# ARBITRATION LAW IN QATAR: THE WAY FORWARD

**Jassim Mohammed A. A. Al-Obaidli**

A thesis submitted in partial fulfillment of
the requirements of the

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for the degree of Doctor of Philosophy

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# Abstract

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Qatar is among the fastest growing developing countries in all fields. Since the State of Qatar gained independence from the United Kingdom, the Qatari government has been focusing on the formation of state institutions to keep pace with global development. In 1971, Qatar released the first civil and commercial law. The country established the first step towards the separation of civil and commercial transactions of Islamic law. However, the ever-changing nature of business and global economy requires significant economic and societal changes. With the increase of foreign investors in Qatar, there had to be a law governing arbitration in contracts. Therefore, the government promulgated the arbitration clause in commercial contracts; the first code of civil and commercial procedure contains a chapter of the arbitration. However, the provisions of arbitration included in this law are not compatible with the UNCITRAL Model Law. Although there is a shortage in literature regarding arbitration in Qatar, several studies discussed issues related to arbitration in Qatar and called for the adoption of a new separate arbitration law in Qatar compatible with the UNCITRAL one. This prompted Qatar to work on a new draft law of arbitration, especially after the ratification of the New York Convention 1985 by Qatar. However, these studies did not cover other factors which affect arbitration; such as cultural attitude towards arbitration and issues affecting the practice of arbitration in Qatar.

Unlike previous studies regarding arbitration in Qatar, this thesis uses multi-methods to get an answer of the main question of the research, which is: "Will the new Arbitration Draft Law solve all the issues related to arbitration in Qatar, thereby attracting international companies to Qatar and its law for their arbitration?"

The thesis reviews the related literature in the first stage. Then it analyses interviews which were held with a number of arbitration stakeholders, the recent Qatari draft law of arbitration, the GCC unified arbitration draft law and the Qatar Financial Centre (QFC) draft law. After that it conducts a comparison between the current provisions of arbitration, the Qatari arbitration draft law and the GCC unified arbitration draft law in light of the UNCITRAL Model Law and the Egyptian Arbitration Law.

This multi-methods study results in recommendations which are listed in its conclusion. It is worth mentioning that both the Qatari arbitration draft law and the QFC draft law are considered for the first time in a research study. Also, the interviews which were held for the purpose of this research enrich the outcome as the participants were chosen from various categories of arbitration stakeholder, where some of them represent official entities; such as the Legislation Department of the Ministries Council and some of them are high ranking officials of these entities; such as the Minister of Justice.

Keywords: Arbitration in Qatar, arbitration in Middle East, civil and commercial law, civil and commercial affairs, arbitration centres, arbitration draft law, arbitration agreement, contracts, dispute resolution, QFC, QICCA, GCC Unified arbitration draft law,

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قال الله تعالى: (يرفع الله الذين آمنوا منكم والذين أوتوا العلم درجات، والله بما تعملون خبير) "المجادلة:11"

(Allah will raise those who have believed among you and those who were given knowledge, by degrees. And Allah is Acquainted with what you do.) [Al-Mujadalah:11, the Holy Qur'an].

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# External output

## Published peer reviewed papers

1. Jassim Al-Obaidli, "Concerns about the enforceability of arbitral awards in Qatar" (2014) 80 Arbitration 326-331.

http://login.westlaw.co.uk/maf/wluk/app/document?&srguid=i0ad69f8e0000015
2b9c943bd235d7ea2&docguid=I93E9B26011FA11E4A464FB74D7E933EB&hitgui
d=I93E9B26011FA11E4A464FB74D7E933EB&rank=3&spos=3&epos=3&td=12&c
rumb-action=append&context=46&resolvein=true

2. Al-Obaidli, J. (2015). The role of arbitration in completion the infrastructure projects in Qatar. The Universal Journal of Arbitration (Arabic Text), 28(October), 131–148.

## Peer reviewed conference abstracts

1. Al-Obaidli, J. (2014) The future of arbitration in Qatar.
   (Oral presentation at Social Legal Study Association Conference (SLSA14) at Robert Gordon University, UK).

