

1 Arbitration Agreements

1.1 What, if any, are the legal requirements of an arbitration agreement under the laws of Qatar?

Under Qatari law, parties may agree to refer a specific dispute, or all disputes, arising from their contract to arbitration. The arbitration agreement must be made (i) in writing, and (ii) by parties having full capacity to dispose of the disputed rights (Art. 190 of the Code of Civil and Commercial Procedure). The new law on arbitration is expected to provide for an express recognition of incorporation by reference and of agreements by way of an exchange of letters or electronic mails.

As regards public works and public procurement contracts, Art. 10 of the Law on Tenders and Bids (Law n°26/2005, as amended in 2008) provides that the subscription by a State entity of an arbitration agreement is subject to the prior approval of the Ministry of Finance. Eventual statutory limitations should also be taken into account when dealing with State-owned entities.

1.2 What other elements ought to be incorporated in an arbitration agreement?

No other specific elements need to be incorporated in an arbitration agreement. Art. 190 of the Code of Civil and Commercial Procedure allows the subject-matter of the dispute to be defined either in the arbitration agreement or during the proceedings.

Although it is not mandatory, it is advisable to determine in the arbitration agreement the following:

- the law applicable to the substance of the dispute, to the procedure and, eventually, to the arbitration agreement itself (see questions 4.1, 4.3 and 6.1 below). Failing such determination, Qatari law would mandatorily apply if the arbitration is sited in Qatar;
- the number of arbitrators and a method for their selection (see question 5.1 below);
- the time limit for the issuance of the award (in order to avoid the restrictions of Qatari law, see question 6.2 below);
- provisions regarding the confidentiality of the arbitration (which is not expressly granted by Qatari law, see question 12.1 below);
- in some situations (especially in *ad hoc* arbitration), the remuneration of the arbitrators (see question 13.3 below); and
- lastly, if agreed upon by the parties, a waiver of the right to appeal the award (since all awards, even in international arbitration, may be appealed under Qatari law).

1.3 What has been the approach of the national courts to the enforcement of arbitration agreements?

The national Courts give full way to the enforcement of arbitration agreements, as long as they respect the aforementioned requirements (see question 3.3 below).

2 Governing Legislation

2.1 What legislation governs the enforcement of arbitration proceedings in Qatar?

Arbitration proceedings are governed by the provisions of the Code of Civil and Commercial Procedure promulgated in 1990 (Law n°13/1990). Most of the relevant provisions are addressed under Articles 190 to 210 (First Book, Part XIII: Arbitration). Provisions regarding the enforcement of arbitral awards made abroad are addressed under Articles 379 to 383 (Book III, Part 1, Chap. III: Enforcement of Judgments, Orders and Official Foreign Documents).

The Qatar International Centre for Conciliation and Arbitration (QICCA), established in 2006 within the Chamber of Commerce and Industry, also offers a set of institutional rules for both domestic and international commercial arbitration. The latest QICCA rules of 2012 are based on the 2010 UNCITRAL Arbitration Rules, and provide parties with an efficient way to complement some outdated provisions of the Code of Civil and Commercial Procedure, in line with the modern standards of arbitration.

Arbitration may also be conducted within the Qatar Financial Centre (QFC). The QFC is a free zone, established in 2005, with an autonomous legal system and a common law judiciary. QFC arbitration is governed by the 2005 QFC Arbitration Regulations, which are based on the UNCITRAL Model Law. While the Code of Civil and Commercial Procedure does not apply within the QFC, arbitral awards issued in QFC-sited procedures are challenged and enforced through the jurisdiction of the QFC Courts (the Qatar International Court and Dispute Resolution Centre (QICDRC), which is a State Court). Awards issued in other seats than the QFC may be recognised and enforced by the QFC Court if they are in relation to the QFC Law.

It is worth mentioning that Qatar is also a party to the GCC Commercial Arbitration Centre (GCAC), sited in Bahrain.

2.2 Does the same arbitration law govern both domestic and international arbitration proceedings? If not, how do they differ?

Both domestic and international arbitration are governed by the same legislation (see question 2.1 above). There is, however, a difference regarding the enforcement of awards made in Qatar and those made abroad (see question 11.3 below).

2.3 Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the two?

The Qatari rules regarding arbitration are not based on the UNCITRAL model. The most significant difference is the possibility, under Qatari law, to appeal arbitral awards before the national Courts on any grounds of fact or law. However, as previously mentioned, the QFC Arbitration Regulations are based on the UNCITRAL Model Law, and the QICCA institutional rules are based on the UNCITRAL Arbitration Rules (see question 2.1 above).

2.4 To what extent are there mandatory rules governing international arbitration proceedings sited in Qatar?

Arbitration proceedings sited in Qatar, and the enforcement of arbitral awards in Qatar, are likely to be subject to rules of public policy. These mandatory rules are addressed in the following sections of this chapter.

3 Jurisdiction

3.1 Are there any subject matters that may not be referred to arbitration under the governing law of Qatar? What is the general approach used in determining whether or not a dispute is “arbitrable”?

Pursuant to Art. 190 of the Code of Civil and Commercial Procedure, arbitration is only possible in matters in which conciliation is possible. Accordingly, all disputes concerning non-disposable rights, public order and public policy are considered unarbitrable.

3.2 Is an arbitrator permitted to rule on the question of his or her own jurisdiction?

In the absence of any provisions of the Code of Civil and Commercial Procedure, the Qatari Courts have fully admitted that arbitral tribunals are empowered to rule on the question of their own jurisdiction and to decide on the validity of the arbitration agreement (Court of Appeal, Grand Civ., 29th May 2002, n°1550/2001). The Court of Appeal also confirmed on several occasions the autonomy of the arbitration clause, which is not affected by the nullity or rescission of the contract in which it is embedded (*id.*, see also Court of Appeal, Civ., 3rd February 1997, n°152/96 and 170/96).

The competence of the arbitral tribunal to rule on its jurisdiction is expressly recognised under the QICCA rules and QFC arbitration regulations (Art. 21 QFC). The draft of the new law on arbitration (which is expected to soon replace the provisions of the Code of Civil and Commercial Procedure) also provides for an express recognition of the competence of the arbitral tribunal to rule on its own jurisdiction, and of the autonomy of the arbitration agreement.

Further, under the new law, the decision of the arbitral tribunal in respect of its jurisdiction shall only be challenged along with the final award.

3.3 What is the approach of the national courts in Qatar towards a party who commences court proceedings in apparent breach of an arbitration agreement?

It is expressly provided by Art. 192 of the Code of Civil and Commercial Procedure that the arbitration agreement implies the relinquishment of the parties’ right to refer the dispute to the Courts having original jurisdiction. Therefore, any claim brought before the national Courts in violation of an arbitration agreement is to be held inadmissible (unless the Court finds that the arbitration agreement is void). However, it is worth recalling that pursuant to the common provisions of the Code of Civil and Commercial Procedure, any motion of inadmissibility must be submitted at the beginning of the proceeding and prior to any defence on the merits.

