The new Qatar Arbitration Law (Law 2 of 2017) ("New Arbitration Law") was issued on 16 February 2017. It will soon be published in the Official Gazette and will come into force 30 days after publication.

This is a long-anticipated piece of legislation which operates to repeal the handful of articles (190 to 210) that had been contained within the Civil and Commercial Code of Procedure Law (Law 13 of 1990) and replaces it with a series of provisions that, by and large, emulate the scheme of the UNCITRAL Model Law on International Commercial Arbitration ("Model Law").

There are no transitional provisions and arbitrations which had been commenced under the 1990 legislation and which are still underway, even if at the award writing stage, will be caught by this new legislation as soon as it comes into force.

We provide a brief commentary on the key provisions of the New Arbitration Law below:

**General provisions**

- In accordance with the approach adopted by the Model Law, the New Arbitration Law is permissive in nature, allowing the Parties freedom to determine the arbitration procedures and processes. The New Arbitration Law acts as a backup if agreement is not reached on procedural matters, and provides a mechanism for the Competent Courts (see below) or Other Authorities (in most cases this will be an arbitral institution such as the ICC or LCIA) to determine procedural issues.

**Competent Court**

- The Competent Court which has supervisory/supportive powers includes not only the local Court which has a specialist arbitration section (under the Court of Appeal), but allows the parties to opt for these functions to be performed by Qatar Financial Centre Court (now known as the Qatar International Court).

- It is likely that the choice of Competent Court will be made at the time that the Parties agree on the Terms of Reference but it should be noted that, at the time of writing, it is not clear that the Qatar International Court can accept jurisdiction over disputes between non-QFC entities.

**Application**

- Article 2(2) of the New Arbitration Law requires the Prime Minister or his delegate to approve inclusion or conclusion of an arbitration agreement relating to administrative contracts.

- There is some ambiguity about this as the term "Administrative Contracts" is not defined. The phrase has been used in other legislation, such as Law No 7 of 2007 on the Settlement of Administrative Disputes which provides that the Administrative Circuit in the Court of First Instance has exclusive jurisdiction over disputes relating to "Administrative Contracts" and the context there means disputes about the operation of government entities. However, by reference to the public procurement legislation, "Administrative Contracts" may relate to contracts where the State or Government is engaged in commercial activity to provide for public utility e.g. where it is a party to a construction contract to build infrastructure.

- Article 2(3) seeks to give a broad application to "civil and commercial" arbitrations and echoes the references in the Model Law which provide that arbitration can be used to resolve disputes arising from both contractual and non-contractual commercial relationships.

**International arbitrations**

- For the first time, there is a definition of what "international" arbitration is. The definition set out at Article 2(4) of the New Arbitration Law is very similar to the definition contained in Article 1(3) of the Model Law.

- This means that "international" arbitrations include arbitrations where the seat of the arbitration, the place of performance of the underlying obligation, the primary places of business of the parties or where the subject matter of the dispute is most closely connected with are outside of the State of Qatar.

- In addition to the Model Law, the New Arbitration Law defines "international" to include where the parties have agreed upon an institution to administer their arbitrations which is based outside of the State of Qatar. This would appear to mean that (for example) ICC and LCIA administered arbitrations would be deemed to be international even if they are seated in Doha, both parties are based...
That said, there does not appear to be a difference in treatment of domestic and international arbitrations in the New Arbitration Law and no express provision has been stipulated about whether arbitrations seated in Qatar have to be issued in the name of the Emir.

Notices
- Article 4 of the New Arbitration Law deals with notices and communications and adopts, in large part, the Model Law.

Waiver of right to object
- Article 5 incorporates the waiver of the right to object from the Model Law. This means that, where a party does not object to an arbitration commencing or continuing in circumstances where it has grounds to object under the New Arbitration Law, its failure to object within a reasonable time will operate as a waiver of its right to object. Therefore jurisdictional challenges to an arbitration must be made reasonably promptly.

The Arbitration Agreement
- Article 7(3) provides that the Arbitration Agreement must be made in writing, otherwise it will be void.
- This can be an arbitration clause in a signed agreement (for example a construction contract) or in an unsigned form through other means of writing, including “electronic letters” and by express incorporation by reference to other documents which may contain an arbitration agreement.
- It will also be sufficient for a party to admit the existence of an arbitration agreement in its pleadings, in circumstances where no other written record might exist (see Article 7(4)).
- Article 7(6) also provides that the arbitration agreement continues in force irrespective of the status of the party (unless the law makes express alternative provision).
- Article 8 requires that any court that is seized with an action that is subject to an Arbitration Agreement shall refuse to accept that action unless it determines the arbitration agreement to be invalid and that any such action before the court does not operate to suspend arbitration proceedings. This is very similar to Article 8 of the Model Law.
- Article 9 gives the court power to take interim or precautionary measures in cases where there is an arbitration agreement, but in circumstances where the arbitrators or institution is not yet capable of taking such measures themselves.