2. Alobaidli, J. (2015) The role of arbitration in completion the infrastructure projects in Qatar.
   (Oral presentation at the 2nd forum of arbitration – Qatar University – Doha – Qatar).

# Table of Abbreviations

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| EU | European Union. |
| GDP | Gross domestic product. |
| GCAC | The Gulf Council Arbitration Centre. |
| QICCA | The Qatar International Centre for Conciliation and Arbitration. |
| QFC | Qatar Financial Centre. |
| GCC | The Gulf Council Countries. |
| UNCITRAL | United Nations Commission on International Trade Law. |
| NYC | New York Convention 1958. |
| ACR | Arbitration's Centres Representatives. |
| ESR | Education Sector Representative. |
| GSR | Governmental Sector Representatives. |
| LSP | The Lawyers Sector Participants. |
| LLF | Local Law Firms. |
| ILF | International Law Firms. |
| JLF | Joint venture Law Firms. |
| LSC | Representatives of Legal Department of Supreme Committee for Delivery & Legacy (the new name of Supreme Committee of Qatar 2022). |
| LCIA | The London Court of International Arbitration. |
| ICC | International Chamber of Commerce. |
| GCCAC | Gulf Countries Council's Commercial Arbitration Centre. |
| QICDR | Qatar International Court and Dispute Resolution. |
| CCP Code | Civil and Commercial Procedures Code. |
| QALCCA | The Draft of the Qatari Arbitration Law in Civil and Commercial Affairs. |
| UAL-GCC | The Draft of the Unified Arbitration Law for the GCC. |

## Table of Terminology:

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|---|---|
| Shari'a: | The Islamic Law. |
| GDP: | The monetary value of all the finished goods and services produced within a country's borders in a specific time period. |
| Competence de la competence: | A central principle of international commercial arbitration, where the tribunal has the competence to decide its own jurisdiction. |
| Al Shura Council: | The Qatari Parliament. |
| Waqf: | An inalienable religious endowment in Islamic law, typically donating a building or plot of land or even cash for Muslim religious or charitable. |
| Hudood: | An Islamic concept that means punishments under Shariah, which are mandated and fixed by God, based on the Quran and Sunnah. |
| Qisas: | A certain occasions of retaliation as a punishment in a private dispute between two parties. |
| Qadha Alsalfah: | Customary judiciary, which was related to Pearl Diving issues in Qatar before Oil discovery. |
| The Hanbali School of Thought: | It is one of the main four Islamic Sunnie Jurisprudence school, which was created by Imam Ahmad Bin Hanbal (780-855AD) |
| Sulh: | A word comes from *Musalaha*, which means reconciliation. |
| Shiekh: | The chief of Tribe in Arabic societies. |
| Hakam: | The arbitrator. |
| The Black Stone: | The eastern cornerstone of the Ka'ba. |
| Al-Ka'ba: | A building located in the centre of Al-Masjid Al-Haram in Makkah the most sacred mosque. |

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|---|---|
| Bab-Al-salam Gate: | Gate of Peace is one of the gates at Al-Masjid Al-Haram. |
| Qur'an: | Or the Holy Qur'an is the sacred book of Muslims and the last heavenly book. |
| Sunnah: | The way of life prescribed as normative in Islam, based on the teaching and practices of Prophet Muhammad and on exegesis of the Qur'an. |
| Hadith: | A traditional account of things said or done by Prophet Mohammad or his companions. |
| Al-Ijmaa': | The consensus or agreement of the Muslim scholars basically on religious issues. |
| Al-Qiyas: | The extension of a Shari'a value from an original case, which is ruled by the Qr'an or Sunnah, to a new case to extend the same ruling to it, because the latter has the same effective cause as the former. |
| Hukum: | Judgment. |
| Qarar: | Award. |
| Black Paper: | Draft Law. |

# Table of Cases

- Petroleum Development (Trucial Coast) Ltd. v. Sheikh of Abu Dhabi, 18 International Law Reports I.L.R. 149 (1953).
- Ruller of Qatar Vs. International Marine Oil Co. Ltd. (20 International Law Report 534 (1953).
- Saudi Arabia v. Arabian American Oil Co. (Aramco), 27 I.L.R. 117, (ad hoc arbitration August 23, 1958).
- Qatari Court of Appeal, judgment No.: 145/94, dated on: 1/4/1997.
- Qatari Court of Appeal, judgment No.5/97 dated on 25/11/1997.
- Qatari Court of Appeal, judgment No.: 170+171/99 dated on 4/12/1999.

