



DOHALAND

Arbitration and Dispute Resolution

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What is Arbitration?

- A private means of dispute resolution
- Rests on an agreement of the parties to arbitrate
- Final and binding resolution by an independent 3rd party or tribunal
- Most common procedure for international construction industry and some domestic construction industries.

Advantages (1)

- “Neutral” tribunal
 - Parties from different national, legal, business backgrounds
 - Reluctance to agree one party’s national courts
- Enforceability
 - 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards
 - 144 countries are signatories
 - Qatar became a signatory in 2003
 - Generally, enforcement of “foreign” awards easier than foreign court judgments
- Choose your tribunal
 - Genuine experts with track record

Advantages (2)

- Parties can choose the language of the Arbitration
 - Can be language of project documents
 - Avoids translating all documents
- Private
 - Hearings are private
 - Documents may be confidential
- Can be quicker
 - Exclude appeals
- Flexibility
 - Parties can choose “seat”
 - Parties can choose procedure

Disadvantages

- Cannot join other parties without agreement
- Tribunal's powers limited
 - Jurisdiction arguments
 - Enforcement requires court application
- Cost?
 - Pay for arbitrators and hearing room
 - On balance other factors outweigh

The Arbitration Agreement - Essentials

- In writing
- Identify the parties!
- Seat of arbitration
- Number of arbitrators
- Language of the arbitration
- Decide whether institutional or ad hoc
- Standard institution clauses
- If ad hoc, address specific issues arising on the applicable procedural law eg excluding appeals; time allowed for the award
- Within main agreement or after dispute arises

Ad hoc or Institutional (1)

AD Hoc

- Procedures and tribunal's powers as agreed; failing which as under the law of the arbitration seat.

Institutional

- Parties agree the rules of a specialist arbitration institution will apply
- Best known international institutions:
 - ICC (817 Requests in 2009)
 - LCIA (243 Requests in 2009 to Nov)
 - UNCITRAL

Ad hoc or Institutional (2)

- Qatar International Centre for Arbitration
- Institution's detailed rules deal with matters not specifically agreed -- appointment of tribunal, powers of the tribunal, procedure, award, costs etc
- Institution staff administer the process (except UNCITRAL)
- The rules supplement the arbitration law of the seat of the arbitration
- The courts of the seat of the arbitration have an overall supervisory jurisdiction – to ensure the process works (eg appoint or remove an arbitrator if all else fails)
- UNCITRAL does not administer or perform any function related to individual arbitration proceedings eg does not appoint arbitrators. In default of an agreed “appointing authority”, Secretary-General of the Permanent Court of Arbitration at the Hague designates the appointing authority.

The Procedure

- Determined by the law of the seat, the arbitration agreement, any agreed institutional rules, and the tribunal
- Commonly something like:
 - Request for arbitration
 - Answer
 - Appointment of tribunal (1 or 3)
 - Terms of Reference drawn up (ICC)
 - Statement of Claim document
 - Statement of Defence and Counterclaim document
 - Procedural hearings
 - Disclosure of documents (if not done)
 - Exchange of witness statements and experts reports
 - Hearing
 - Post-hearing submissions
 - Award

Can the award be Challenged?

- By the Court in the seat of the arbitration
- In Qatar, automatic right of appeal unless parties have explicitly excluded rights of appeal (Civil and Commercial Proceedings Law, Art 205)
- In Qatar grounds for challenge include:
 - No effective arbitration agreement (Art 207)
 - The dispute concerned a matter which could not be conciliated
 - Lack of capacity of a party
 - the award is contrary to public order
 - the award has not been deposited with the Court within 15 days
 - the award goes outside the scope of the arbitration agreement (Art 207(1))
 - an invalidity occurs in the award or in the proceedings effecting the award (207(4))



Enforcement of Award (1)

.Tribunal has no powers to enforce an award

- Apply to the Court in the country where you seek to enforce
- Enforcement will depend on law of place of enforcement
- 1958 New York Convention facilitates enforcement
- Foreign awards have been enforced in Qatar pre-2003 (no reciprocity requirement)
- No post 2003 instances of enforcement in Qatar found

Enforcement of Award (2)

1958 New York Convention Article V grounds for refusal to enforce (exhaustive):

- Lack of capacity
- Invalidity of arbitration agreement
- No proper notice of the arbitration proceedings or opportunity to present case;
- the award is beyond the scope of the submission to arbitration
- Irregular composition of tribunal or procedure not in accordance with arbitration agreement or the law of the seat
- Award not binding or has been set aside under the law of the seat
- the dispute is not capable of settlement by arbitration under the law of the country of enforcement
- Enforcement would be contrary to public policy in the country enforcement is sought

Not an appeal

Arbitration in Qatar – Qatari law

- Arbitration law is at Articles 190-210 of Law No 13 of 1990, the Civil and Commercial Proceedings Law
- In the past, not a popular option. Viewed as adding a layer, due to right of appeal. Some features arguably not sufficiently robust:
 - Automatic right of appeal (Art 205)
 - Wide right to annul/set aside the award (Art 207)
 - Award must be made within (if no other period agreed) 3 months. Court can extend the period or refer dispute to new arbitrators or decide the dispute itself (Art 197)
- More confidence in ability to enforce in Qatar an award made outside Qatar (1958 NYC)

Arbitration in Qatar - QICA

.Qatar International Centre for Arbitration (QICA)

- Established January 2007 by Qatar Chamber of Commerce and Industry
- Detailed Rules – apply if parties agree
- Appoints arbitrators – unless agreed otherwise, or “needed”, will be QICA accredited (published list) (Art 18)
- Arabic is the arbitration language unless agreed or ordered otherwise (Art 43)
- Appeals excluded (Article 34)
 - But N.B. losing party could apply to set aside an award
- Award must be made within 6 months unless parties agree or tribunal orders longer period

Arbitration in Qatar - QFC

- Qatar Financial Centre established in 2005 to enable businesses in financial services sector, insurance and associated professionals. Can be considered as a separate QFC jurisdiction with its own laws.
- Qatar Financial Centre Arbitration Regulations (Regulation No. 8 of 2005)
 - Made under Article 9 of the QFC law and apply “in the QFC”
“To the fullest extent permitted by the QFC Law, the laws, rules and regulations of the State concerning Arbitration shall not apply in the QFC.”
- A substitute arbitration law applies
- Under supervision of the QFC Civil and Commercial Court
- Parts 1 to 4 apply where the QFC is the seat of the arbitration
- Must be either a choice of QFC seat or a party established in the QFC
- Probably of limited relevance to the construction industry
- May be difficulties in enforcement outside Qatar under 1958 NYC

Other Methods of Dispute Resolution

- Mediation
 - Mediator assists parties to reach settlement
 - Mediator has no power to make a binding decision
 - May not resolve dispute
 - Quicker, cheaper, less formal
- Dispute Adjudication Boards
 - FIDIC first means of recourse – compulsory
 - Not acting as arbitrators
 - Decisions to be complied with until overturned by agreement or arbitration
 - Enforcement – by arbitration; 1958 NYC not applicable to DAB decision
 - Expense of standing board
- Expert Determination
 - Binding decision
 - Not an arbitration
 - Only suitable for simplest disputes (eg rent review; some commodity disputes)
 - Uncertain under Qatari law
 - Enforcement – contractual right; 1958 NYC not applicable.

THANK YOU