Composition of the Arbitral Tribunal
- Articles 10 to 17 relate to the Arbitral Tribunal.
- Under the New Arbitration Law, the default position is that any Tribunal shall be comprised of three arbitrators subject to the parties’ agreement (which can include the scheme provided for number of arbitrators in institutional rules that are adopted by the parties).
- The New Arbitration Law further provides that any arbitral tribunal shall be composed of an odd number and that decisions or actions by the tribunal will be effective if agreed upon by the majority of the Tribunal (see Article 29), or for procedural matters by the chairperson alone.
- There is potentially a lack of clarity as to the operation of Article 11. Article 11(1) of the New Arbitration Law requires that in order for an arbitrator to be appointed they must be selected from a list of approved arbitrators maintained by the Ministry of Justice; however, Article 11(10) suggests that arbitrators can be appointed from other lists (for example panels held by arbitral institutions). It remains to be seen how Article 11(1) will be interpreted, but the inference is that if the Competent Court is asked to intervene to make the appointments, the Competent Court will appoint from the list held by the Ministry of Justice but that if the appointment is to be made by any other way, then Parties can rely on the institutional rules and panels that they may have expressly agreed upon.
- Given there are no transitional provisions and the ambiguity in this provision, perhaps members of arbitration panels that are already appointed might, for the abundance of caution, seek to be included on the Ministry of Justice’s list, when that list is established.
- Article 11(11) excludes liability for an arbitrator’s performance unless that performance was carried out in bad faith, collusion or gross negligence. In this regard, however, we note that there is no statutory definition of gross negligence, as opposed to gross mistake under Qatar Law. Further, simply withdrawing from an arbitration which is underway of itself is not evidence of bad faith, collusion or gross negligence – see article 14(2).

Jurisdiction of the Tribunal
- Article 16 provides the competence-competence provision allowing arbitrators to rule upon their own jurisdiction, but there is a right of appeal from the Tribunal’s own ruling to the Competent Court or arbitral institution whose decision will be final (i.e. there can be no further appeal from that decision).

Interim measures and preliminary orders
- Article 17 gives the Tribunal power to take interim or precautionary measures, unless the parties agree otherwise, and gives the Tribunal the power to obtain cross undertakings as to costs (with or without security) on such applications.
- If such a measure is ordered by the Tribunal and not complied with, the New Arbitration Law allows for enforcement action on such interim measures to be sought from the Qatar Court of First Instance.
- This provision also requires that if ultimately the application for interim precautionary measures fails, the party that has applied for such measures will be liable for the cost and indemnities for the damages caused to the other party. While it is for the Tribunal to determine...
In a related provision, Article 27 permits the Tribunal to appoint the Competent Court for assistance with obtaining evidence from non-willing participants, which includes the ability to impose punishment on witnesses who fail to appear or decline to answer questions.