# List of Appendices

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# Chapter one: Introduction

This chapter will discuss the topic of the thesis by providing a brief background of the study. It will illustrate the scope of the thesis, reasons for selecting Qatar as a thesis object, why the researcher made the comparison in light of the Egyptian Arbitration Law and the importance of this research. The research objectives and questions will be set out in this chapter. In addition, the research methodology and the limitations of the study will be explained. Finally, the structure of the current thesis will be outlined.

## 1.1. Background of the Study

### 1.1.1. Historical Background of Arbitration in Qatar

Qatar is an independent state situated in the centre of the west coast of the Arabian Gulf. Its land and sea boundary is with Saudi Arabia, and sea borders are with Bahrain, the UAE and Iran. Qatar became independent from a British protectorate on 3 September 1971. As a result, (the parties under) the Qatari-British parties terminated their contracts to the treaty of 1916 (Amiri Diwan 2012), according to which Qatar was under the protection of Britain and agreed that the ruler of Qatar would have no dealings with other foreign powers without express British permission (Luscombe, 2015).

Before independence, the judiciary in Qatar was confined to the religious judiciary, which was partially derived from the provisions of Islamic law. The legislature derived the Common Judiciary from the elimination of customary norms and traditions relating to the affairs of pearl diving. Similarly, the jurisdiction of the Court of Joint, which consisted of the Ruler of Qatar or his representative and the British Mayor or his representative, had several conflicts arising from Britons and other foreigners; a British judge controlled the court. This is because, at that time, the Government of Qatar did not have authority over foreign residents. However, the government changed this situation after

independence for two reasons: First, the government enacted the first law that controlled the Court of Justice in 1971. The law was based on several legal principles: the first principle is the principle of litigation on the two degrees. The law stated that the Judicial Courts shall consist of: (a) the Criminal Court, which shall consist of the Minor Criminal Court and the Major Criminal Court; (b) the Civil Court, which shall consist of the Minor Civil Court and the Major Civil Court; (c) the Labour Court; and (d) the Court of Appeal. The second of these illustrates the principle of individual judge, as the law stated that each of the Minor Criminal Court and the Minor Civil Court shall consist of a sole judge. Finally, the third principle is that of multi judges as it stated that the Major Criminal Court shall be formed of a president and two of the judges of Minor Criminal Court and the Minor Civil Court. The Major Civil Court shall be formed of three judges. The Court of Appeal shall be formed of the president of the Judicial Courts or one of the deputies of the president of the Court of Appeal, as a president of the Court, and two of the deputies and judges of the Court of Appeal (Law(13), 1971). The law was designed to make up a diverse civil and criminal justice system as well as the legitimate judiciary, which has been retained by the Qatari legislator in this system because of its major importance. Secondly and most importantly is the significant progress of the Qatari government towards full sovereignty and the enforcement of its laws on all its residents Arabs and foreigners, including Britons (Bayat 2009). It should be noted that there was no reference to arbitration in this law.

Further, because of the continuing economic boom, the legislature in Qatar has continued to expand and deepen its laws. However, Egyptian and French laws are still the main sources of Qatari law, while "Sharia", the Islamic Law, applies to aspects of family, inheritance and some criminal laws (Sharar 2011). In 1990, as a result of a continuously booming Qatari economy, and due to the fact that arbitration has already been agreed as a method of resolution of issues arising from commercial contracts, especially those containing foreign parties, the government issued and passed the Civil and Commercial Procedure Code forming a huge development in Qatari law in comparison with previous stages. This development resulted from the adoption of Chapter 13 of this Code, which is currently valid in Qatar, as the first law that deals with arbitration (Al-Emadi 2011).

