Kluwer Arbitration Blog

B v C: Qatar International Court's First Decision On A Set-Aside Application

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On 5 May 2024, the Civil and Commercial Court of the Qatar Financial Centre ("Court"), rendered its judgment in B v C on a setting aside application brought under the QFC Arbitration Regulations 2005 ("QFC Arbitration Regulations"). This is an important judgment because it is the first Court judgment commenting on the setting aside of an award in arbitrations seated in the Qatar Financial Centre ("QFC"), and touches upon other key principles under Article 41 of the QFC Arbitration Regulations. This post explores some of the key elements of B v C.

Jurisdiction and Principles Governing the Setting Aside of Awards under the QFC Arbitration Regulations

Arbitrations seated in Doha are governed by Law No. 2 of 2017 and arbitrations seated in the QFC are governed by the QFC Arbitration Regulations. Article 41 of the QFC Arbitration Regulations deals with the setting aside of awards and is based on Article 34 of the UNCITRAL Model Law on International Commercial Arbitration ("Model Law").

Forum and Jurisdiction

Article 41(1) of the QFC Arbitration Regulations states that applications to set aside awards may only be made to the "QFC Tribunal". While a QFC Tribunal was envisaged to be created by the "TDR Regulations" as the supervisory court responsible for set aside and enforcement proceedings, such "TDR Regulations" were not enacted and a "QFC Tribunal" was never established. Since the creation of the Court in 2009 (through an amendment in Law No. 7 of 2005 ("QFC Law")), the position as to the competent supervisory court for QFC-seated arbitrations remained unclear until the decision of C v D, which held that the Court has supervisory jurisdiction over QFC-seated arbitrations. This principle was then re-affirmed by the Court in B v C, on the basis of Articles 41(2)(A)(iv) and 41(2)(B)(ii) of the QFC Arbitration Regulations and Articles 9.3, 10.3 and 33.1 of the QFC Civil and Commercial Court Procedural Rules.

But there is one further important point to note on jurisdiction in B v C: neither party to the underlying arbitration agreement was a QFC entity. Generally, the position under Article 8(3)(c) of the QFC Law is that, to invoke the jurisdiction of the Court, at least one of the litigating parties must be established in the QFC. However, B v C underscores that non-QFC entities are able to agree to a QFC-seated arbitration, which in turn means that non-QFC entities can invoke the

supervisory jurisdiction of the Court under the QFC Arbitration Regulations.

Grounds

The grounds on which awards can be challenged are set out in Article 41(2) of the QFC Arbitration Regulations. Under Article 41(2)(A), an award may be set aside if, upon an application, the Court is satisfied that (a) the arbitration agreement is invalid due to issues of incapacity; (b) a party was not given proper notice of appointment of an arbitrator or the proceedings or was unable to present its defence; (c) the award decided disputes outside the terms of submission to arbitration; or (d) the appointment of the arbitral tribunal or the proceedings was not in accordance with the parties' agreement or the QFC Arbitration Regulations. In addition, Article 41(2)(B) also allows the Court to set aside an award, including of its own volition, if (i) the subject matter of the dispute is not arbitrable under QFC law; or (ii) if the award is not in the "interest of the QFC".

Time Limit

Under Article 41(3) of the QFC Arbitration Regulations, the time limit to file a set-aside application is three months from the date on which the award was received by the aggrieved party. If an application to correct an award is made under Article 40 of the QFC Arbitration Regulations, the time limit would run from the date on which such application was disposed of by the arbitral tribunal. Interestingly, if the set-aside application is filed on the ground that the award conflicts with the public policy of the QFC, no time limit is applicable. This is indeed a significant deviation from the Model Law; although, the authors note that the QFC is currently considering removing this provision: see Consultation Paper No. 1 of 2024.

Findings of the Court in B v C

Time Limit

In B v C, the Court first clarified that the date on which the set-aside application is filed, rather than when it is served, is the relevant date for the purposes of Article 41-time limits. This is because practical issues may arise in service and it would be "undesirable" for a set-aside time limit to expire because of service issues.

Statutory Interpretation

Given that the QFC is a common law-based jurisdiction, distinct from the civil law system in mainland Qatar, the approach to interpreting QFC laws and regulations is often debated. Typically, the Court's position is that the consideration of foreign law should be the last resort: see Chedid & Associates Qatar LLC v Said Bou Ayash ("Chedid"), paragraph 18, wherein the Court held that in respect of issues governed by a QFC regulation, the correct approach is to apply such regulation according to its natural meaning, having particular regard to the conditions in Qatar, and foreign jurisprudence could be of assistance, but should be used sparingly and not as a first resort. This position is supported by Xavier Roig Castello v Match Hospitality Consultants LLC ("Xavier"): see paragraph 20, per Kirkham J. On the other hand, there is a body of jurisprudence in which the Court took account of international practice and standards: e.g., see Manan Jain v Devisers Advisory Republic Services LLC ("Manan"); and Leonardo v Doha Bank Assurance Company ("Leonardo"). In Manan, at paragraphs 28-29, the Court had expressed its view that where the interpretation of a provision of the QFC Contract Regulations 2005 could not be in accordance

with its natural meaning (due to peculiar circumstances not covered thereunder), guidance must be taken from English law since these regulations were broadly based upon it, in addition to the applicable provisions of Qatari Civil Law (where they assist in achieving consistency). Prior to Manan, in Leonardo, at paragraphs 41-46, the Court had concluded that an international code expressly applicable to the agreements in dispute – which set out the applicable legal principles and international practice – should be applied by the Court without considering prior case law, since this would be consistent with the Court's approach, to interpret QFC regulations according to their natural meaning, as per Chedid.

