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What's in a Name? The Validity of Arbitration Awards in Qatar

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Over the last few years, the courts in Qatar have been criticized from the arbitration community for having issued several rulings setting aside both domestic and foreign arbitral awards on public policy grounds. In particular, these rulings held that like court issued judgments, domestic and even foreign arbitral awards were required to be rendered in the name of the supreme authority of the state i.e., His Highness, the Emir of Qatar, failing which awards could be challenged in the Qatari courts for violating public policy.

The Qatari courts justified their position on the now repealed provisions of the Civil and Commercial Procedures Law (Law No. 13 of 1990) ("**Qatar CCPL**") [1)], which previously governed arbitrations seated in Qatar before the issuance of Law No. 2 of 2017 Promulgating the Civil and Commercial Arbitration ("**Qatar Arbitration Law**"). In addition, the Qatari courts also relied on other general provisions of the Qatar CCPL such as Article 69, which stipulates that all judgments are to be issued and executed in the name of the Emir, without distinguishing between court judgments issued by the state's judges and arbitration awards rendered by arbitral tribunals. These provisions are underscored by Article 63 of Qatari Constitution, which provides that *"judicial authority shall be vested in the Courts in the manner prescribed in this constitution and judgments shall be issued in the name of the Emir"*.

In Qatar Court of Cassation No. 64 of 2012, which concerned an arbitration seated in Qatar, the Qatari courts was of the view that rendering judgments in the name of the Emir is supported by public force, and is what makes them enforceable. Analogously, failing to issue an award in the name of the Emir would result in the award being considered null and void, contrary to public order and the courts may *sua sponte* set aside that award. A commentary on this case can be found here.

Foreign Arbitration Awards Enforced in Qatar

The ineptness of imposing the requirement to issue judgments in the name of the Emir on arbitration awards was brought one step further in 2013 when the Qatari courts not only refused the enforcement, but also annulled a foreign ICC arbitration award rendered in Paris for the same reason, that it was not issued in the name of the Emir. This was a troubling decision for many reasons. First, being a member of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention)", Qatar was obliged to recognize and enforce arbitral awards in line with its provisions. Second, Qatar was not the seat of

the arbitration in this case and its national courts had no jurisdiction to annul an arbitration award that was rendered in Paris. Third, this case created a ripple effect of concerns for potential investors in Qatar. A previous commentary on this case can be found here.

Against the backdrop of these somewhat astounding decisions that were issued by the Qatari courts, the Qatar Court of Cassation seized an opportunity in 2014 to clarify its position with respect to foreign arbitral awards.

In Qatar Court of Cassation No. 164 of 2014, the Qatari courts held that when it comes to the enforcement of foreign arbitral awards, the provisions of the New York Convention are to be adhered to and it would be incorrect to impose domestic requirements (such as the requirement for an arbitration award to be rendered by the supreme authority of the state) on foreign arbitral awards. The Qatari courts reasoned that the New York Convention does not stipulate any provisions regarding the form of the award or its elements. An earlier commentary on this judgment can be found here.

While this was a positive step taken by the Qatari courts towards the recognition and enforcement of arbitration awards in Qatar, it left much to be desired. For one, the position with respect to Qatar seated arbitration awards was still subject to the Qatar CCPL requirements, which remained varied and disjointed at best. Further, in a similar judgment issued by the Qatar Court of Cassation in Appeal Nos. 45 and 49 of 2014, the Qatari courts appeared to mistakenly consider an arbitration seated in Qatar as foreign on the basis that the proceedings took place under the rules of the ICC, which is headquartered in Paris. On this basis, the Qatari courts concluded that this award did not need to be issued in the name of the Emir.

Recent Clarification by the Qatar Court of Cassation Post Issuance of the Qatar Arbitration Law

Since the issuance of the Qatar Arbitration Law in 2017, which repealed the arbitration related provisions of the Qatar CCPL, there is no basis to maintain the requirement for even Qatar seated arbitration awards to be issued in the name of the Emir. In tandem with this, the Qatar Court of Appeal refused to set aside a Qatar arbitration award based on the argument that the award was not issued in the name of the Emir in Qatar Court of Appeal No. 2186 of 2019 dated 6 July 2020.

The Qatari courts firmly held that an application to challenge an arbitration award could only be made out under one of the limited grounds set out in Article 33 of the Qatar Arbitration Law. Accordingly, the Qatari courts held that the appellant's contention that the arbitral award contravened public policy because it was not issued in the name the Emir and should be set aside was baseless and without merit. While the Qatari courts did not mention the New York Convention, the grounds for setting aside awards under the Qatar Arbitration Law mirror the grounds for refusing the enforcement of foreign awards contained in Article V of the Convention. By this, the Qatari courts have affirmed its adherence to the New York Convention.

Refreshingly, the Qatari courts even went a step further in this case in clarifying the historical misinterpretation and erroneous application of domestic law to arbitral awards, stating that:

> *"The lack of a statement in the preamble to the judgment that the judgment is issued in the name of HH the Emiri would not undermine its legality or essence for it is clear that the constitution and the Judicial Authority Law do not address the*

> *particulars that must be included in judgments. The provision that judgments shall be issued and enforced in the name of HH the Emir of Qatar indicates that such issuance is, of itself, presumed by the force of the Constitution per se regardless of whether it is stated in the preamble to the judgment. The inclusion of a statement is a subsequent physical act that bears out but does not perfect the facts presumed…. The statement's omission does not produce nullity."*

This is an encouraging decision from the higher court of Qatar, which strengthens the validity and enforceability of both Qatar and foreign seated arbitration awards.

Future of Qatar's Pro-Arbitration Stance

Shakespeare once shared a similar sentiment, when writing, *"What's in a name? That which we call a rose by any other name would smell just as sweet."* What he was alluding to, and what is equally applicable here is that how something is labelled is arbitrary if it does not change its fundamental and intrinsic qualities. In other words, whether an arbitration award is issued in the name of the Emir should not affect its validity or enforceability as long as the content of the award is sound. For the Qatari courts to have set aside or refused the enforcement of arbitration awards on the basis that they did not include the words *"issued in the name of His Highness the Emir"*, was not just a wholly erroneous application of Qatari law, but also a contravention of Qatar's obligation under the New York Convention, which it has ratified and adhered to since 2003, by virtue of Emiri Decree No. 29 of 2003.

The implications of this judgment are four-fold. First, the latest Qatar Court of Appeal judgment hopefully laid to rest the requirement that Qatar seated arbitration awards are to be issued in the name of the Emir. Second, it affirms the position that arbitration awards in Qatar may only be set aside on one of the limited grounds contained in Article 33 of the Qatar Arbitration Law. Third, Qatar has aligned its approach on the validity and enforceability of arbitral awards with that of the New York Convention. Fourth, it solidifies the position of the Qatar Arbitration Law as taking precedence over any provisions of the Qatar CCPL, with respect to arbitrations. Lastly (and perhaps most importantly), it strengthens Qatar's reputation as a pro-arbitration jurisdiction.

While it remains to be seen how the Qatari courts will determine these issues in future cases, recent applications to set aside arbitration awards before the Qatari courts do indicate Qatar's intention to develop itself into a pro-arbitration jurisdiction. Since these controversial rulings, the Qatari courts have changed its approach towards arbitration. Indeed, setting aside applications of arbitration awards before the Qatari courts have an increasingly high threshold to meet presently. The future of Qatar as a pro-arbitration hub is certainty optimistic.

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References

?1 Namely Articles 198, 204 and 207 of the Qatar CCPL

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