3.4 Under what circumstances can a court address the issue of the jurisdiction and competence of the national arbitral tribunal? What is the standard of review in respect of a tribunal’s decision as to its own jurisdiction?

See question 3.3 above.

National Courts shall also verify the jurisdiction of an arbitral tribunal when examining a request for the annulment of an award (see question 10.1 below) or for the issuance of an enforcement order (see question 11.3 below).

3.5 Under what, if any, circumstances does the national law of Qatar allow an arbitral tribunal to assume jurisdiction over individuals or entities which are not themselves party to an agreement to arbitrate?

The extension of arbitration agreements to third parties is not addressed by the Code of Civil and Commercial Procedure.

Pursuant to the general doctrine of privity of contracts stipulated under Art. 175 and 177 of the Civil Code, the arbitration agreement shall be binding on the contracting parties and their general successors only. An arbitral tribunal may, therefore, assume jurisdiction over third parties in the event of a general succession to a party, or when the arbitration agreement is formally assigned.

Art. 176 of the Civil Code also provides that the essential rights and obligations created by a contract in connection with a property are transferred along with such property, (provided, as regards the obligations, that the successor could have been aware of these at the time of the transfer). Accordingly, the Qatari Court of Cassation upheld, on the basis of an implied warranty, the contractual claim of the final purchaser against the manufacturer, beyond the fact that there was no direct contractual relation between them.

Apart from these exceptional situations, the scope of the arbitration agreement shall remain limited to the parties. In the present state of the jurisprudence, there is no clear recognition of doctrines such as agency or group of companies, and the concepts of legal personality and contractual consent remain subject to a strict assessment by the Qatari Courts.

On another hand, the joinder of third parties to the arbitration proceedings is also not addressed by the Code of Civil and Commercial Procedure. Subject to its availability under the rules selected by the parties to govern the procedure, such joinder shall be admissible under Qatari law provided that the consent of all parties was given.

3.6 What laws or rules prescribe limitation periods for the commencement of arbitrations in Qatar and what is the typical length of such periods? Do the national courts of Qatar consider such rules procedural or substantive, i.e., what choice of law rules govern the application of limitation periods?

The commencement of an arbitration proceeding is limited by the term of prescription under the law applicable to the substance of the dispute. Under Qatari law, the general term of prescription for claims of personal rights is 15 years (Art. 403 of the Civil Code). Special terms may be applicable in specific matters.

The period of prescription shall be suspended by a judicial claim, even if made before a non-competent jurisdiction, or any procedure taken by the creditor to hold to his right (Art. 413 of the Civil Code). It is also suspended by the express or implied acknowledgment of the creditor's right by the debtor (Art. 414). When the period is interrupted, a new period of the same length as the original period shall begin to run from the time of expiry of the cause such interruption (Art. 415).

3.7 What is the effect in Qatar of pending insolvency proceedings affecting one or more of the parties to ongoing arbitration proceedings?

Art. 647 of the Qatari Commercial Code (Law n°27/2006) provides that an adjudication of bankruptcy shall entail the stay of any suits brought by ordinary creditors and general lien creditors. Such creditors may neither finalise the proceedings initiated before the adjudication of bankruptcy or take individual enforcement proceedings against the assets of the bankrupt.

Mortgage and special lien creditors may bring or continue actions against the receiver (appointed by the Court) and may pursue enforcement of their rights against the assets of the bankrupt.

These provisions are to be considered as public policy.

It is worth mentioning that very few Qatari companies have been declared bankrupt since the entry into force of the aforementioned provisions, in 2006. Therefore, there are very few Court precedents on this issue. As regards companies registered within the QFC, no proceedings or execution of legal processes may be commenced or continued between the application for an administration order and the appointment of an administrator, except with the leave of the QFC Court (QFC Insolvency Regulations 2005, Art. 26).

4 Choice of Law Rules

4.1 How is the law applicable to the substance of a dispute determined?

The law applicable to the substance of the dispute is determined by the parties. However, if the parties abstained to make any selection, Qatari law shall apply when the arbitration is sited in Qatar (*cf.* Art. 198 of the Code of Civil and Commercial Procedure: if it is agreed to hold the arbitration in Qatar, the laws of the State of Qatar shall be applicable to all elements of the dispute, unless otherwise agreed by the parties).

The parties may authorise the arbitrators to rule in equity (amiable composition), provided that the latter do not contravene the Qatari rules of public policy (Art. 198).

Under the QICCA rules and the QFC arbitration regulations, failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

4.2 In what circumstances will mandatory laws (of the seat or of another jurisdiction) prevail over the law chosen by the parties?

Arbitral awards may be challenged for annulment when they contravene the Qatari rules of public policy (see question 10.1 below). Their enforcement in Qatar shall also be refused for the same reason (see questions 11.3 and 11.5 below). Qatari law also gives way to the international rules of jurisdiction of a foreign seat by precluding any enforcement in Qatar if the award was rendered in violation of such rules (see question 11.3 below).

4.3 What choice of law rules govern the formation, validity, and legality of arbitration agreements?

Owing to its contractual nature, the validity and the formation of the arbitration is subject to the autonomy of the parties. In the absence of any designation, and if the arbitration is sited in Qatar, Qatari law shall apply pursuant to the provisions of Art. 198 of the Code of Civil and Commercial Procedure (see question 4.1 above).

5 Selection of Arbitral Tribunal

5.1 Are there any limits to the parties' autonomy to select arbitrators?

The main requirement of the Code of Civil and Commercial Procedure (Art. 193) pertains to the civil capacity of the arbitrators. An arbitrator may not be: a minor; an incapacitated person; or a person deprived of their civil rights due to a criminal offence or bankruptcy (unless it was rehabilitated). The arbitral tribunal must be composed of an odd number of arbitrators, otherwise the arbitration shall be null and void (Art. 193).

Unless they are appointed by the Court (see question 5.2 below), the arbitrators must accept their mission in writing (Art. 194 of the Code of Civil and Commercial Procedure).

5.2 If the parties' chosen method for selecting arbitrators fails, is there a default procedure?

Art. 193 of the Code of Civil and Commercial Procedure provides that arbitrators shall be appointed on the basis of the arbitration agreement or an independent document. The arbitrators are, however, appointed by a national Court in the following events (Art. 195):

- if a dispute arises between the parties prior to an agreement between them as to the arbitrators (e.g. when the parties didn't determine a method for their appointment, or when such method failed); and
- if one or more of the arbitrators is unavailable, refuses to act as such, withdraws or is dismissed.

The request is filed by one of the parties by summoning the others to appear before the Court having original jurisdiction over the dispute. The order of appointment rendered by the Court may not be appealed (but the refusal to make an appointment is appealable).

Under the QICCA rules and the QFC Arbitration Regulations, when the parties' chosen method fails, the arbitrators are appointed by the QICCA committee or the QFC Court.

5.3 Can a court intervene in the selection of arbitrators? If so, how?

Yes (see question 5.2 above).

