

A Look At Enforcing And Contesting Arbitral Awards In Qatar

By **Tamim Momeni, Michael Guiffre and Meagan Bachman** (November 15, 2023, 4:47 PM EST)

The enforcement of arbitral awards holds paramount importance in arbitration. Parties strive to enforce these awards through national courts when the losing party fails to voluntarily comply with them. However, in Qatar, as with other jurisdictions, losing parties may try to impede enforcement by utilizing local avenues.

In this article, we delve into the enforcement of awards in Qatar and the challenges that may be presented along the way.

Evolution of the Enforcement Regime

Qatar not only has historical roots in alternative dispute resolution, but it also has undergone significant progress in the realm of international commercial arbitration and the enforcement of awards. This significant upward development continues following Qatar's recent hosting of the 2022 World Cup and its aspirations to become a regional investment hub as part of Qatar Vision 2030.

The framework for award enforcement and challenges is established by Qatar's accession to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, commonly known as the New York Convention, on Dec. 30, 2002, and its subsequent ratification into Qatar law on March 15, 2003, through Emiri Decree No. 29.

While Qatar's legal position aligns with the New York Convention in principle, it is crucial for parties engaged in arbitration to understand nuances specific to Qatar's legal landscape to maximize prospects of enforcing any resulting award.

Previously, the enforcement of awards in Qatar was governed by Articles 190 to 210 of the Civil and Commercial Procedures Law No. 13/1990. However, the landscape underwent a significant transformation with the issuance of Commercial Arbitration Law No. 2 of 2017 in February 2017, which applies to both domestic and international awards.

Aligned with the United Nations Commission on International Trade Law Model Law, the Arbitration Law reflects Qatar's commitment to modernizing its arbitration practices in accordance with international standards.

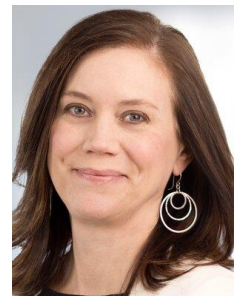
Awards Don't Need to Be Issued Under Emir's Name



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The Qatari courts rejected that awards must be issued under the name of the emir, the Qatari head of state.

Prior to the Arbitration Law, there were local court judgments where the enforcement of awards was opposed due to the awards not being issued in the emir's name in apparent contradiction of local procedural requirements. The fact that the word "hukum" (حكم) is used for both judgments and awards in Article 69 of the Civil Procedures Law may have contributed to creating ambiguity.

Nonetheless, the Qatari courts have clarified that awards are not bound by local court procedures, but parties may still decide to include such wording on awards for caution.

While it is a positive development that case law is evolving to reflect international arbitration practice, there has still been criticism from the arbitration community that such developments require time-consuming and expensive submissions before multiple local courts, which delay enforcement.

Parties Don't Need to Have Qatari Representation

The Qatari courts rejected that parties seeking enforcement of arbitral awards must have Qatari legal representation under the Qatari Code of Legal Practice.

Moreover, there have been cases where parties have sought to set aside arbitral awards based on the argument that the party seeking enforcement lacked proper legal representation according to the Qatari Code of Legal Practice in Law No. 23/2006. It has been determined, however, that there is no mandatory requirement for such representation.

Such arbitration-friendly decisions provide some reassurance, although there remains some uncertainty whether similar decisions will be reached in other court proceedings.

Apparent Ambiguities in the Qatari Arbitration Legal Regime

While Article 4 of the Arbitration Law repealed Articles 190 to 210 of the Civil Procedures Law "and any provision that contravenes the provisions" of the Arbitration Law, there may be some ambiguities as to which provisions of the Civil Procedures Law "contravene" the Arbitration Law and which still apply.

For example, Article 381 of the Civil Procedures Law states that the preceding Articles 379 and 380 apply to "arbitrators' awards issued in a foreign country." Article 379 provides that "foreign judgments and orders" can be enforced in Qatar under the same conditions as Qatari judgments or orders are enforced in a foreign country, which is generally referred to as the reciprocity requirement.

Article 380 outlines the specific conditions required for granting an enforcement order, which include verifying that: (1) the foreign court had jurisdiction; (2) the counterparty was properly summoned and represented; (3) the foreign judgment or order is legally final in the issuing country; and (4) the foreign judgment or order does not violate public order or morals in Qatar.

Article 383 of the Civil Procedures Law then states that international conventions between Qatar and other countries must not be prejudiced by the legal provisions in the other articles. It is, therefore, unclear if Articles 379 to 381 of the Civil Procedures Law apply to the enforcement of arbitration awards following the passage of the Arbitration Law.

If the Arbitration Law was intended to repeal Articles 379 to 381 of the Civil Procedures Law, it would have been preferable for the law to have expressly repealed those provisions; even if those articles do not result in substantive prejudice to the enforcement of arbitration awards, parties may still face delay and expense as courts consider the question of if and how the provisions apply.

Enforcement Procedures

According to Article 34(2) of the Arbitration Law, a party seeking to enforce an award must submit a written request to the "competent judge." For domestic Qatari awards outside the Qatar Financial Centre, the competent judge is the "enforcement judge in the First Instance Circuit," and for Qatar Financial Centre seated awards, it is the enforcement judge of the Qatar International Court and Dispute Resolution Centre.

The party making an enforcement application must provide the relevant court with a copy of the arbitration agreement, the original award or a certified copy of it in the language it was issued, and, if necessary, certified Arabic translations.

