An Overview of the draft Arbitration Law in Qatar

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I. INTRODUCTION

Qatar has witnessed very significant accomplishments within the last ten years in the direction of updating and modifying its national laws in the field of international commercial arbitration. On 30 December 2002**,** Qatar acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and has since applied the unified rules contained in the Convention to foreign arbitral awards being enforced in Qatar. However, some legislative and judicial obstacles hindered the development of international commercial arbitration in Qatar. The courts in Qatar held a hostile attitude towards international commercial arbitration and erroneously interpreted the scope of the New York Convention.

Recently, an important new development has taken place with respect to international commercial arbitration in Qatar, which is the preparation of a new law on arbitration based on the UNCITRAL Model Law ("Model Law"). This new draft law will likely abolish the current arbitration law contained in articles 190 to 210 of the Code of the Civil and Commercial Procedures (Law No. 13 of 1990).

This article sets out some of the key provision in the draft law. Please note that I am not addressing QFC arbitration in this article as it has its own arbitration rules and is essentially a separate jurisdiction to the rest of Qatar.

II. SCOPE OF APPLICATION

(a) Date of Coming into Force

Pursuant to Article 1 of the draft Law on Arbitration in Civil and Commercial Matters ("Draft Law"), the Draft Law is to apply to the following cases:

- Any ongoing or pending arbitration on the date of the draft law coming into force.
- All arbitrations commenced after the draft law comes into force, even if based upon an arbitration agreement made before that date.

It is currently unclear when the Draft Law will be issued and come into force, but it is expected to be issued by the end of this year.

(b) Scope of Applicability to the Parties

The scope of application of the draft law includes arbitrations held between public or private legal entities irrespective of the nature of the legal relationship between the contesting parties. This broad scope provides new breakthrough possibilities as to settling disputes arising from administrative contracts by arbitration. Accordingly, administrative authorities may now submit to arbitration proceedings subject to the approval of the prime minister or the person delegated with his authorities.

(c) Territorial Scope of Applicability

The Draft Law applies to all the arbitration disputes having their seat in Qatar (but not the QFC) as well as

to arbitrations having venues outside Qatar so long as the parties agree to submit themselves to the rules and provisions of the Draft Law. It is noteworthy that the provisions of the Draft Law may not be mandatorily applied to all the arbitrations conducted in Qatar. Hence, the parties may agree to the application of a procedural foreign law to an arbitration seated in Qatar.

(d) Arbitrability

The Draft Law has adopted a definition for "commercial arbitration" which resembles the definition set out in the Model Law. Article 1(2) of the Draft Law provides that "an arbitration shall be considered "commercial" pursuant to the provisions of this Draft Law if the dispute arises out of a legal relationship having an economic nature."

(e) The applicability of Draft Law on International and Domestic Arbitrations

The provisions of the Draft law will apply to international and domestic arbitrations. The Draft Law prescribes the cases where an arbitration shall be considered as 'international':

- Where the parties agree to submit their dispute to an arbitration center either in Qatar or outside.
- If the subject matter of the dispute is linked to more than one country.
- If the principal places of business of the two parties to the arbitration are located in two different states at the time of the conclusion of the arbitration agreement.
- If one of the following places is located outside Qatar where the principal places of business of the parties are located: a) the place of arbitration as determined in the arbitration agreement; b) the place where a substantial part of the obligations emerging from the commercial relationship between the parties are to be performed; or (c) the place with which the subject matter of the dispute is most closely connected.

Whether an arbitration is international or domestic is important for how the arbitral award will be enforced, as explained further below.

III. THE ARBITRATION AGREEMENT

The Draft Law expressly places emphasis on the significance of the desire of the parties to submit to arbitration. The parties may agree to submit to arbitration to settle any potential dispute between them arising from their legal relationship as long as the dispute is arbitrable in a number of ways. The parties may agree to proceed with arbitration either before the occurrence of the dispute or after, even if the dispute is under adjudication before a national court. The arbitration agreement may exist in the same contractual instrument or in an independent document.

Moreover, recourse to arbitration may be made by means of reference to a contract including an arbitration agreement if the reference explicitly provides that the arbitration agreement must be considered part of that contract.

The arbitration agreement must be in writing, and this condition may be satisfied by any written means such as electronic emails or letters.

As a result of the parties' agreement to arbitration, the national courts may not hear a case subject to a valid arbitration agreement. Article 8 of the Draft Law provides that if a party files a law suit before the court with regard to a dispute which must be settled by arbitration, then the court, based on the objection of the other party to the arbitration agreement, shall consider the case inadmissible on the grounds of a valid arbitration agreement.

Nevertheless, the Draft Law grants the national courts a controlling power to determine the legitimacy and enforceability of the arbitration clause. But this authority does not extend to give the courts the right to review the arbitration clause unless the arbitration clause is prima facie null and void or ineffective.

IV. THE FORMATION OF THE ARBITRAL TRIBUNAL

Pursuant to the Draft Law, the parties are free to determine the procedures by which the Tribunal may be appointed. The parties may elect to authorize an arbitration institution or a third party to appoint an arbitrator or the chairman in case the patties fail to reach an agreement.

The Draft Law stipulates certain requirements that must be met in in appointing the Tribunal such as that the number of the arbitrators must be an odd number and the arbitrator must have the capacity to act as an arbitrator.