**Conduct of Arbitral Proceedings**

- Article 18 expressly states that each party should be treated with equality and impartiality and shall have a “full and equal” opportunity to present its case.
- Article 19 gives the Parties ability to agree upon the procedures to be adopted in the arbitration subject to any mandatory provisions of law and to agree upon the rules of evidence.
- Articles 20 to 22 effectively mirror the Model Law and provide that:
  - Article 20 - The Parties are free to agree upon the seat of the arbitration. Not all meetings or hearings need to take place at the seat.
  - Article 21 - The arbitration proceedings commence on the date when a request to refer a dispute to arbitration is received by the respondent; noting that the New Arbitration Law has provisions dealing with deemed dates of service.
  - Article 22 - The Parties may agree upon the language of the arbitration and the Tribunal has the power to ask for the translation of documents from language to language.
- Article 23 envisages an exchange of pleadings after the Tribunal is established, such that it is likely that any request for arbitration and answer to it will only contain a brief description of what is being claimed and will not be required to be in substantive form. Again these are subject to any institutional rule that has been incorporated into the arbitration agreement.
- In terms of the hearing itself, Article 24 is very similar to the same Article in the Model Law and gives the Tribunal flexibility to fulfil its function either with an oral hearing or on documents alone.
- An important distinction, however, is that if there is an oral hearing, witnesses and experts are no longer required to take an oath, but any such proceedings have to be recorded in the minutes of the meeting – which includes transcriptions – a copy of which must be provided to the parties. Again it is not clear if the Tribunal is required to sign those minutes as being an accurate record, particularly if the record is a transcript.
- Article 24(6) allows the parties to be represented by an “attorney” but it is not clear whether that attorney must be duly registered or given permission to act as an attorney for arbitrations seated within the state of Qatar as required under the Advocacy Law. It also gives the Tribunal the power to request proof that any such attorney is duly authorised to represent its party; no doubt this will be achieved by provision of a duly authenticated power of attorney.
- Article 25, which is similar to the Model Law, allows the Tribunal to stop the arbitration if the claiming party does not comply with its procedural obligations by filing its statement of claim, but allows it to continue with the arbitration if the defendant does not submit its defence or if either party fails to attend the hearing or comply with other documentary requirements.
- Article 26 allows the Tribunal to appoint its own experts, unless agreed otherwise by the parties and to include the cost of such experts within the expenses of the Tribunal. Again, this mirrors the Model Law.
- Under Article 31 all other awards will be made in writing and be signed by the Tribunal. If there is more than one arbitrator, the award only needs to be signed by the majority providing that an explanation for the omission of a signature is stated in the award.
- The award must give reasons unless reasons are not required by agreement of the Parties. Unless agreed otherwise, the award is to state the cost of the arbitration and identify which party is liable to pay for them and in what amount (Article 31(4)).
- At Article 31(3) the New Arbitration Law diverges from the Model Law by including some very prescriptive requirements for the award, though none of these requirements are substantially different from common practice in any event. For example, the award must include:
  - the names and addresses of the Parties;
  - the nationalities and titles of the arbitrators;
  - a copy of the Arbitration Agreement;
  - the date of issue of the award;
  - the seat of the arbitration;
  - a summary of the Parties’ requests, statements and documents;
  - the pronouncement of the award; and
  - (if required – see above) the Tribunal’s reasons.
- Article 31(5) provides that if no time limit is set for rendering the award by agreement between the parties, then the Tribunal is required to render its award within one month of the close of oral hearings subject to it being permitted to extend it by a further month of its own motion. Any extension beyond the two-month period will require the parties’ agreement.
- Article 31(6) allows the Tribunal to reopen oral hearings. No doubt this is to allow it to revisit topics where it does not feel it has adequate information to make a determination and echoes the provisions of Article 216 of the Civil Code (Law Number 22 of 2004).
- Once the arbitration award is published, Article 31(8) provides that the Tribunal is required to electronically file a copy of that award with the Ministry of Justice within 15 days. That said, the New...
Arbitration Law does not provide any sanction for failing to do this or state that of itself failure to submit a copy of the award will preclude recognition or enforcement of that award. There is no express provision in the New Arbitration Law requiring the arbitration award to be signed within the State of Qatar if the arbitration is seated in Qatar, and there is no need for it to be in the Arabic Language for the purposes of filing, unless that is the agreed/ordered language of the arbitration.

Article 32 provides that corrections to the award can be applied for within seven days from the date of publication of the award (i.e. the date the parties received it, not necessarily the date of the award itself). Any such corrections are required to be made in writing within seven days of the Tribunal receiving the request and signed by the Tribunal. If the Tribunal is not able to make such corrections or to consider such corrections within seven days, then it loses its power to make those corrections and an application will have to be made to the Competent Court to consider whether the corrections are appropriate.

Recourse against Award

Article 33 sets out very limited grounds upon which an arbitral award can be challenged, in essence citing the same grounds as the Model Law.

One important distinction with the Model Law, however, is that any such challenge has to be issued within one month (rather than three months under the Model Law) from the date of the party receiving the award, or corrected decision or such longer time period as the parties might agree (Article 33(4)).

On an application to annul the award, the Court will make its finding and there is no right to make further appeals to the Court of Appeal or Court of Cassation.

Recognition and enforcement of awards

Under Articles 34 and 35, applications for the recognition and enforcement of the arbitration award cannot be made until after the time for making an application to annul that award (as identified above) has expired, or annulment proceedings have been determined.

Any such application for recognition or enforcement is required to be ordered by the Court unless the court is satisfied that any of the grounds for annulment exist (and these are similar to those contained in the Model Law and the New York Convention on Recognition and Enforcement of Foreign Arbitral Award). Such challenge to recognition and enforcement may be made by the paying party or by the court of its own motion.

In contrast to applications for annulment, a court judgment refusing the execution of an award may be appealed.

Miscellaneous other provisions

The final provisions of the New Arbitration Law give the Minister of Justice the right to license arbitration centres and allow branches of foreign arbitration centres to be established within Qatar. They also allow the Ministry of Justice to prepare regulations to create a register of arbitrators and establish how arbitrators can be admitted or removed from such a register.

It is not yet clear when these activities will be carried out.