In the First Instance Circuit, which is an Arabic language-based court, certified translations are always required. In the Qatar International Court the use of English or Arabic depends on the case, as both languages are authoritative under Article 3.1 of the QIC rules.

The Qatari courts generally have a pro-enforcement stance and will typically enforce an award unless there are valid reasons to refuse enforcement.

Enforcement Through the Qatar International Court

The Qatar International Court, being subject to the Arbitration Law, is required to apply it. Article 2 of the Arbitration Law states that it applies to all arbitrations in Qatar and that this is without prejudice to the New York Convention regarding foreign seated arbitral awards.

If the Qatar International Court issues an enforcement judgment or order, it is capable of enforcement and execution by the courts of Qatar as would be a judgment or order of any other Qatari court under Article 34.1 of the Qatar International Court Rules. Relevant Qatari agencies and authorities are obliged to take necessary action and provide cooperation to enforce such judgments or orders.

Duration

Enforcement of awards in Qatar can vary in duration. In straightforward cases, the process can take up to six months. However, in complex cases, especially when there are challenges to enforcement, the timeline can extend significantly.

Challenges to Enforcement

Application to Set Aside an Award

A losing party can seek to annul an award by applying to the relevant competent court. For domestic awards, this is the specialized circuit of the Court of Appeal, and for QFC awards, it is the First Instance Court of the Qatar International Court.

Article 33(4) of the Arbitration Law requires that a set aside application must be lodged at the competent court within one month from the date that: (1) the parties receive the award; (2) the party making the appeal application is notified of the award; or (3) the tribunal issues a correction, interpretation or additional award.

An award can only be set aside for one of the limited, exclusive exceptions set out in Articles 33(2) and 33(3) of the Arbitration Law as set out below:

- "Any party to the arbitration agreement was, at the time of concluding it, incompetent or under some incapacity, in accordance with the law that governs its capacity, or the arbitration agreement is invalid under the law to which the parties have agreed, or under the Arbitration Law if the parties did not reach such agreement";
- "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 defense for any other reasons beyond its control";
- "The award has decided matters outside the scope of the arbitration agreement or in excess of the arbitration agreement";
- "The composition of the arbitral tribunal, the appointment of arbitrators or the conduct of the arbitral proceedings was not in accordance with the agreement of the parties unless such agreement was in conflict with a provision of this law, from which the parties cannot derogate, or failing such agreement, was not in accordance with this law"; and/or
- "The competent court shall decide to set aside the arbitral award on its own motion if the subject-matter of the dispute is not capable of settlement by arbitration under Qatar law or the arbitral award is in conflict with Qatari public policy."

Article 33(5) of the Arbitration Law provides that the competent court may stay the set aside proceedings, at the request of one of the parties, if it considers it appropriate to give an arbitrator or tribunal the opportunity to deal with any defective aspects of an award.

In accordance with Article 33(6), any judgment from the competent court will be final and binding on the parties.

Challenges to the Recognition and Enforcement of an Award

Once the period for filing a set aside application has expired, the winning party can apply to the competent judge, who is the enforcement judge in the local courts or the Qatar International Court as appropriate, to seek to enforce an arbitral award under Article 34(3) of the Arbitration Law. The relevant judge has jurisdiction to recognize and enforce awards or reject the same.

A counterparty has the option to challenge recognition and enforcement at this stage. An application to refuse recognition and enforcement of an award may present the most viable means of challenging the award because it is not constrained by the strict time limits imposed on set aside applications.

The party against whom the award is invoked can request the enforcement judge to refuse recognition and enforcement of the arbitral award on similar grounds as those requirements for set aside, detailed

above, and, also, if relevant that the award is no longer binding, has been annulled or its enforcement has been stayed in Qatar courts in accordance with Article 35 of the Arbitration Law.

Any decision of the competent judge is appealable within 30 days from the issuance of the decision to the relevant competent court under Article 35(3) of the Arbitration Law. The appeal would be subject to the relevant procedural rule of the relevant court, and it is not explored in this article.

Enforceable and Unenforceable Under Qatari Law

Damages generally are recoverable under Qatar Law No. 22/2004 — the Civil Code. Damages can include lost profits as a result of the counterparty's breaches or delays in performing its obligations, Article 263(2) of the Civil Code, and moral damages, Article 264 of the Civil Code.

Interest generally is not recoverable under Qatar Law, unless the interest is applied by a licensed financial institution.

The Arbitration Law is silent on the recoverability of legal costs from arbitrations in Qatar, so this may be subject to the tribunal's discretion in each case. For example, Article 38(5) of the International Chamber of Commerce Rules provide that the tribunal will decide on the costs of the arbitration by considering all relevant circumstances.

In respect of local court procedures for enforcement of local court judgments, Article 131 of the Civil Procedures Law states that legal costs may be recoverable and the court has discretion to decide on it, but in practice, minimal legal costs generally are ordered in the local courts.

Anything that is considered contrary to public policy or morality is not enforceable in Qatar.

Conclusion

Despite some remaining uncertainties, Qatar has made notable advancements in its laws and procedures concerning the enforcement of awards, particularly with the introduction of the Arbitration Law. The legal landscape has become more consistent, aligning with the principles of the New York Convention. This should instill confidence in parties involved.

However, the true test lies in how the courts will handle intricate and strategic enforcement challenges as they may arise in the future. Only time will reveal the outcomes of such situations. Regardless, however, these developments bolster the effectiveness and reliability of award enforcement in Qatar.

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