, whereby any decision on enforcement may be appealed to the Competent Court. Unfortunately, there is no clear stipulation in the Arbitration Law that such appeal is final, and accordingly, may be further appealed.

## The recognition and enforcement of New York Convention Awards

The recognition and enforcement of foreign awards remains subject to the New York Convention, which is applied by the Qatari courts. It is noteworthy that Article 35 of the Arbitration Law, which specifies grounds of refusal for recognition and enforcement, largely matches Article V of the New York Convention.

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**If you would like more information about this topic then please contact us.**

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