

QATAR - DIPLOMATIC TIES SEVERED: IMPLICATIONS FOR BUSINESS

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Legal Briefings

On Monday 5 June 2017, Saudi Arabia, the United Arab Emirates ("UAE"), Egypt and Bahrain announced that they would sever diplomatic ties with, and cut off transport links to, Qatar.

Saudi Arabia, the UAE, Bahrain and Egypt closed transport links with Qatar from Tuesday 6 June 2017. Effective from the same date, Qatari nationals were given 48 hours to leave Saudi Arabia, the UAE and Bahrain and these countries' nationals were given 14 days to leave Qatar.

Following these initial actions, other countries (including the Maldives, Yemen and Libya's eastern based government) have acted to sever diplomatic relations with Qatar.

To date, no legislation has been announced in respect of the steps the severing states have taken or plan to take, although the severing states have announced that they may pursue legal avenues to block other countries and companies transiting to and from Qatar across their airspace.

At this time, many companies will be dealing with the implications of these actions on their business. While the situation continues to evolve and further information comes to light, set out below are some initial issues that companies may take into consideration to ensure business continuity and assess the potential impacts on their business.

EMPLOYEES

Many companies will be giving priority to repatriating members of staff impacted by the directives of Saudi Arabia, the UAE and Bahrain. Consider also the position of Egypt and Egyptian employees, which, at the time of writing, are not subject to equivalent orders. Other considerations might include whether employees of other nationalities should remain in Qatar given the travel restrictions, as well as:

- **Health and safety** – considering the duty to protect the health and safety of employees and ensuring a safe place of work.
- **Relocation plan** – planning how to cope with relocation of staff and potentially significant levels of employee absenteeism.
- **Policies** – considering if it is appropriate to permit homeworking, remote working or a period of unpaid leave in the circumstances or to implement other measures. Employers might also consider whether their emergency notification systems are up to date and effective.
- **Offences** – warning employees that recent media reports state that Qatari sympathisers in the UAE may face a jail term up to 15 years and a fine of not less than five hundred thousand dirhams. Avoid expressing political views on the situation.

IMPLICATIONS FOR CONTRACTS

Companies should consider reviewing their contracts to see what contractual rights and obligations they have in respect of the following issues, in particular if they may not be able to provide their usual services or if suppliers cannot deliver to them:

- **Failure to perform obligations** – companies should consider whether any failure to perform an obligation under the contract by it or its counterparties will be considered an event of default (and what notification requirements are required in respect of that default).
- **Force majeure** – if a party cannot perform, then consider whether relevant contracts include force majeure provisions that may excuse performance. Will these geopolitical events fall within the definition of force majeure under the relevant contract? Typically, contractual provisions require, as a minimum, that the event is beyond a party's reasonable control and prevents or delays the party from performing its obligations under the contract.
- **Notification and mitigation requirements** – in order to manage claims and preserve

rights, it will be important to check and comply with notification and information requirements generally, as well as in respect of force majeure provisions. Are there obligations to use "best endeavours" to mitigate the effects of a force majeure event? Can a work around be found to commercial problems to avoid the need for legal redress?

- **Material adverse change** – is there a material adverse change provision in the contract? What are the consequences if these events trigger that provision?
- **Suspension of performance and potential termination** – is a party prevented from performing the contract as a whole? What are the long-term effects? Is there a right to terminate for prolonged force majeure? Is there a right to relief under the governing law if one or more parties are unable to perform the obligations? • Licences and permits – consider the effect of these events on existing licenses and permits and respond accordingly.
- **Guarantees** – review and consider whether guarantees, indemnities or performance bonds might be called or be at risk of being called if obligations secured by them cannot be performed and respond accordingly. Prompt communication with counterparties may be critical.
- **Keep records** – maintain copies of critical correspondence and other communications to justify actions if a dispute arises later.
- **Approach to potential dispute resolution** – review contracts for provisions which may require certain matters to be discussed by executive officers prior to pursuing other dispute resolution methods such as arbitration or court proceedings.