5.4 What are the requirements (if any) as to arbitrator independence, neutrality and/or impartiality and for disclosure of potential conflicts of interest for arbitrators imposed by law or issued by arbitration institutions within Qatar?

The standard of independence imposed on arbitrators by Qatari law is similar to that imposed on Court magistrates to the extent that arbitrators are subject to the general grounds for dismissal that are set forth for Court judges. Art. 194 of the Code of Civil and Commercial Procedure indeed provides that recusal shall be requested on the basis of the same grounds and procedures as those applicable to the recusal or incapacitation of a judge.

These grounds are defined under Art. 98 and 100 of the Code of Civil and Commercial Procedure:

- Arbitrators may not hear a case that they have previously heard as a judge (or arbitrator), or in which they have been involved as a counsel (including the delivery of a legal opinion), expert or witness for any party. They may not hear a case that they have previously commented in written publications. Also, arbitrators may not be related (up to the fourth degree) to another arbitrator sitting in the arbitral tribunal, or to one of the parties' representative or counsel.
- As regards kinship and interest, arbitrators (or their spouses) may not have an interest in the case or in another dispute pertaining to the same legal points. They may not hear a case involving, as a party, any relative up to the fourth degree, as well as any person sharing their meals or home on a regular basis, or whom they are the employer, agent, guardian, trustee or presumptive heir, or from whom they have received a gift (prior or after the start of the case). The exclusion is also applicable to cases involving a party (or the spouse of such party) that would be in dispute with the arbitrator or his relative.
- When one of the parties is a company, arbitrators may not be related (up to the fourth degree) to one of their directors, managers or partners having a personal interest in the dispute.
- Finally, arbitrators may not hear a dispute if any enmity or intimacy with one of the parties is likely to affect their impartiality.

The Code of Civil and Commercial Procedure does not expressly provide for the extension to arbitrators of the obligation to disclose a conflict of interest or another ground of recusal, which appears to be binding on the judges only as per the letter of Art. 101 and 102. However, Art. 194 of the Code makes it very clear that an arbitrator who would not withdraw from its mission in one of the aforementioned situations may incur a dismissal, upon request of any party to the Court having original jurisdiction over the dispute. It is worth mentioning that the request must be filed within five days from the notification to the other party of the arbitrator's appointment (Art. 194). This requirement has been criticised, on the basis that it would be more appropriate to compute such delay from the discovery of the ground of recusal.

Further, the Court may only dismiss an arbitrator provided that the ground for recusal appeared or occurred after the signature of the arbitration agreement (Art. 194).

The judgement of the Court regarding the request for recusal (or its rejection) is appealable (Art. 194) under the same conditions as those applicable to the appeal of an arbitral award (see question 10.4 below).

Finally, it is worth recalling that an arbitrator may also be dismissed with the approval of all the parties to the dispute (Art. 194).

Under the QICCA rules and the QFC Arbitration Regulations, a request for recusal shall be submitted to the arbitral tribunal, within 15 days from the appointment (QICCA) or from when the challenging party became aware of the cause (QFC), unless otherwise agreed by the parties. The tribunal's decision to reject the request is appealable before the QICCA arbitration committee or the QFC Court. Under the QFC Arbitration Regulations, an arbitrator may be disqualified if circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or if he does not possess qualifications agreed by the parties. A party may only challenge an arbitrator appointed by him for reasons of which he became aware of after the appointment (Art. 15).

Under the QFC Arbitration Regulations (Art. 15), an arbitrator shall disclose, without delay, any circumstances likely to affect his impartiality or independence.

Under the new law on arbitration, a request for recusal shall be submitted to the arbitral tribunal. The tribunal's rejection of the request shall be appealable before the national Courts within 30 days from its notification. The Court decision shall not be appealable. When the request for recusal is granted (either by the arbitral tribunal or the Court), the whole procedure (including any award previously issued) is annulled, and a new tribunal shall be constituted to settle the dispute.

6 Procedural Rules

6.1 Are there laws or rules governing the procedure of arbitration in Qatar? If so, do those laws or rules apply to all arbitral proceedings sited in Qatar?

The parties have full autonomy to choose the law or the rules applicable to the procedure. However, as previously mentioned (see question 4.1 above), Art. 198 of the Code of Civil and Commercial Procedure provides for the application of Qatari law if the parties abstained from making any selection and the arbitration is sited in Qatar.

As confirmed by Art. 198, the application of Qatari law to an arbitration is limited to that of the rules embedded in the chapter dedicated to arbitration in the Code of Civil and Commercial Procedure (Book I, Part XIII).

Whatever law may govern the procedure pursuant to the parties' selection, the arbitral proceeding conducted in Qatar must comply with the general principle of due process, which stands as a mandatory rule.

Under the QICCA rules and the QFC Arbitration Regulations, failing any designation by the parties, the arbitral tribunal shall conduct the procedure in such manner as it considers appropriate.

6.2 In arbitration proceedings conducted in Qatar, are there any particular procedural steps that are required by law?

As previously mentioned, the conduct of the proceeding is governed by the law or rules that have been determined by the parties, or, failing such determination, by Qatari law on arbitration if the arbitration is sited in Qatar. There are no particular procedural steps other than those described throughout this chapter.

Regarding the duration of the arbitration, unless the parties have determined a different time-limit (which they are always entitled to

extend), the arbitrators must render their award within three months following the acceptance of the last arbitrator to be appointed (Art. 197 of the Code of Civil and Commercial Procedure). The time-limit is automatically suspended upon the occurrence of special events (for example, dismissal of an arbitrator or recusal application against him, death of a party *cf.* Art. 197; deferral to the Courts of a matter which is not within the jurisdiction of the arbitral tribunal, Art. 199, see question 6.7 below).

If the arbitrators fail to render the award within the conventional or the legal time-limit (or are unable to accomplish such mission for any compelling reason), any party may refer the dispute to the Court having original jurisdiction over the dispute in order to either (i) extend the expired time-limit, (ii) appoint other arbitrators, or (iii) settle the dispute itself.

Under the draft of the new law on arbitration, the time-limit for rendering the award shall be increased to 12 months (unless otherwise agreed by the parties), and may be extended for six months by the arbitral tribunal. If the award is not rendered within the time-limit, any party may refer to the President of the Court having original jurisdiction over the dispute to either order an extension, or the termination, of the arbitration. In case of a termination, any party may refer to the Court having original jurisdiction to settle the dispute.

Under the QICCA rules, the time-limit for rendering an award is six months, unless otherwise agreed by the parties. Under the QFC Arbitration Regulations, the time-limit is determined by the parties or the arbitral tribunal, without any restriction.

6.3 Are there any particular rules that govern the conduct of counsel from Qatar in arbitral proceedings sited in Qatar? If so: (i) do those same rules also govern the conduct of counsel from [Country] in arbitral proceedings sited elsewhere; and (ii) do those same rules also govern the conduct of counsel from countries other than Qatar in arbitral proceedings sited in Qatar?