There are many flaws within the 1990 Code, and these can be an obstacle to foreign investment and international trade in Qatar. These flaws are attributable to two main factors: Firstly, the law derived its clauses from the old Egyptian Civil and Commercial Procedure Law No.13 of 1968, which had many conflicting issues (Al-Emadi 2011). These issues can be noticed from the many revisions of this law and the changes which have appeared in the legal system in Egypt.

Secondly, although some specific provisions for arbitration have been included in the current Commercial and Civil Procedure Code, they are outdated and not compatible with international standards, thus threatening foreign investment and international trade in Qatar (Sharar 2011).

Currently, Qatar's constant positive development has strongly attracted the interest of speculators, investors, establishments and non-sovereign organisations. Studying the basic economic data for Qatar can prove this growth in interest (Anani 2009).[1] Consequently, Qatar is one of the fastest growing economies in the world and had a higher per capita income than countries in the EU in 2007. Surprisingly, real growth of Qatar's GDP reached 7.8% in 2007. Moreover, the state has taken remarkable steps to diversify its economy and move away from its dependency on hydrocarbon towards a knowledge-based economy (Anani 2009). Furthermore, on 2 December 2010, Qatar won the bid to host the 2022 FIFA World Cup. As a developing country, this requires Qatar to invest in huge infrastructure projects, thus resulting in more and enhanced international contracts. These improvements and circumstances have created a huge burden on litigation and Qatari Courts because of the volume and the number of complications which arise between the contracting parties.

[1] Qatar's Gross Domestic Product (GDP) reached 68.8 billion US Dollars and its exports reached 33.3 billion US Dollars in 2007. In addition, it has the third largest Liquefied Natural Gas (LNG) reserve in the world (15% of the world's reserves).

### 1.1.2. Advantages of Arbitration as a Dispute Resolution Mechanism in Qatar

While concluding a contract, parties in an international contract should think about how the potential disputes should be resolved in future by selecting one of the methods of dispute resolution. Primarily, international business includes vast amounts of investment and numbers of international participants (Clarkson *et al* 2006). Even though there are those who refer to litigation, most contracting parties prefer to refer to arbitration to solve disputes which might arise between them in relation to contracts. This preference is due to several reasons (Clarkson *et al* 2006). The first reason is the speed of the process and its flexibility, making it easy to resolve disputes more quickly by arbitration than by litigation (Drahozal 2010). In addition, arbitration has greater flexibility than litigation (Roberts 2004).

Neutrality is the second reason. Where the parties reside in different countries with different jurisdictions, it may be that each party is reluctant to submit the resolution to the national court of the other party. Therefore, the parties can send the resolution of their dispute to the judges of their own choice (Roberts 2004).

The third reason is the confidentiality of arbitration for those parties who wish to resolve disputes privately. Unlike litigation, arbitration hearings are not open and the pleadings are not available to the public (Drahozal 2010).

The fourth reason is cost. Pursuant to the speed and flexibility of arbitration, the cost of arbitration is usually lower than the cost of litigation. However, it might be costly sometimes (Mazirow 2008).

Expertise is the fifth reason. The parties to arbitration can choose an arbitrator or an arbitral panel with respective technical or commercial expertise in the subject matter of a dispute. Therefore, with arbitration, the accuracy of the result will be high (Drahozal 2010).

The sixth reason is the finality of the decision. The arbitral award is generally final and binding, whereas the judgment at first instance in litigation can generally be appealed (Mazirow 2008).

