

Qatari arbitration law: to apply or not to apply

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Introduction

On 12 April 2017, Qatar's first stand-alone arbitration law titled Law No. 2 of 2017 Promulgating the Civil and Commercial Arbitration Law ('Qatari Arbitration Law' or 'the Law'), which is largely based on the United Nations Commission on International Trade Law ('UNCITRAL') Model Arbitration Law, entered into force. The Qatari Arbitration Law applies retrospectively (Article 3). It also repealed and replaced Part 13: Arbitration (Articles 190 to 210) of the Civil and Commercial Procedures Code, Law No (13) of 1990 ('CCPL' or 'the old law') as of 12 April 2017 (Article 4 of the Qatari Arbitration Law).

While the law signals Qatar's intent to transition into a pro-arbitration jurisdiction, it remains to be seen if local courts support arbitrations in line with current best practices. This article draws attention to a recent judgment of the Qatari Court of Cassation, which decided that the Qatari Arbitration Law does not apply to arbitrations arising from contracts signed prior to the effective date of the law, i.e., 12 April 2017. The judgment appears to contradict Articles 3 and 4 of the Qatari Arbitration Law.

Procedural history

The parties to the case had entered into a commercial consultation agreement (containing an arbitration clause) in 2013. In May 2017, following the repeal of Article 195 of the CCPL, the Claimant sought the assistance of the Court of First Instance under the same provision, (which allows the Court to appoint arbitrators in specific instances) on the basis that the Defendant failed to nominate an arbitrator. The Defendant contended that since the case was filed after the Qatari Arbitration Law came into force, the CCPL was not applicable to the dispute. Instead it argued that the Qatari Arbitration Law should apply. The Court of First Instance ruled in favour of the Claimant and appointed the members of the arbitration tribunal in reliance on Article 195 of the CCPL.

The Defendant appealed the judgment of the Court of First Instance to the Court of Appeal. The Court of Appeal denied the Defendant's application to appeal and upheld the decision of the Court of First Instance. The Court relied on Article 195 of the CCPL according to which decisions on court-appointed arbitrators under Article 195 may not be appealed.

Decision of the Court of Cassation

The Defendant, nonetheless, appealed to the Court of Cassation. It contended that the Court of Appeal wrongfully dismissed the appeal as the appeal was based on a dispute over the applicability of the Qatari Arbitration Law and not solely on the decision to appoint an arbitrator under Article 195 of the CCPL. The Court of Cassation allowed the appeal to proceed. The Court held that *"[t]he Qatari Arbitration Law is not applicable in this instance as the legal relationship between the parties was established before the effective date of the law. Since the arbitration clause was signed in January 2013, the consequence that follows is that the CCPL remains the law applicable to the arbitration agreement in question."*

The Court based its reasoning on Subsection 2: The Application of the Law with Regard to Time, Article 3(1) of the Civil Law no. 22 of 2004 states *"unless otherwise provided, the new law shall apply to any act from the effective date thereof."* As a result, it upheld the decision of the Court of First Instance that appointed the members of the arbitration tribunal in reliance on Article 195 of the CCPL.

Commentary

The decision of the Court of Cassation limits the scope of the Qatari Arbitration Law contrary to its express terms. The impact of the decision is that the CCPL will apply to all arbitrations arising out of contracts signed prior to 12 April 2017. The Court of Cassation seems to have solely relied on Article 3(1) of the Civil Law no. 22 of 2004 and not considered Articles 3 and 4 of the Qatari Arbitration Law.

Article 3 of the law states,

"the provisions of the attached Law of Arbitration in Civil and Commercial Matters shall apply to any ongoing Arbitration at the time the Law enters into force and to any Arbitration commencing after the Law enters into force."

Article 3 consists of two parts. The Qatari arbitration Law shall apply to: 1) any ongoing arbitration at the time the Law enters into force; and 2) any arbitration commencing after the Law enters into force. Since, in the first part, the Qatari Arbitration Law applies *"to any ongoing arbitration at the time the law enters into force"* it is implicit that the Qatari Arbitration Law applies to arbitration agreements signed prior the commencement of the Qatari Arbitration Law. Even though, the second part of Article 3 does not explicitly state that the law shall apply to arbitrations arising out of previously existing arbitration agreements¹, the reference to *"any Arbitration"* (in the second part) arguably includes arbitrations based on arbitration

agreements concluded prior to the time the Qatari Arbitration Law entered into force.

Article 4 of the law states,

“Articles 190 to 210 of the first Book of the aforementioned Civil and Commercial Procedures Law are repealed, as well as any provision that contravenes the provisions of the attached Law”.

The decision of the Court of Cassation upheld the decision of the Court of First instance, which applied a repealed law provision, i.e., Article 195 of the CCPL. It is also worth noting that the Qatari Arbitration Law specifies additional measures to be followed for the appointment of arbitrators. Article 11 of the Law states, arbitrators shall be appointed from a registry of arbitrators approved by the Ministry and must meet certain conditions including that they are persons of good conduct and reputation. Articles 195 of the CCPL did not contain such conditions, and the appointment of arbitrators pursuant to its provisions would arguably deprive the parties of their entitlements under Article 11 of the Qatari Arbitration Law. Further, it remains an open question as to whether an arbitrator appointed under Article 195 of the CCPL, following its repeal by the Qatari Arbitration Law, may issue enforceable awards. This question will be determined, we expect, by the Qatari courts in determining any future challenges to such awards.

It is hoped that future judgments will clarify the relationship between Article 3(1) of the Civil Law no. 22 of 2004 and Articles 3 and 4 of the Qatari Arbitration Law. In the meantime, the position appears to be that the Qatari Arbitration Law does not apply to arbitrations arising out of contracts signed prior to 12 April 2017.

1Such language is deployed in the UAE Arbitration Law – Article 59, The Temporal Dimension of this Law – “The provisions of this Law shall apply to any Arbitration which is pending at the time of entry into force of this Law, including any Arbitration arising out of a previously existing Arbitration Agreement, and all proceedings which took place under any prior legislation shall remain valid.”

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