The conduct of Qatari lawyers is generally governed by the provisions of the Code of Law Practice (promulgated by Law n°23 of 2006), in particular by Art. 45 to 60 (Chapter VI: Duties of the lawyers). Apart from these provisions, there are no particular rules governing the conduct of a Qatari counsel in arbitral proceedings sited in Qatar or elsewhere.

These rules, in theory, do not apply to lawyers from foreign jurisdictions (unless they are licensed to practice in Qatar). However, the appearance of such foreign lawyers before an arbitral tribunal sited in Qatar may only be allowed in conjunction with a practising Qatari lawyer (see question 6.5 below).

6.4 What powers and duties does the national law of Qatar impose upon arbitrators?

Pursuant to Art. 194 of the Code of Civil and Commercial Procedure, arbitrators may not, once they have accepted their mission, withdraw without reasonable justification, otherwise they might be held liable for compensation on the ground of their contractual obligation towards the parties.

From a general perspective, arbitrators are bound to render an award in good faith, diligently and impartially, and within the contractual or legal arbitration time-limit.

6.5 Are there rules restricting the appearance of lawyers from other jurisdictions in legal matters in Qatar and, if so, is it clear that such restrictions do not apply to arbitration proceedings sited in Qatar?

Article 3 of the Code of Law Practice (promulgated by Law n°23 of 2006) provides that lawyers from foreign jurisdictions are not allowed to appear before Courts or arbitral tribunals sited in Qatar, or to deliver legal advice (unless they hold a specific licence to practice law in Qatar).

Art. 8 of the Code of Law Practice allows non-Qatari lawyers to apply for a special authorisation to plead before Qatari Courts in respect of a particular case. The authorisation is granted by the Ministry of Justice, upon advice of the Lawyers Admission Committee, and on condition that that the non-Qatari lawyer shall act in conjunction with a practising Qatari lawyer.

There is no express confirmation that these rules should not apply to international arbitrations sited in Qatar.

Foreign law firms shall obtain a QFC licence to practice law within the QFC.

A draft law, intended to reform the provisions of the Code of Law Practice, has been recently released. Among other points, this draft law proposed to empower in-house counsels to represent their company in court. The Qatari Bar Association expressed the strongest reservations towards this project. On another hand, the Association has complained about the massive circumvention of the law by foreign firms practising law in Qatar through unregistered legal consultants, or in violation of the scope of their QFC licence.

Although arbitration is rarely mentioned, the ongoing debates will hopefully result in clearer rules regarding professional practice, which shall be enforced and respected by all operators.

6.6 To what extent are there laws or rules in Qatar providing for arbitrator immunity?

There are no specific rules in Qatar providing for arbitrator immunity. As previously mentioned, arbitrators might be held personally liable for their unjustified failure to render an award, as well as in the event of deliberate misconduct.

On the contrary, the QFC Arbitration Regulations (Art. 19) expressly recognise immunity to the arbitrator (save for bad faith conduct).

6.7 Do the national courts have jurisdiction to deal with procedural issues arising during an arbitration?

National Courts do not have such jurisdiction, unless they are requested in their mission to support the arbitral tribunal when the arbitration is sited in Qatar (for instance: in order to designate or dismiss an arbitrator (see questions 5.2 to 5.4 above); to order precautionary attachments (see question 7.2 below); or to order a third party to produce evidence or to testify before the arbitral tribunal (see questions 8.2 and 8.3 below)).

Art. 199 of the Code of Civil and Commercial Procedure also provides that matters outside the jurisdiction of the arbitrators (including forgery and criminal proceedings) must be deferred to the competent Courts. Arbitrators must then stay the proceedings and the time-limit for rendering the award is suspended until the issuance of a final judgment on the deferred matter.

7 Preliminary Relief and Interim Measures

7.1 Is an arbitrator in Qatar permitted to award preliminary or interim relief? If so, what types of relief? Must an arbitrator seek the assistance of a court to do so?

The Code of Civil and Commercial Procedure does not have any express provisions as regards the power of arbitrators to grant preliminary or interim relief. As previously mentioned, arbitrators must defer to the Courts the matters falling outside their jurisdiction (Art. 199) and seek their assistance to perform the necessary judicial procedures for the settlement of the dispute (Art. 201). In consequence, when the preliminary measure is of a judicial nature (for instance a precautionary attachment of property, *cf.* Art. 398 *et seqq.*) or is beyond the jurisdiction of the arbitral tribunal (for instance when it involves a third party), arbitrators must refer the request to the Court having original jurisdiction over the dispute.

When the preliminary relief is not of a judicial nature and does not exceed the jurisdiction of the arbitral tribunal over the parties, there should be no ground, on the basis of the Qatari law, to prevent the arbitrators from granting it (as long as such relief is allowed by the arbitration agreement or the rules of procedure selected by the parties).

However, it is worth mentioning that the enforcement in Qatar of a preliminary award granting interim relief is likely to face difficulties when the arbitration is sited outside Qatar. As it will be seen later in question 11.3 below, Art. 380 of the Code of Civil and Commercial Procedure provides that enforcement may not be ordered unless it is verified that the award has the effect of *res judicata* in accordance with the law of the issuing Court. When the award is purely of a preliminary or interim nature, such condition is likely to be considered as not satisfied.

This issue is expected to be solved soon with the new law on arbitration, the draft of which expressly provides that arbitral tribunals may grant interim relief when empowered to do so by the parties. Such relief shall be enforceable through the national Courts. Under the QFC Arbitration Regulations (Art. 22), arbitral tribunals are expressly empowered to order interim measures and related securities, unless otherwise agreed by the parties. Such measures ordered by the arbitral tribunal are enforceable by application to the QFC Court, subject to the requirements for the enforcement of an award (Art. 23).

7.2 Is a court entitled to grant preliminary or interim relief in proceedings subject to arbitration? In what circumstances? Can a party's request to a court for relief have any effect on the jurisdiction of the arbitration tribunal?

Yes. In addition to the situations mentioned earlier (see question 7.1 above), the Courts retain a general jurisdiction to grant preliminary or interim relief in relation to arbitration proceedings. Such jurisdiction is justified by the temporary nature of the measures, which do not affect the jurisdiction of the arbitral tribunal to rule on the substance of the dispute.

Therefore, parties may seek interim relief before the national Courts at any time, either before the constitution of the arbitral tribunal or during the arbitration proceedings. When appropriate, parties may refer to an urgent court.

However, when a precautionary attachment is ordered before the engagement of the proceedings, it is expressly requested that the

substantive action (e.g. the arbitration) be filed within two weeks, otherwise the attachment shall be void (Art. 402 of the Code of Civil and Commercial Procedure).

The possibility to seek interim relief either before the arbitral tribunal or before the national Courts, at any time prior or during the arbitration, is expected to be confirmed under the new law on arbitration.

As regards the QFC, Art. 12 of the Arbitration Regulations similarly provide that is not incompatible with an arbitration agreement for a party to request from any State Court (including the QFC Court) an interim measure of protection, before or during arbitration.

7.3 In practice, what is the approach of the national courts to requests for interim relief by parties to arbitration agreements?