Furthermore, the most important reason that parties prefer arbitration instead of litigation is the enforceability of arbitral awards. There are various international principles governing and effecting the reciprocal recognition and enforcement of arbitral awards made in a foreign country. The most important of these is the New York Convention of 1958, to which 143 countries had acceded by 2008 (Roberts 2004). International commercial arbitration was first applicable at the beginning of the last century. Initially, it relied on domestic laws, which varied appreciably from each other. Therefore, the need of an international arbitration system was required. The non-enforceability of arbitral articles regarding potential disagreements to arbitration was another major problem (United Nations 2003). Consequently, the Geneva Protocol on Arbitration Clauses of 1923 served as a first step. After that, concerned legislators devised the Geneva Convention on the Execution of Foreign Awards of 1927, which governed the enforcement of arbitral awards rendered in accordance with the Geneva Protocol. However, both conventions failed to achieve the aspirations of the international commercial community. Therefore, over 100 countries developed and adopted the New York Convention in 1958 (United Nations 2003).

The New York Convention is currently the essential and most widely used convention in relation to arbitral awards. This is mainly because most of the major trading nations of the world have registered as parties to it, with the result that any arbitral award issued in any member State of the Convention can be easily enforced in any other member State according to the provisions of the convention (143 countries by 2008) (Redfern & Hunter 2004). Qatar ratified its accession in 2003 (*Emiri Decree No.: 29 of 2003*). The current number of the convention's parties according to its official web site is 156 states (UNCITRAL, 2016).

According to the foregoing and due to the development of arbitration all over the world, arbitration is the preferred alternative dispute resolution in Qatar.

### 1.1.3. An overview of previous literature

In light of the issues and disadvantages of current law, especially, with the economic boom and after ratifying the New York Convention, the Qatari legislature decided to draft a new Arbitration Bill. This step came after many calls to update the provisions of arbitration and to adopt a new separate arbitration law in Qatar. For example, Dr. Talal Al-Emadi examined some central issues referring to current arbitration law, including the recognition and enforcement of foreign arbitral awards. Following this he concluded that Qatar should learn from other countries' experience in implementing the provisions of Model Law (Al-Emadi 2011). Another example is the research of Dr. Zain Al Abdin Ahmed Sharar, titled 'Does Qatar Need to Reform its Arbitration Law and Adopting the UNCITRAL Model Law for Arbitration? A Comparative Analysis'. Dr. Sharar examined some of the existing arbitration provisions and highlighted the major deficiencies in the Qatari arbitration law. He found that the Qatari arbitration provision lacked clarity and direction; thus he recommended that Qatar should reform its commercial legislation with respect to arbitration in line with international standards. For example, with regard to arbitration clauses and arbitration agreements, he recommended that the amendment should expand the interpretation of 'writing requirement' in line with the interpretation of the writing requirement in the UNCITRAL Model Law (Sharar 2011). Regarding the scope of the arbitration clause, he recommended that the particular types of disputes which cannot be arbitrated should be identified by the authorities, who should also identify matters that cannot be treated by arbitration. In matters related to legal capacity, he recommended that the clarification and identification of a party's capacity, in relation to arbitration should be more detailed. With regard to the autonomy of the arbitration agreement, he recommended that the amendment adopts and embodies the principles of separability, autonomy or independence, and the principle of *competence de la competence*. With regard to the finality of the arbitration award, he recommended that the amendment should revoke the provision towards appeals against awards and keep only the grounds of setting aside arbitral award.

In addition, Ahmed Anani, Head of Altamimi & Company Advocates & Legal Consultants, conducted a questionnaire regarding arbitration in Qatar at that

time. He divided the questionnaire into six parts consisting of 82 questions. In the conclusion to his research, he identified possible advantages and disadvantages of choosing Qatar as the basis of an international commercial arbitration. In his opinion, the disadvantages are as follows:

- Qatar does not have a separate law for arbitration derived from the UNCITRAL Model Law. In addition, the current Arbitration Regulations are not compatible with the International Arbitration Standards.
- Qatari Courts may face many difficulties in dealing with issues related to arbitrations. This is because of the weakness of arbitration culture of Qatari judges, lawyers and experts. For example, lawyers and experts have experience in procedures of courts, while few of them have experience in arbitration procedures, which are substantially different from those adopted by courts.
- Issues related to language: most international commercial arbitrations are written in English. This may cause some translation problems for Qatari judges, lawyers and experts. In addition, the certified translation bureaus do not offer quality translations with respect to legal expressions and terms. Mostly, translations of laws and memoranda are faulty and do not express the correct meaning. Laws in force in Qatar have no official translation and all used translations are of poor quality.

