New Conciliation Rules Promulgated in Qatar

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In order to encourage constructive dialogue amongst parties and to encourage the use of conciliation to resolve disputes that may arise in respect of projects in Qatar, the Qatar International Center for Conciliation and Arbitration (QICCA) adopted a new set of Conciliation Rules in May 2012 (the "QICCA Conciliation Rules"), which are modelled on the UNCITRAL Conciliation Rules. In the wake of this welcome development, the Qatar International Court and Dispute Resolution Centre (QICDRC) has also prepared its own draft conciliation rules, which are expected to come into force in the near future. At contract drafting stage, parties to international contracts may now elect for the QICCA Rules, or those of the QICDRC (once adopted), as the procedural rules governing disputes arising under those contracts as an alternative to the more commonly used international institutional rules (such as the ICC Rules).

The Conciliation Process under the QICCA

In order for a dispute to be settled under the QICCA Conciliation Rules, the parties in a contractual relationship must agree that the dispute between them will be settled, in the first instance, by means of conciliation pursuant to the QICCA Conciliation Rules. In order to initiate the conciliation process under the QICCA Conciliation Rules, a party must file a conciliation request, setting out a précis of the dispute, with the QICCA, and pay the required fee. The QICCA will then, within seven days, notify the other named party of the filing. The conciliation process does not officially commence until the other party expresses in writing its agreement to participate in the process. Unless otherwise specified in the Notice of Conciliation, the respondent is afforded two weeks from the date the QICCA sends the Notice of same to reply; otherwise the conciliation will not proceed. The QICCA Conciliation Rules do not stipulate as to the details to be included in the Notice of Conciliation, other than the required summary of the dispute. However, it is to be assumed such Notice ought to include the names and contact details of other parties, and the details relating to the method to be used to select a Conciliator, where same is not specified in the dispute resolution clause in the contract.

Under the QICCA Rules, the process shall be conducted by one mutually agreed-upon Conciliator, unless the otherwise stipulated by the parties in their contract. However, where the parties have agreed to appoint two Conciliators, each party is permitted to nominate one of its choosing. Where three Conciliators are to be appointed, the parties shall attempt to reach agreement with regard to the third. The parties may seek the assistance of the QICCA with respect to the designation of the Conciliators. In all cases, when individuals are nominated or appointed to work as Conciliators, the QICCA shall take into consideration the requirement for the Conciliators to remain neutral and independent in the performance of their duties. To that end, Conciliators must, within one week of their appointment, disclose any circumstances that may give rise to justifiable doubt in relation to their neutrality or independence. Furthermore, appointment of a Conciliator shall not be considered complete until the Conciliator accepts the nomination.

The Conciliator must ensure that the parties are treated fairly and equally and that they have been provided with adequate opportunity to present their case. The parties shall undertake to cooperate with the Conciliator in good faith and to comply with the Conciliator's requests to attend meetings and to provide evidence. Absent any agreement between the parties to the contrary, communications with the parties may be oral or in writing and the location of any meetings is to be determined by the Conciliator after having consulted the parties. The Conciliator is obliged to use their best endeavours to bring the parties to settlement in the time frame available, and in any event within three months, unless the parties agree to extend the process. The Conciliator shall abide by the parties' instructions throughout the

Conciliation in relation to what information, if any, is to be treated as confidential. The conciliation process terminates once the parties reach and sign a settlement agreement (discussed further below), or where the Conciliator informs the QICCA in writing (after consulting the parties) that the conciliation process has reached a deadlock, or upon notification by any of the parties to the QICCA confirming that such party no longer wishes to participate in the process.

The Settlement Agreement

When the parties to conciliation reach an agreement in relation to settlement of their dispute, a Settlement Agreement shall be drafted by the Conciliator and circulated to the parties for their signatures. The parties may wish to, and be given, an opportunity to comment on the draft Agreement and the Conciliator may reformulate same accordingly. The final Agreement, once signed by both parties, shall be considered binding and enforceable upon them.

The status of Settlement Agreements internationally, and particularly with regard to enforcement, is the subject of some debate. In some jurisdictions, Settlement Agreements may be enforced in the same manner as any other contract; in others, such agreements will only acquire the power to bind the parties where the dispute resolution clause which provided for the parties to enter into conciliation also stipulated that those parties may have recourse to arbitration should they fail to reach agreement at conciliation, in which case the Settlement Agreement may be given the force of an arbitral award.

Notwithstanding the fact that the QICCA Conciliation Rules, as well as their equivalent alternatives, provide for such agreements to be binding and enforceable, any party to a Settlement Agreement may decide, after signing a Settlement Agreement, not to abide by it for any reason it may consider valid. It is arguable that such a scenario would return the parties, who had initially selected conciliation in order to avoid having recourse to arbitration or to judicial intervention, back to their original positions. In such circumstances, would the party in default be in breach of a contractual obligation and, if so, would the other party seek a court order for specific execution?

In the Qatari context, parties entering into a Settlement Agreement should have regard to the provisions of Qatar's Civil Code relating to 'compromises', enshrined at Articles 573 to 581, inclusive thereof. Pursuant to the aforementioned Articles, the parties must have proper capacity to dispose of or vary their rights under the contract and the Settlement Agreement must only affect the rights of the contracting parties; the settlement terms must be in writing; and the Settlement Agreement must clearly delineate between the rights being disposed of or varied, and those which are excluded from its scope. It would be prudent to include a severability clause in the Settlement Agreement, in order to preclude the application of Article 581 of the Qatari Civil Code, which operates to nullify a 'compromise' agreement where any part of it is determined to be void or is annulled.

Conclusion

As Qatar works to achieve the objectives set out in Qatar National Vision 2030, and particularly to build the infrastructure required to facilitate the FIFA World Cup 2022, the domestic construction and engineering industries are experiencing unprecedented growth. Our experience in practice informs us that many of the contracts relating to the largest projects currently underway or about to be commenced in Qatar stipulate Qatari law as the governing law. In light of the foregoing, developments such as the QICCA's adoption of new Conciliation Rules are to be welcomed, bolstering as they do the machinery available to parties contracting in this jurisdiction for the resolution of contractual disputes.