See questions 1.3, 7.1 and 7.2 above.

7.4 Under what circumstances will a national court of Qatar issue an anti-suit injunction in aid of an arbitration?

Qatari law does not have any specific provisions regarding anti-suit injunctions.

7.5 Does the national law allow for the national court and/or arbitral tribunal to order security for costs?

Qatari law does not have any specific provisions regarding security for costs.

8 Evidentiary Matters

8.1 What rules of evidence (if any) apply to arbitral proceedings in Qatar?

Art. 200 of the Code of Civil and Commercial Procedure provides that the arbitrators settle the dispute on the basis of the arbitration agreement and of the statements made by the parties, which are to be submitted within the time-limit directed by the arbitral tribunal. The parties must submit all the documents and evidence they hold, and comply with any request of the arbitral tribunal in this respect.

8.2 Are there limits on the scope of an arbitrator's authority to order the disclosure of documents and other disclosure (including third party disclosure)?

As previously seen, arbitrators are empowered to order the production of evidence by the parties.

When the evidence is held by a third party, the arbitrators may request the Court having original jurisdiction over the dispute to issue an order for the production of such evidence or to summon the third party to appear as a witness before the arbitral tribunal (Art. 200 of the Code of Civil and Commercial Procedure). The arbitrators may also request the Court to punish any third party who refrains from appearing or refuses to give evidence (Art. 201). Generally, the arbitrators may seek their assistance to perform the necessary judicial procedures for the settlement of the dispute (Art. 201), for instance a rogatory commission.

Under the QFC Arbitration Regulations (Art. 33), the arbitral tribunal may generally seek any assistance of the QFC Court (to the extent of the competence of such Court) in taking evidence.

8.3 Under what circumstances, if any, is a court able to intervene in matters of disclosure/discovery?

As previously mentioned, a Court may, upon request of the arbitral tribunal, order the production of evidence by a third party or summon the latter to appear as a witness before the arbitral tribunal (see question 8.2 above).

8.4 What, if any, laws, regulations or professional rules apply to the production of written and/or oral witness testimony? For example, must witnesses be sworn in before the tribunal or is cross-examination allowed?

Pursuant to Art. 200 of the Code of Civil and Commercial Procedure, the arbitral tribunal shall order the witness to take an oath. A false statement before the arbitral tribunal is constitutive of a perjury, and the arbitral tribunal may defer the witness to the competent authority for prosecution. Cross-examination is not restricted. (In litigation proceedings, a peculiarity of the Qatari law is that questions are to be directed through the judges, *cf.* Art. 305 *et seqq.* of the Code of Civil and Commercial Procedure.)

8.5 What is the scope of the privilege rules under the law of Qatar? For example, do all communications with outside counsel and/or in-house counsel attract privilege? In what circumstances is privilege deemed to have been waived?

Under the laws of Qatar, the concept of privilege is limited to the relationship between an attorney and his client, through the attorney's obligation to keep confidential the information and documents disclosed to him by his client (Art. 51 of the Code of Law Practice).

The Code of Law Practice does not apply to in-house counsels, whose status is governed by the Qatari Labour Law. Nevertheless, Art. 265 of the Code of Civil and Commercial Procedure forbids, in a general way, any lawyer, agent or other person to divulge information that he would have become aware of within the exercise of his profession (unless not divulging the said information is intended to cause the commission of a crime or misdemeanour). The confidentiality shall remain applicable even after the professional has ended his service.

As regards communications between parties (or between their lawyers), the concept of 'without prejudice communications' is not recognised under the Qatari law. The parties are entitled to produce in Court (or arbitration) any document which may support their position.

Under these circumstances, when parties are engaged in negotiations to settle a dispute, it is recommended that they qualify any communication or offer with an express statement establishing that such document does not constitute an admission of liability. Parties may also consider entering a confidentiality agreement for the purpose of the settlement negotiations.

The concepts of 'privilege' and 'without prejudice' are likely to receive a wider application within the QFC, notably due to its common law inspiration. For instance, QFC Regulation n°3 of 2005 previously referred to the information coming to a professional legal adviser in relation to a lawsuit or the delivery of legal advice as coming in privileged circumstances, for the purpose of excluding such information from the scope of the reporting obligations defined under the anti-money laundering regulation. However, this Regulation was repealed in 2010 and the reference to the concept totally disappeared from the QFC legal corpus. Therefore, in the absence of any express recognition, the aforementioned recommendations shall also stand for the QFC.

9 Making an Award

9.1 What, if any, are the legal requirements of an arbitral award? For example, is there any requirement under the law of Qatar that the Award contain reasons or that the arbitrators sign every page?

Pursuant to Art. 202 of the Code of Civil and Commercial Procedure, an arbitral award must be made in writing and shall include a summary of the statements and evidence submitted by the parties, the motivation of the decision, the text of the decision, as well as the place and date of issuance of the award. A copy of the arbitration agreement must also be attached to the award.

The arbitration decision shall be taken after deliberation of the arbitrators, by a majority of the votes.

The award shall be signed by the arbitrators. The eventual refusal of an arbitrator to sign the award must be mentioned in the decision. The award is valid and enforceable if it was signed by the majority of the arbitrators.

10 Challenge of an Award

10.1 On what bases, if any, are parties entitled to challenge an arbitral award made in Qatar?

1. As provided by Art. 207 of the Code of Civil and Commercial Procedure, a final award may be set aside on the following limited grounds:

- the nullity, inexistence or expiration of the arbitration agreement;
- the lack of capacity of a party;
- the inarbitrability of the dispute (see question 3.1 above);
- the irregular appointment of the arbitrators or their absence of entitlement to render an award in the absence of the other arbitrators;
- the award is contrary to a rule of public policy (see question 11.5 below);
- the award exceeds the scope of the arbitration agreement (*ultra petita*); and
- a procedural error affecting the validity of the award (see question 9.1 above, or a violation of due process).

The request for annulment shall be filed before the Court having original jurisdiction over the dispute, in accordance with the normal procedures applicable to such Court (Art. 208 of the Code of Civil and Commercial Procedure). The request for annulment suspends the enforcement of the award, unless the Court orders its execution to continue (Art. 208).

The award may be annulled, either in whole or in part. Upon such annulment, the Court may either settle the dispute itself or refer it back to the Arbitral Tribunal for corrections (Art. 209). 2. Additionally, arbitral awards may be subject to appeal (see question 10.4 below).

3. Finally, an arbitral award may be subject to review in the event of fraud, forgery, perjury or dissimulation of decisive evidence (Art. 178, par. 1 to 4 by reference of Art. 206). Such request may be filed before the Court having original jurisdiction over the dispute (Art. 206) within 30 days after the discovery of the fraud, the judicial declaration (or spontaneous admission) of the forgery or perjury, or the disclosure of the decisive evidence (Art. 179).