CORPORATE GOVERNANCE IMPLICATIONS

Businesses operating through joint ventures with Qatari entities or nationals, be it for activities in Qatar or in any of the other involved states, may be considering the impact on their businesses of the following:

- **Joint Ventures and Shareholders Agreements** – provisions on the running of the business or projects (in the context of shortage in supply of goods or services) together with provisions relating to repatriation of profits or financing facilities, cross border business across the relevant countries, conditions regarding the composition of the board or senior management which may be affected by travel bans, authorised signatories provisions (e.g. board resolutions, powers of attorney for the operating of bank accounts) and particulars around physical meetings.
- **Asset Management and Funds** – although there is no official ban on cross border financial and asset management services (e.g. management of funds), the practical

issues may adversely affect normal business operations. The official positions of the financial regulatory authorities in the concerned jurisdictions have not yet been made public.

BANKING AND FINANCE

Both financiers and borrowers will be reviewing existing finance documents to assess the potential consequences of the current situation. Some key considerations will be:

- **Representations** – have any representations become untrue, or do any disclosures need to be made?
- **Undertakings** – is continuing compliance with undertakings possible? Practical issues may arise, for example, if an annual presentation is required, and the relevant personnel are unable to travel to the set location or if a construction schedule cannot be adhered to because of difficulties in obtaining equipment and materials.
- **Material Adverse Effect** – checking the drafting of this definition, and the associated operative provisions, to determine if they could be triggered.
- **Political/Economic risk** – if such an event of default is included in the finance documents, is it triggered by the current situation and its potential impact on the borrower's business?
- **Liquidity** – although at the time of writing there are no official rules or regulations impacting monetary flows, there are informal reports of some banks suspending on further lending and other financial transactions with Qatari banks. Companies should monitor to see if the GCC Central Banks issue circulars to clarify the position.
- **Trade finance** – logistical difficulties may affect trade finance transactions due to the closure of airspace, ports and land borders. There might also be practical considerations relating to letters of credit and bank guarantees depending on where they need to be presented for payment.

DETERMINE EXTENT OF INSURANCE COVER

Any entity with interests or assets in Qatar will be considering, as a priority, key steps needed to be taken to safeguard them as far as possible; for example managing perishable goods that are unable to clear customs. However, some losses may be unavoidable. If so, relevant actions will include:

- **Responsiveness** - identifying any insurance policies which could be responsive to these events, making sure that notifications are made to those insurers and that (so far as possible) all requirements under the policies are met. For example, there may be coverage for business interruption losses arising from the closure of borders (depending on the wording of the policy).
- **Bespoke cover** – considering any bespoke cover under political risk policies or political evacuation cover for individuals/employees.
- **Loss mitigation** - reviewing standard policies for steps to avoid losses.
- **Insurer consent** – checking the requirements for insurer's consent to any steps taken to extract property or personnel. Most policies will have quite strict due diligence clauses and it will be difficult to establish what may or may not have been possible by way of securing and protecting assets at a later date – contemporaneous evidence will be much more persuasive.

GENERAL RISK MANAGEMENT

In order to help manage the issues above, companies may consider adopting the following practices to help mitigate the effects of such instability on their business operations and dealings:

- **Business continuity** – reviewing the company's business continuity plan and establishing a centralised team to deal exclusively with the issues. Companies may consider including a representative from all relevant business functions (e.g. HR, finance, legal etc.) in the centralised team.
- **Communications plan** – clearly assigning communication responsibilities to manage the flow of information. Spokespeople might observe the fundamental rule of 'do no harm' and be mindful of potential future litigation and the future dealings with each of the countries involved.
- **Documentation protocol** – to provide a defence to any claims raised by contractual counterparties, by putting into place a document protocol to evidence due diligence in relation to corporate decision-making. Keeping an accurate and thorough record of any losses incurred as a result of these events to ensure that any future claims against counterparties for those losses are fully particularised.
- **Regulators** – co-operating with any relevant regulators in a proactive and measured

fashion. Consider monitoring news and other political commentary available.

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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