The Draft Law also enables the parties to challenge the selection of an arbitrator and apply for the recusal of such arbitrator. However, Article 13(6) provides that a challenge is inadmissible if made by a party who has challenged that same arbitrator during the same arbitration proceedings unless that party discovers a new ground for challenging the arbitrator provided that such new ground is different from the ground of previous challenge or that such new ground was unknown by that party after applying the first challenge. The Draft Law also notably stipulates that the challenge must be submitted to the arbitral tribunal. If the challenged arbitrator decides to continue to serve as an arbitrator despite the recusal request against him, the arbitral tribunal will decide on the recusal request.

The party applying for the recusal request may appeal the decision rendered by arbitral tribunal before the court in accordance with Article 5 within 30 days from the date the party is notified of the refusal of the recusal request. The decision rendered by court is final and if the court or the arbitral tribunal uphold the recusal request, all the arbitration procedures (including the arbitral award if issued) are deemed not to have existed. Consequently, all the arbitral procedures must be repeated again before the newly constituted arbitral tribunal after the removal of the challenged arbitrator.

V. THE ARBITRAL PROCEDURE

One very significant doctrine adopted by the Draft Law is that of "competence- competence", whereby the tribunal is entitled to decide its own jurisdiction. The adoption of this doctrine indicates an attitude that seeks to limit the intervention of national courts in the arbitral proceedings and support the fast resolution of disputes settled by arbitration.

Another doctrine recognized by the Draft Law is the severability of the arbitral agreement. Therefore, if any one of the parties to an arbitration agreement challenges the legality and integrity of the contract of which the arbitration agreement forms part, the challenge will not affect the arbitration agreement.

Article 16(3) of the Draft Law does not allow the party who challenges the jurisdiction of the arbitral tribunal to appeal the interlocutory decision, but instead requires the party to wait until the final decision of the tribunal is rendered before challenging the decision.

The Draft Law also authorizes the parties to empower the arbitral tribunal to render interim measures. If the party, against whom the interim decision is rendered, refuses to voluntarily comply with it, the other party may request the president of the court of competent jurisdiction to issue an injunction to comply with the interim award.

However, this authority bestowed to the arbitral tribunal by the parties does not prevent the courts from ordering such interim measures if one of the parties so requests the court. Prior to the formation of the arbitration tribunal, the parties have no recourse to obtain the interim measures unless by resorting for the national courts. Conversely, after the formation of the arbitral tribunal, the parties may freely elect whether to request the competent court or the arbitral tribunal to decide such interim measures.

VI. THE AWARD

Unless agreed otherwise between the parties, the decision issued by an arbitral tribunal comprising more

than one arbitrator must be rendered by the majority of the arbitrators.

In case parties reach an amicable settlement before the arbitral tribunal renders its final award, then the arbitral tribunal may terminate the arbitration proceedings based on the request of the parties. In such eventuality, the arbitral tribunal must include the terms of settlement in its award terminating the proceedings. This award will be executed and enforced in the same manner as any other arbitral award.

The Draft Law stipulates that the award must include the following information:

(a) the names and addresses of the parties

(b) the names, addresses and nationalities of the arbitrators

(c) a copy of the arbitration agreement

(d) a summary of the parties' claims, statements and supporting documents#

(e) the date of the award

(f) the place of issuance of the award

(g) the reasoning for the award.

In addition, the Draft Law expressly precludes the publication of the arbitral award partially or wholly, unless both parties have agreed otherwise.

Pursuant to Article 32(3) of the Draft Law, in the absence of any agreement to the contrary between the parties, the arbitral tribunal is under an obligation to render its final award on the merits of the dispute within 12 months from the commencement of the arbitration proceedings. However, the tribunal is authorized to extend this deadline a further six months unless agreed between the parties otherwise. If the arbitral award is not rendered within the agreed upon timeframe, then each party may request from the president of the court having jurisdiction an order for an extension of the timeframe or the termination of the arbitral proceedings. If terminated, each party may resort to the national court having the ultimate jurisdiction over the dispute to settle the dispute.

The Draft Law also contemplates the finality of the arbitral awards. All the arbitral awards rendered under the rules of this Draft Law are final and are not susceptible to challenges pursuant to the Code of Civil & Commercial Procedures**.** The only available means for challenging the arbitral award would be to file an application for annulment, which is generally based on the principles of procedural integrity of the award rather than a substantive review of it. Applications for annulment are permitted under limited circumstances which have been specifically enumerated in Article 34 of the Draft Law. The application of annulment must be submitted within 90 days after the date of notification of the arbitral award to the challenging party.

The arbitral award may not be enforceable until the time limit for requesting an annulment has lapsed or the request for annulment has been denied by the competent court. This means that the winning party will have to wait at least 3 months before starting the enforcement process, unless the losing party seeks annulment. No publication of the award or parts thereof shall be authorized except with the approval of both parties to the arbitration

CONCLUSION

These pivotal alterations to the rules governing arbitration procedures proposed by the Draft Law will dispel the drawbacks which undermine arbitration practice in Qatar (but not the QFC). The promulgation of this Draft Law will significantly impact international commerce and investment on Qatar. One may expect a remarkable development in the volume of investments involving Qatar in the near future. Moreover, the

promulgation of the Draft Law will benefit the Qatar International Centre for Conciliation and Arbitration by increasing its exposure as a credible venue for international commercial arbitration among the GCC countries.