The request for review is also admissible in the event of a lack of valid representation of the party against which the award was

rendered. In such situation, the request may be filed within 30 days after the notification of the award (Art. 179). The request for review does not suspend the enforcement of the award, unless a special motion of suspension is filed on the ground that the enforcement would cause unavoidable harm (Art. 181). The arbitral tribunal shall first determine whether the request for review is admissible. The scope of the review is then limited to the grounds raised within the request (Art. 182). The award issued by the arbitral tribunal after the review replaces the previous award (Art. 184).

4. The foregoing means of recourse are expected to be wholly reformed by the new arbitration law, which shall soon replace the provisions of the Code of Civil and Commercial Procedure. Pursuant to Art. 34 of the draft law, arbitral awards shall only be challenged through a request for annulment, on the basis of limited grounds, similar to those of the 2006 UNCITRAL Model Law. The request for annulment shall be submitted within three months from the reception of the award by the challenging party. The award shall not be enforceable until the expiration of this time-limit or, when a request for annulment is filed, until the rejection of such request.

5. Arbitral awards issued in QFC-sited procedures may only be challenged through a request for annulment filed before the QFC Court within three months from the reception of the award by the challenging party (QFC Arbitration Regulations, Art. 41). The grounds for setting-aside are similar to those of the UNCITRAL Model Law. When appropriate, the QFC Court may grant the arbitral tribunal an opportunity to resume the arbitral proceeding in order to remedy to the grounds for setting aside.

10.2 Can parties agree to exclude any basis of challenge against an arbitral award that would otherwise apply as a matter of law?

The parties may only relinquish the right to request the annulment after the award is rendered. Any waiver prior to the issuance of the award is considered void (Art. 208 of the Code of Civil and Commercial Procedure).

The parties can waive their right to appeal the award. This point should become irrelevant with the removal of the possibility of appeal under the new law on arbitration (see question 10.4 below).

10.3 Can parties agree to expand the scope of appeal of an arbitral award beyond the grounds available in relevant national laws?

Since arbitral awards are appealable under Qatari law, the parties do not need to expand such scope. They may only waive their right to appeal.

10.4 What is the procedure for appealing an arbitral award in Qatar?

Unless they have waived their right thereto, the parties may appeal an arbitral award according to the rules applicable for appeal against judgments issued by the Court having original jurisdiction to hear the dispute (Art. 205 of the Code of Civil and Commercial Procedure). The appeal must be filed before the Court of Appeal within 15 days after the date of the registration of the award with the competent Court (the Court having original jurisdiction over the dispute, see question 11.3 below for the registration procedure). Such possibility to appeal arbitral awards, even those that should be considered as foreign awards, on any ground of fact or law, has been widely criticised as being contrary to the provisions of the New York Convention. Awards are, however, not appealable when rendered in

equity (amiable composition) or in arbitration appeal (Art. 205). As previously mentioned (see question 10.3 above), the new law on arbitration is expected to repeal the possibility to appeal arbitral awards. The new Qatari law should then stand in conformity with the provisions of the New York Convention.

11 Enforcement of an Award

11.1 Has Qatar signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Has it entered any reservations? What is the relevant national legislation?

Qatar ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards on the 15 March 2003. It did not enter any reservations.

The relevant national legislation governing the enforcement of foreign arbitral awards may be found in Book III (Execution), Part I, Chapter III (Enforcement of Judgments, Orders and Official Foreign Documents) of the Code of Civil and Commercial Procedure (see question 11.3 below).

11.2 Has Qatar signed and/or ratified any regional Conventions concerning the recognition and enforcement of arbitral awards?

The main regional instrument that was ratified by Qatar is the Riyadh Arab Agreement for Judicial Cooperation, which was adopted in the League of Arab States on the 6 April 1983. The fifth chapter of this Agreement provides for the recognition of judgments pronounced in civil, commercial, administrative and personal statute actions, including specific provisions that are applicable to arbitral awards and adjudications (article 37 of the Agreement).

Qatar is also a party to the GCC Protocol on the Enforcement of Court Judgements, Letters of Rogatory and Judicial Notices (ratified on the 24 April 1996) (also known as the GCC Convention on the Execution of Judgements, Delegations and Judicial Notifications), including specific provisions that are applicable to arbitral awards rendered in the Member States (Art. 12, Art.2, Art. 4).

Qatar also ratified the ICSID Convention (Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States of 1965) in 2010 (which entered into force on the 20 January 2011).

Qatar has entered into several other relevant judicial cooperation agreements, as part of its bilateral relations.

11.3 What is the approach of the national courts in Qatar towards the recognition and enforcement of arbitration awards in practice? What steps are parties required to take?

Arbitral awards are only enforceable in Qatar by virtue of a Court order granting leave to enforce. The requirements differ depending on whether the award was made in Qatar or abroad. 1. All original awards made in Qatar shall be registered with the Court having original jurisdiction over the dispute, along with the original arbitration agreement and within 15 days following their issuance (Art. 203 of the Code of Civil and Commercial Procedure).

Provided that the aforementioned requirement has been satisfied, the writ of execution will then be issued to by the Court that performed the registration of the award, upon demand of any of the interested parties.

The writ of execution is granted after establishing the formal validity of the award and the arbitration agreement, as well as its compliance with the Qatari public order (Art. 204). Such ruling is made without consideration of the merits of the case. The judge granting the writ of execution shall have competence over all matters related to the execution of the award (Art. 204). 2. The enforcement in Qatar of awards made outside Qatar is governed by the rules applicable to the performance of foreign judgments (Art. 379 to 383 of the Code of Civil and Commercial Procedure). The enforcement in Qatar of a foreign Court judgment recognising a foreign award is subject to the same requirements. A request shall be filed by summoning the other party to appear before the judge of execution of the Higher Civil Court, in compliance with the normal procedures of filing a lawsuit (Art. 379). An enforcement order is then granted, with no consideration of the merits of the dispute, after establishing (Art. 380):

- that the award was not rendered in violation of an exclusive jurisdiction of the Qatari Courts;
- that the award was not rendered in violation of the international rules of jurisdiction of the country where it was made;
- that the parties to the arbitration were duly summoned and represented;
- that the award has the force of a final judgment (*res judicata*) in the country where it was made;
- that the award is not inconsistent with any previous order of judgment of a Qatari Court;
- that the award does not contravene the Qatari rules of public policy; and
- that the subject matter of the dispute was arbitrable under the Qatari law (Art. 381).

Article 379 of the Code of Civil and Commercial Procedure provides that a condition of reciprocity must also be satisfied: the enforcement in Qatar of a foreign award (or judgment) shall be granted under the same conditions as those required by that foreign State for the enforcement of an award (or judgment) made in Qatar. Finally, Art. 383 of the Code of Civil and Commercial Procedure provides that the aforementioned rules shall not prejudice rules and regulations provided for in international conventions signed between Qatar and other countries in respect of the execution of foreign judgments and awards (see questions 11.1 and 11.2 above for reference to some of these treaties).

3. It is noteworthy that the new law on arbitration provides for a better distinction between domestic and international arbitration. An arbitration shall be considered international when (*inter alia*) the parties selected an arbitration centre (either inside or outside Qatar), or in the presence of an external factor (e.g. place of arbitration, place of business of one of the parties at the time of the arbitration agreement, place of performance of the substantial obligations or subject matter of the dispute).

