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Is It Time to Amend the Articles Regulating Arbitration in Qatar?

Seem Maleh (The Center for American and International Law) · Thursday, June 30th, 2011

There are two legal jurisdictions in Qatar with laws containing specific provisions related to arbitration: the State of Qatar and the Qatar Financial Center (the "QFC"). The latter is a separate jurisdiction with its own laws within the state. The QFC Law provides for the arbitration of commercial disputes in relation to contracts that have been concluded under QFC Law. The QFC has set Arbitration Regulations in 2005, which are based on the UNCITRAL Model Law; however, until today there were no cases trialed under the QFC Rules.

Until today there is no independent arbitration law in Qatar. Articles 190-210 of Law No 13 of 1990 The Civil and Commercial Code of Procedure (the "CCP") regulates arbitrations. The CCP is mainly based on the old Egyptian laws and does not meet the needs of swift investment and construction developments that Qatar is heavily undertaking. In addition to the CCP and the QFC, an Emiri Decision number (5/8) of 2006 established the Qatar International Center for Arbitration (the "QICA") within the Qatar Chamber of Commerce and Industry as an optional forum for commercial arbitration in Qatar. The QICA Rules were issued as a set of arbitration rules to be used by parties who choose the QICA as the forum for their arbitration.

With this background in mind and in order to get to know more about Qatar arbitration rules and developments, I met with Dr. Zain Al Abdin Sharar, an Associate Professor of Commercial Law at Qatar University. Our discussion mainly covered the CCP out of date rules and the problems associated with the current provisions. The problems were also discussed and highlighted in his recent article to be published by the end of the year (Does Qatar Need Reforming its Arbitration Law and Adopting the UNCITRAL Model Law for Arbitration? A Comparative Analysis). I thought I'd summarize some of the notes discussed, only in relation to the CCP and not with regard to the Australian International Arbitration Law (IAA), which is part of the comparative study, for the benefit of our readers.

Arbitration clause and arbitration agreement: Article 190 of the CCP Law strictly provides for the arbitration agreement to be in writing. Dr. Zain recommends that the scope of "in writing" to be broader in a way to encompass the situation in which a formal agreement has not yet been printed and signed by the parties. In interpreting the "writing" requirement, he also recommends the Qatari legislator or national courts to take into account the aspects of the law prescribed in article 7 (2) of the UNCITRAL Model Law, which are consistent with the best practice reflected in the New York Convention and the Model Law when interpreting the writing requirement.

Arbitrability: There is no reference to arbitrability under Qatari law. Article 190 of the CCP mentions only the "matters that can be settled amicably". Matters that cannot be settled amicably are those matters related to personal status matters (including the validity or termination of marriage, filiations, incapacity, guardianship and inheritance) and those related to public policy (such as criminal liability, betting and gambling, drugs, prostitution and other 'immoral' activities). In that respect, Dr. Zain recommends that the new arbitration law in Qatar lays down directly the requirements for arbitrability by clearly identifying the types of disputes that cannot be arbitrated with clear guidelines for matters that can be subject to arbitration. Furthermore, the article suggests clearer definition for "legal capacity" in relation to arbitration.

The Kompetenz-Kompetenz principle and autonomy of the arbitration agreement: These two important principles are completely missing from the CCP provisions regulating arbitration. Interestingly enough, the article noted that "some jurists argued that the arbitration clause follows the fate of the main agreement with respect to its existence and validity and it seems that there are not any judicial decisions to state otherwise".

Finality of the arbitral award: The CCP permits three types of recourse against an arbitral award: the appeal, the petition for reconsideration, and the request for the award to be set aside. Articles 202-209 set out vague and ambiguous conditions and time restraints with respect to appeals. Dr. Zain stated that there are no pre-established grounds for appeal and that an award can be appealed on question of fact and law. Having said that, article 205 states that an award may not be appealed "if the award is made by arbitrators acting as amiable compositeurs, or in an appellate capacity, and if the parties to arbitration have expressly waived their right to appeal". However, with regard to setting aside an award, the grounds provided for in article 207 of the CCP are very much similar to those mentioned in Article V of the 1958 New York Convention.

In general, all the CCP articles in relation to arbitration need to be updated. The Qatari legislator is currently working on creating a new arbitration act; however, it is not clear yet when this act will be available.

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