

Qatari Arbitration Reform Offers Modest Improvements

By **Caroline Simson**

Law360, New York (March 7, 2017, 2:23 PM EST) -- A new law enacted last month in Qatar modernizing the Arab nation's arbitration regime is being praised as a welcome development to encourage foreign investment in the country, but some practitioners still question whether the measure is actually a missed opportunity.

Qatari Law No 2 of 2017 – issuing the Arbitration Act in Civil and Commercial Matters was issued in mid-February and will apply to all new arbitrations initiated in the country after then, as well as those that are currently ongoing. The law has reforms in a number of areas, including new rules relating to the enforceability of arbitration agreements, and it adds clarity regarding the nullification and enforcement of arbitral awards.

It also authorizes the Qatar Court of Appeal or Qatar Financial Centre Court of First Instance to address all issues under the new law requiring the assistance of the Qatar courts, according to Clyde & Co. partner Laura Warren. Qatari Law No. 2 of 2017 is based on the model law issued by the United Nations Commission on International Trade Law, better known as the UNCITRAL model law, a widely respected and widely used model for countries with outdated or nonexistent arbitration laws.

Mayer Brown partner Raid Abu-Manneh, the global co-head of the firm's international arbitration group, praised the new law as a way to prompt additional growth of international arbitration in the Middle East and the Gulf, and therefore to encourage investors to do business in the region.

That's particularly important as the country gears up to host the World Cup in 2022, he said.

"It's a positive development," he told Law360 recently. "It's a good attempt to enact a modern framework, and it's a significant improvement from what there was in the past. There's no doubt about that."

He noted that the law is significant because it is separate from the country's civil procedural laws, an approach that's common in other countries with a more modern take on international arbitration largely based on the UNCITRAL model law. This means that Qatar has set out an extensive code dealing with arbitration, rather than having more limited articles doing the same thing — a step that shows Qatar is serious about having the right framework for arbitration, he said.

"Having a certain legal framework plays an important role when investors choose to invest in a particular country," he added.

And last month, the law was welcomed by Christopher Grout, the registrar of the Qatar International Court and Dispute Resolution Centre, who said soon after it was issued that the law would boost Qatar's prominence in the region as "the place" to arbitrate.

Others, like Shearman & Sterling LLP partner Alex Bevan, managing partner of the firm's Abu Dhabi office, also told Law360 recently that the new law is a much-needed replacement for defective and deficient laws in Qatar that previously dealt with arbitration. He pointed in particular to the fact that the new law changes a provision contained in the old law in which parties could appeal arbitral awards on the merits.

Now, such awards cannot be appealed on questions of fact or law — a positive development that will provide greater certainty to parties and keep sensitive matters relating to the nature of a dispute out of the local courts.

"It's certainly better than it was," he said of the new law.

Still, the law also contains several problematic "quirks," he said. For example, under the new law, parties must register their awards with the country's justice ministry within two weeks of the award being rendered. That's a tight deadline with no discernable purpose that is likely to lead to challenges from the losing party, he said.

Parties also are required to choose their arbitrators from a government-approved list, although some arbitrators who meet certain criteria, such as having a "good reputation," can be appointed in certain circumstances even if they are not on the list.

But that's still a provision that undermines a party's ability to choose their own arbitrator — one of the most positive aspects of arbitration — and could potentially lead to arbitrator challenges. And that's never a good thing, Bevan said.

The law also does little to clarify continuing questions into whether signatories to an agreement have the legal authority to do so, according to Warren.

"Interestingly, the legal capacity or authority of the signatory to the agreement frequently raised questions under the 'old' law and could continue to do so under the new one, which means that persons entering into agreements containing arbitration clauses should still ensure that they, and their counter-signatory, have sufficient authority to bind the parties to arbitration," she said.

In addition, Qatari government entities are not allowed to sign arbitration agreements with private entities unless the relevant provision is approved by the prime minister. While the measure is likely aimed at minimizing the government's exposure to potentially expensive investor state claims, such a provision is considered outmoded and not seen as a positive development from an arbitration law perspective, Bevan said.

While Bevan noted that these quirks are unlikely to drive investors away from Qatar, he expects that many will likely be looking to include arbitration provisions that do not call for arbitration seated in that country. And that means that Qatar's reputation in the region as a seat of arbitration is unlikely to improve when compared to more favorable and progressive jurisdictions in the region, such as the Abu Dhabi Global Market, a financial free zone located on Al Mariya Island in Abu Dhabi where authorities have enacted special rules creating a cloak of confidentiality around arbitral proceedings.

"I don't think this new law for Qatar really moves the needle," he said. "It improves Qatar's running, but it's still not even close to the top of the list ... It's a missed opportunity."

--Editing by Rebecca Flanagan and Emily Kokoll.

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