4. Arbitral awards issued in QFC-sited procedures are enforced through the jurisdiction of the QFC Court. Awards issued in seats other than the QFC may be recognised and enforced by the QFC Court if rendered in relation to the QFC Law (QFC Arbitration Regulations, Art. 42).

11.4 What is the effect of an arbitration award in terms of *res judicata* in Qatar? Does the fact that certain issues have been finally determined by an arbitral tribunal preclude those issues from being re-heard in a national court and, if so, in what circumstances?

Article 202 of the Code of Civil and Commercial Procedure provides that the arbitral award shall be considered as issued as from the date

of its signature by the arbitrators, even before its pronouncement or registration. Subject to the availability of an appeal or of another recourse (see questions 10.1 and 10.4 above), the subject-matter of the dispute should be considered *res judicata* when the arbitral award is signed.

11.5 What is the standard for refusing enforcement of an arbitral award on the grounds of public policy?

A recent decision of the Court of Cassation has clarified such standard in favour of the enforcement of arbitration awards, after a two-year controversy on several decisions rendered by the Qatari Courts on the basis of an extensive approach of the concept of public order.

Between 2012 and 2014, enforcement was indeed refused on a few occasions to arbitral awards rendered under the rules of the ICC (e.g. Higher Civ. Court, n°2216/2013) and of the QICCA (e.g. Cass. Civ., n°64/2012), on the ground of a principle of public policy requiring awards to be rendered in the name of the Emir of Qatar. (These decisions were based on a strict analysis of the provisions of the Constitution and of the Code of Civil and Commercial Procedure, the terms of which did not make any distinction between a Court judgment and an arbitral award.)

In a decision of 25 March 2014, the Court of Cassation invalidated this approach and reinstated an ICC award that was rendered in Doha (Cass. Civ., n°45/2014). While it is not expressly stated in the decision whether the Court considered the ICC award to be foreign (which is likely, owing to the reference to the New York Convention and to the choice of the ICC Rules by the parties) or domestic, it is important to observe that the Court did not mention any exception of public policy to the enforcement of this award.

The main lesson learnt from this decision is that the standard of public policy should be applied with some flexibility as regards the enforcement of arbitral awards (or at least, that of international awards).

Indeed, it is not clear whether the Qatari Court of Cassation initiated, alike in some other jurisdictions, a distinction between an internal standard of public policy applicable to domestic arbitration and, on another hand, a narrower concept of international public policy applicable to international arbitration and offering more flexibility towards the political, social, economic and moral views of the national law.

Further developments of the jurisprudence will, hopefully, help clarify this situation.

12 Confidentiality

12.1 Are arbitral proceedings sited in Qatar confidential? In what circumstances, if any, are proceedings not protected by confidentiality? What, if any, law governs confidentiality?

The Qatari law does not contain any provisions regarding the confidentiality of the arbitration proceedings. The parties may, however, consider including such provisions in the arbitration agreement.

The QICCA rules (Art. 41), however, expressly provide for the confidentiality of the award and of the evidence.

Under the draft of the new law on arbitration, the publication of an award (even partial) shall be prohibited, unless authorised by the parties.

12.2 Can information disclosed in arbitral proceedings be referred to and/or relied on in subsequent proceedings?

Subject to question 12.1 above, such information can be referred to in subsequent proceedings.

13 Remedies / Interests / Costs

13.1 Are there limits on the types of remedies (including damages) that are available in arbitration (e.g., punitive damages)?

The Qatari law does not have any provisions restricting the types of remedies available in arbitration, as long as they are not contrary to public policy (see, however, question 13.2 below on the availability of interest).

Remedies are generally determined by the law applicable to the substance of the dispute. In its general provisions, Qatari law applies the principle of full compensation for the damage suffered (including losses, lost profits and moral damages, but not indirect damages, *cf.* Arts. 263 and 264 of the Civil Code). Contractual liquidated damages are admitted (Art. 263).

Punitive damages do not exist under Qatari law.

13.2 What, if any, interest is available, and how is the rate of interest determined?

Interest based on the claims is generally determined by the law applicable to the substance of the dispute. As regards Qatari law, interest is subject to a general prohibition under the Islamic *Shari'a*, which stands for the main and common source of legislation (Art. 1 of the Constitution). Some exceptions do exist, notably within the banking sector, entitling financial institutions licensed by the Central Bank to apply interest on loans and to benefit from default interest (*cf.* Decree-Law n° 33/2006 on the Central Bank of Qatar and subsequent regulations of the Central Bank). However, in other situations, the prohibition of interest remains applicable. Art. 568 of the Civil Code provides that the stipulation of interest (generally, any remuneration in excess of the lent monies, save for the lender's securities) in a loan contract is void. The other provisions of the contract shall, however, remain valid.

As regards default interest (in any type of contracts), it remains prohibited under the general principle directed by the *Shari'a*. This does not mean that the Qatari law refuses to sanction contractual default or performance delays. Remedies are available, but in the form of a lump sum which can either be stipulated in the contract or assessed by the judge, after taking into account the damage effectively suffered by the creditor of the obligation. Art. 268 of the Civil Code provides an illustration of this concept: if the obligation concerns an amount of money which the debtor fails to pay after being notified, and the creditor proves that he has suffered damage as a result, the court may order the debtor to pay damages observing the principles of justice. It is worth mentioning that the judge must reduce the contractual liquidated damages if they are disproportionate to the effective damage suffered by the creditor (Art. 266, which is a mandatory provision).

Finally, there is no interest attached to the enforcement of an award under Qatari law.

Qatari Courts are generally strict in the application of this prohibition (and have, on several occasions and until being overruled by the

Court of Cassation, been reluctant to apply the special provisions of the law allowing interest in the banking sector). Therefore, when the enforcement of an award in Qatar is foreseeable, parties should consider casting their claim in the form of a lump sum (rather than an interest), if they have the possibility to do so. Otherwise, enforcement is likely to be rejected on the ground of public policy.

It is worth mentioning that the situation is wholly different under the QFC Law. Pursuant to Art. 38 of the QFC Arbitration Regulations, arbitrators are fully entitled to award interest on any sums they order to pay.

13.3 Are parties entitled to recover fees and/or costs and, if so, on what basis? What is the general practice with regard to shifting fees and costs between the parties?

As regards litigation, Art. 131 to 133 of the Code of Civil and Commercial Procedure provide that the Court may decide – on its own motion and according to the circumstances of the dispute – that the costs of proceedings should either be borne by the losing party, the winning party or by both of them. Attorney fees are part of such expenses. The Court may reject unnecessary expenses, and take into consideration the behaviour of the parties during the proceedings.

