

QATAR - ANOTHER POSITIVE STEP FORWARD IN THE ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

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Legal Briefings

In the past, Qatar's application of the New York Convention has been somewhat unpredictable. A recent decision of the Qatari Court of Cassation suggests that Qatar is moving towards overcoming the perception that it is an arbitration-unfriendly jurisdiction.

Qatar's status as a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "**New York Convention**") is often cited as an advantage when selecting arbitration as the dispute resolution mechanism for contracts involving a Qatari party. However, enforcement of arbitral awards in Qatar can be inconsistent and some award creditors have found their awards being annulled by the local courts.

In Case No. 173 of 2016, the Qatari Court of Cassation overturned the rulings of the lower courts to find that there was no basis for not enforcing an ICC Paris-seated award in Qatar, which had met the requirements under Article IV of the New York Convention.

HISTORY OF ENFORCEMENT OF FOREIGN ARBITRAL AWARDS IN QATAR

The New York Convention became law in Qatar in March 2003. However, despite Qatar being a signatory to the New York Convention, enforcement of foreign arbitral awards in Qatar has been inconsistent and awards have been annulled for reasons which seemingly contradict the provisions of the New York Convention. Reasons cited for denying enforcement include that the arbitration agreement did not explicitly state that any awards would be final and binding and thus the award was open to an appeal on the merits (*Case No. 631/2006*); and, although subsequently reversed (see below), the Qatari Court of Appeal also found that a foreign award which had not been rendered in the name of His Royal Highness the Emir of Qatar violated public policy and therefore was unenforceable (*Case No. 2216/2013*).

QATAR COURT OF CASSATION CASE NO. 173 OF 2016

The case concerned an award made in May 2013 by the International Chamber of Commerce (the "**ICC**") in Paris-seated arbitration proceedings. Interestingly, from an enforcement perspective, the case involved two Qatari parties. While the award creditor sought to enforce the award in Qatar, the award debtor commenced proceedings to have the award annulled by the Qatari courts. The enforcement proceedings were therefore stayed pending a decision regarding annulment.

These latest developments centre on the enforcement proceedings after the Qatari Court of Cassation overturned the decisions of the lower courts and dismissed the annulment action at the end of 2014.

It had previously been determined by the Qatari Court of First Instance and Qatari Court of Appeal that the arbitrator's failure to render the award in the name of the Emir breached Article 69 of the Civil and Commercial Procedural Code (the "**Code**") and therefore violated public policy. The Qatari Court of Cassation, however, concluded that, as the New York Convention applied, the fact that the award did not satisfy the conditions of the Code (and had not been made in the name of the Emir) was irrelevant. The award was only subject to Qatari procedural law at the enforcement stage and, therefore, provided that the form of the award met the requirements of the New York Convention, Qatari procedural law had no impact on the recognition of the award.

However, as part of the enforcement action, the Qatari Court of First Instance and the Qatari Court of Appeal found that, while the New York Convention did indeed apply, the award still needed to be certified and authenticated by the competent authorities in order to be enforceable. The award creditor appealed yet again, relying specifically on Articles III and IV of the New York Convention. Article III of the New York Convention prohibits signatories from imposing substantially more onerous conditions on the recognition or enforcement of foreign arbitral awards than on that of domestic arbitral awards. Under Article IV of the New York Convention, the only requirements for enforcing a foreign arbitral award are presentation of: (i) the authenticated original (or a certified copy) of the award; (ii) the original arbitration agreement; and (iii) where applicable, certified translations of (i) and (ii) where these documents are not in the language of the country where enforcement is sought.

Perhaps as a final attempt to resist enforcement, the award debtor also attempted to argue that the lawyer who brought the appeal on behalf of the award creditor lacked the necessary authority. However, the Qatari Court of Cassation held that this was not an issue as a suitable power of attorney had indeed been filed by the award creditor.

The Qatari Court of Cassation found in favour of the award creditor, stating that the New York Convention made no mention of an award being attested by authorities and that the conditions of Article IV had been met. It also made no difference that the award debtor had commenced annulment proceedings before the French courts as the award had not been set aside or suspended and therefore remained binding on the parties.

SIGNIFICANCE OF THE JUDGMENT

The judgment of the Qatari Court of Cassation provides further comfort to parties who may need to enforce foreign arbitral awards in Qatar that their awards will be recognised and enforced by the local courts.

Practitioners will welcome the ruling but, while the end result may be encouraging, the case shows that enforcement is likely to remain a long, drawn out process, potentially requiring a number of appeals. The decision reveals that a lack of familiarity with the application of the New York Convention is a major obstacle to the smooth enforcement of foreign arbitral awards in Qatar, a situation which will hopefully improve over time as the Qatari courts apply the New York Convention on a more consistent basis.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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