In B v C, the Court was faced with a similar issue regarding the interpretation of Article 41 of the QFC Arbitration Regulations. Relying on Manan and Leonardo, the Court held that the right approach would be to consider that Article 41 is based on the Model Law, and that international practices should be taken into account when interpreting this provision. In fact, the Court took significant guidance from the judgment of Lord Thomas of Cwmgiedd (the President of the Court) in Betamax Ltd v State Trading Corporation (Mauritius) (a Privy Council decision, following on appeal from the Supreme Court of Mauritius). Notably, the Court held that it is "entirely appropriate" to use international jurisprudence from other Model Law countries, such that the QFC follows the "same approach as other major arbitration jurisdictions".

Whilst the Court's views were prescriptively expressed, and are entirely consistent with the international position on the Model Law, a central issue remains unanswered in B v C: the status of the Court's and Appellate Division's views in Xavier and Chedid. The general principles laid down by those cases have *not* been expressly overturned. Whilst the Court considers international jurisprudence as a first resort, the Court exercised great care in wording its judgment in B v C: "The Court considers that the right approach on interpretation of the Arbitration Regulations is to consider the fact that article 41 of the Arbitration Regulations is based on the UNCITRAL Model Law" (emphasis added). In other words, the Court's deviation from the general principle that foreign law should be the last resort was adopted only in the context of the QFC Arbitration Regulations. Such a deviation would indeed align with the general public policy of ensuring that the QFC is consistent with other Model Law jurisdictions. However, in respect of other laws and regulations of the QFC, it remains to be seen whether the Court will be minded to adopt the approach in B v C, or revert to the more conservative position of Chedid and Xavier.

Grounds

The award in B v C was primarily challenged on the basis of Article 41(2)(B)(ii) of the QFC Arbitration Regulations for not being "in the interest of the QFC". Notably, the QFC Arbitration Regulations adopt inconsistent language: "interest of the QFC" in Article 41(2)(B)(ii) but "public policy of the QFC" in Article 41(3). The Court held that these terms are to be construed as one and the same. As to any potential distinction between the interest (or public policy) of the QFC and that of mainland Qatar, the Court noted that this distinction did not have any practical effect because "it is difficult to think of a case where the interest of the QFC and that of the State of Qatar are not aligned or the same".

The applicant argued that the award was incompatible with the interests of the QFC because: (i) the arbitral tribunal failed to give effect to mandatory provisions of Qatari law; (ii) the arbitral tribunal failed to give reasons for finding one fact witness to be more reliable than the other; and (iii) the arbitral tribunal awarded pre- and post-award interest.

The Court did not accept that the grounds raised by the applicant satisfied the criterion of not being "in the interest of the QFC" to merit the award being set aside. Whilst the Court gave two examples (terrorism financing and money laundering) of potentially relevant issues, the Court did not define what may be covered by the public policy ground under Article 41. However, the Court did rely on a judgment of the Qatari Court of Cassation to broadly explain the concept of public policy, which it indicated would equally apply to the QFC.

The upshot of the Court's judgment on the first two grounds is clarity on the following: the public policy ground is to be narrowly construed; challenges must be scrutinised strictly; errors of law or fact, or deficiency in reasons, are not a valid ground; and the Court will not interfere with assessment of evidence by an arbitral tribunal.

As to the third ground concerning the award of pre- and post-award interest, the Court held that interest is expressly recoverable under QFC law and that interest is not a matter of public policy from a Qatari law perspective.

There are two important takeaways on the third ground. First, the Court did not create a distinction between pre- and post-award interest. Second, to find that the award of interest is not a matter of Qatari public policy, the Court relied on decisions of the Qatari Court of Cassation No. 171/2020 and Qatari Court of Appeal No. 31/2019. The applicant had relied on a recent decision of the Qatari Court of Appeal (Arbitration Circuit) (i.e., the competent court for annulment applications under Law No. 2 of 2017) in Case No. 1856/2022, wherein the Qatari Court of Appeal had partially annulled an award on the basis that interest is contrary to Qatari public policy. The Court, however, did not expressly comment on that judgment. It will be interesting to see how further jurisprudence develops in mainland Qatar on the recoverability of interest in awards. For now, the position is that both pre- and post-award interest are recoverable in QFC-seated arbitrations, even if substantively governed by Qatari law.

The final ground of challenge was not on the basis of Article 41(2)(B)(ii) of the QFC Arbitration Regulations, but was founded in the arbitral tribunal's alleged failure to conduct the proceedings in accordance with the parties' agreement. The Court dismissed that ground on the basis that an arbitral tribunal has considerable discretion to conduct the proceedings as it deems fit and that any interference by the Court would only be justified if serious prejudice is demonstrated.

Conclusion

B v C is undoubtedly a landmark decision, because it is the first setting aside application to be decided by the Court since the enactment of the QFC Arbitration Regulations and the Court's establishment in 2009. The judgment reflects a strong pro-enforcement policy, which is indeed consistent with internationally accepted principles. It will be intriguing to observe how the Court's jurisprudence evolves, and whether the Court's approach to potential public policy issues, especially in light of further developments in mainland Qatar, will change in the future.

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The authors of this post represented the applicant in B v C.

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