While these provisions are not applicable to arbitration, they indicate the flexibility of Qatari law on the issue of costs, which is essentially to be ruled by the arbitral tribunal. Thus, unless the arbitration agreement or the applicable rules of procedure (e.g. institutional rules) provide otherwise, the arbitral tribunal shall have a discretionary power to determine the allocation of costs in its award. As regards arbitration, it is worth mentioning that the remunerations of the arbitrators shall be specified in the arbitration agreement or in a subsequent document. In the absence of such determination, the Court having original jurisdiction to hear the dispute may determine the fees upon the demand of one of the parties (Art. 210 of the Code of Civil and Commercial Procedure).

Owing to the variable composition of arbitral tribunals, it is very difficult to identify any general practice regarding the allocation of costs in Qatar. Our perception, which is not limited to the situation in Qatar, is that of a contemporaneous tendency to allocate costs according to the result, with an apportionment when the circumstances of the dispute or the behaviour of the parties suggest that it would not be fair to order the unsuccessful party to bear all of the expenses.

Under the QICCA rules, the losing party shall be responsible for the costs of arbitration (unless otherwise agreed by the parties). Under the QFC Arbitration Regulations (Art. 38), the arbitral tribunal is fully entitled to fix and apportion the costs to be paid (unless otherwise agreed by the parties).

13.4 Is an award subject to tax? If so, in what circumstances and on what basis?

Arbitral awards are not subject to tax.

13.5 Are there any restrictions on third parties, including lawyers, funding claims under the law of Qatar? Are contingency fees legal under the law of Qatar? Are there any "professional" funders active in the market, either for litigation or arbitration?

Qatari law does not have any provisions regarding third party funding of arbitration proceedings. There is no professional funding market in Qatar.

Art. 37 of the Code of Law Practice provides that legal fees shall be determined according to the agreement made with the client. Pursuant to the letter of the current law, entitlement to the fees shall not be conditional upon winning the action, nor may the amount of such fees be subject to the amount of the claim or to the amount awarded. Nevertheless, the principle of contingency fees has been admitted by the Qatari Courts in matters of inheritance and damages. A draft law is currently under preparation to reform the existing Code of Law Practice, and includes an article limiting contingency fees to a maximum of 10% of the amount awarded. The Qatari Bar Association, in discussions with the Ministry of Justice, proposed that this rate be raised to 20%.

14 Investor State Arbitrations

14.1 Has Qatar signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965) (otherwise known as "ICSID")?

Qatar has signed and ratified the Washington Convention of 1965 in 2010 (with an entry into force on the 20 January 2011).

14.2 How many Bilateral Investment Treaties (BITs) or other multi-party investment treaties (such as the Energy Charter Treaty) is Qatar party to?

Qatar is a party to 51 bilateral investment treaties, 18 of which are in force (notably those with France, Germany, Italy, Switzerland, China, South Korea, India, Iran, the Russian Federation, Morocco, Egypt, Turkey, and various Eastern European countries). It is also a party to several multi-party investment treaties within the League of the Arab States, the GCC and the OIC. Through the GCC, it has entered investment framework agreements with the European Union and the United States of America. Qatar is not a signatory to the Energy Charter Treaty (but an observer at the Energy Charter Conference).

14.3 Does Qatar have any noteworthy language that it uses in its investment treaties (for example in relation to "most favoured nation" or exhaustion of local remedies provisions)? If so, what is the intended significance of that language?

Qatari investment treaties use the notion of most favoured national or national treatment in their commonly accepted meaning (e.g. BIT India-Qatar: a treatment which shall not be less favourable than that accorded either to investments of its own or investments of investors of any third State).

14.4 What is the approach of the national courts in Qatar towards the defence of state immunity regarding jurisdiction and execution?

The Qatari law does not have any proper doctrine enacting the concept of sovereign immunity. Accordingly, State and public entities can normally be sued in Court in civil and commercial proceedings (*cf.* Art. 10 of the Civil Code). Qatar is, however, respective of international law and, therefore, foreign States may claim the immunity from jurisdiction they enjoy under international law in respect, notably, of their diplomatic and consular missions in Qatar.

As regards execution, Art. 57 of the Civil Code provides that the property of the State or of a public person may not be subject to attachment or disposition as long as it is affected to a public service (allocated for a public benefit) (see also Art. 1 of Law n°10/1987 on Public and Private State Property). In practice, such provision is likely to equate to an immunity from execution, classically based on the criterion of the State's sovereign activities and excluding activities of a purely commercial nature (absence of public service). Nevertheless, we are not aware of any Court precedent confirming the application (or the extension) of this provision in respect of the properties of a foreign State located in Qatar. Again, foreign States may claim, where applicable, any immunity enjoyed under international law in respect, notably, of their diplomatic and consular missions in Qatar.

As regards arbitration, it is commonly admitted that States waive any defence based on immunity from jurisdiction when they sign an arbitration agreement, or ratify an investment treaty providing for the settlement of dispute by way of arbitration (e.g. the ICSID convention, bilateral investment treaties). It is not uncommon for such waiver to be expressly stipulated in a contract to which the State is a party. Such waiver is generally construed as limited to the immunity from jurisdiction (unless other provisions to the contrary).

However, as regards immunity from execution, it is worth mentioning an international precedent in which the French Court of Cassation ruled against Qatar and considered that the reference to the ICC Rules in the arbitration agreement entailed waiver of such immunity from execution (Cass. Civ 1 (France), n°98-19068, *Gouvernement de l'Etat du Qatar c. Creighton Ltd.*). Such precedent, however, only reflects the position of the French jurisprudence.

Finally, in respect of the evolution of international law, it should be observed that Qatar has not ratified the 2004 UN Convention on Jurisdictional Immunities of States and their Property (which, in any event, has not come into force).

15 General

15.1 Are there noteworthy trends in or current issues affecting the use of arbitration in Qatar (such as pending or proposed legislation)? Are there any trends regarding the type of disputes commonly being referred to arbitration?

The growth of the Qatari economy and its opening to international investments over the last years, supported by an active legal policy of the government, have naturally resulted in an increased use of arbitration in Qatar, in particular within the sectors of international trade and construction.

In the context of the proliferation of arbitration institutions within the GCC, Qatar has attached to consolidate its regional position through the establishment of the QICCA and of arbitration mechanisms within the QFC.

The most significant and awaited reform is undoubtedly the preparation of the new law on arbitration based on the 2006 UNCITRAL Model Law, which is intended to replace the outdated provisions of the Code of Civil and Commercial Procedure with a whole new framework, in accordance with the standards and best practices of modern arbitration. The salient aspects of the draft law have been exposed throughout this chapter. The organisation of the FIFA World Cup scheduled for 2022 is also expected to result in a peak of construction arbitration. Initiatives have been taken in this respect, such as the preparation by the QFC of construction adjudication rules (Q-Construct), to provide parties with an inexpensive and quick procedure to resolve their disputes.

As a conclusion to this chapter, Qatar is a fast-moving economy, and further developments of the legislative and jurisprudential environment of commercial law and arbitration should be expected in the foreseeable future.

15.2 What, if any, recent steps have institutions in Qatar taken to address current issues in arbitration (such as time and costs)?

See question 15.1 above.

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