

Qatar: Dispute Resolution Clauses and Foreign Governing Law in Facility Agreements

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Similarly, when entering into a facility agreement where one of the parties is in Qatar or where the contract is performed (party or totally) in Qatar, it is important to understand whether Qatari courts would uphold the parties' choice of foreign law and foreign jurisdiction or arbitration or dismiss them in favor of Qatari laws and courts.

In principle, parties may validly elect to have the laws of another jurisdiction govern the terms of their facility agreement. A competent Qatari Court will likely uphold such a choice provided that the provisions of the chosen foreign law do not contravene public policy or morality in Qatar. However, applying a foreign law by a Qatari court can encounter challenges. A party arguing in favor of the application of foreign law must produce a duly authenticated translation of the relevant laws of the foreign jurisdiction otherwise the local court will apply Qatari law. Producing an authenticated translation in a timely manner can be difficult particularly when the foreign governing law is an un-codified law (i.e. the English law). If such party fails to provide the authenticated translation, a Qatari court will apply Qatari law regardless of the parties' agreement.

Whilst the choice of foreign law is likely to be upheld in Qatar subject to the foregoing, Qatari courts will exercise jurisdiction notwithstanding the parties' agreement to contract out of the Qatari courts' jurisdiction by agreeing to submit disputes exclusively to the jurisdiction of another court.

Qatari courts have historically ignored and dismissed the parties' agreements on foreign jurisdiction as a matter of public policy and retained jurisdiction over disputes filed before them. Most recently, on 25 June 2015 the Court of First Instance rendered a decision in Lawsuit No. 897 of 2014 whereby it confirmed the principle that no parties shall have the right to disregard Qatari courts in favor of foreign jurisdictions (the Swiss courts in this case). In making its decision, the Court of First Instance relied upon previous Court of Cassation Judgments confirming that the jurisdictional issue is a matter related to public policy. As such, if the Qatari court finds itself competent to hear the case, the parties agreement to refer their dispute to foreign jurisdiction will not be upheld.

The approach of Qatari courts differs when it comes to the parties' agreements to arbitrate rather than their agreement to resort to a foreign court. If the parties into a facility agreement agree on arbitration as the mean of solving disputes, a Qatari court would, in principle, defer the parties to arbitration if, at the first hearing, one of the parties raises an objection based on the arbitration clause and challenges the court's jurisdiction.

The process of recognizing and enforcing a foreign judgment and a foreign arbitral award should also be taken into account when considering a dispute settlement provision in facility agreements.

Enforcement of foreign judgments are subject to the principle of reciprocity recognized under Article 379 of the Code of Commercial and Civil Procedure and a Qatari court would require evidence that the competent court in the relevant foreign jurisdiction would enforce Qatari judgments. In addition to the

reciprocity requirement, enforcement of a foreign judgment is subject to various other conditions set out in Article 380 of the Code of Commercial and Civil Procedure.

Since Qatar had formally acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”) on 30 December 2002, Qatari courts have confirmed that recognizing and enforcing a foreign arbitral award is subject to the terms of the New York Convention. Whilst recognition of a foreign arbitral award would be, in principle, subject to the same requirements set out under Article 380 for enforcement of foreign judgments, the principle of reciprocity does not come into play. Furthermore, Qatari courts have been encouraging the enforcement of foreign arbitral award under the New York Convention.

With this approach of Qatari courts, parties entering into facilities agreements are recommended to either agree on the Qatari law as the governing law with Qatari court jurisdiction, or alternatively, select a foreign law and arbitration. Agreeing on a foreign law and a foreign jurisdiction entails the risk of having a Qatari court dismisses the dispute resolution clause in favor of Qatari courts.

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