On the other hand, the advantages of choosing Qatar as the basis of an international commercial arbitration are as follows:

- The independence and neutrality of law in the State of Qatar: Qatar lacks the authority that binds the judicial rulings. Moreover, corruption and bribery are non-existent in the judiciary in Qatar.
- Several laws promulgated in Qatar lately encourage arbitration as an effective way of settling disputes, in addition to the role of arbitration in attracting foreign investments. For example, Law No. 13 of 2000 controls foreign economic investment in Qatar. Some investment incentives appear in Article 11, which allows agreements

on settlement of disputes between a non-Qatari investor and others by means of a domestic or foreign arbitral tribunal.

However, Anani's research does not cover the procedures and awards of the Qatar International Centre for Commercial Arbitration nor the enforcement of foreign awards enforced in Qatari Courts (Anani 2008).

Likewise, Norton Rose Group has presented several topics about arbitration in Qatar in its international arbitration manual – *Qatar*. The topics include: (1) Qatar's accession to the Gulf Council Arbitration Centre (GCAC); (2) the establishment of the Qatar International Centre for Conciliation and Arbitration (QICCA); (3) Chapter 13 of the Code of Civil and Commercial Procedure of 1990; (4) the ratifying of the Convention of New York; and (5) Qatar Financial Centre. Additionally, the study included a comparison between the Qatar International Centre for Commercial Arbitration and Qatar Financial Centre. This comparison dealt with the act of regulating arbitration proceedings, the available rules, supervision of arbitrators and their awards, the speed of setting up a tribunal, the right to challenge the appointment of an arbitrator and the enforceability of an arbitration award. The most important results of the above-mentioned comparison are as follows:

- The Code of Civil and Commercial Procedure of 1990 does not concur with the UNCITRAL Model Law, while the QFC Arbitration Regulations derives from the UNCITRAL Model Law with various additions.
- Even though Qatar is a party of the New York Convention, the New York Convention cannot be acceded by the Qatar Financial Centre since (the Qatar Financial Centre) it is not a state (Norton 2008).

### 1.1.4. Suggested solutions

As indicated by the above research, the State of Qatar should adopt the UNCITRAL Model Law on International Commercial Arbitration to suit the Qatari context; this is what the Qatari legislature should work on. However, the need to improve the arbitration bodies is also required. Even though most of these studies discussed the issues related to the arbitration law and institutions in Qatar, they recommended the adoption of the UNCITRAL Model Law as a

solution. This is a simplistic solution and relates only to the arbitration regulations and ignores the importance of the role of the institutions of arbitration in Qatar, which are no less important than the law that regulates the arbitration. Especially when it is obvious that the region's states are proving strong competition for Qatar in attracting disputing parties to arbitrate in their arbitration centres and pulling the rug from under Qatar's feet. For example, Dubai, which is the second largest Emirate of the UAE, created the Dubai International Arbitration Centre (DIAC) in 2004. Further, in 2008 a joint venture arbitration centre between Dubai International Financial Centre (DIFC) and the London Court of International Arbitration (LCIA) was launched in the DIFC under the name of the DIFC-LCIA Arbitration Centre (Blanke, 2009). The Kingdom of Bahrain is another example of a competitor for Qatar in the arbitration field. It created the world's first arbitration free zone named the Bahrain Chamber for Dispute Resolution (BCDR) in 2009. This chamber has been created in collaboration with the American Arbitration Association (AAA) under the name of BCDR-AAA (Karrar & Lewsley, 2011).

## 1.2. The Scope and Aim of the Thesis

The main purpose of the current study is to examine the current arbitration laws and practice in Qatar and determine the issues which affect the practice of arbitration in Qatar. It aims to present appropriate methods of enhancing arbitration legislations, bodies and practice in Qatar to match the International Standards, thus keeping up with the speed of the economic boom in Qatar. This study seeks to demonstrate whether the issues mentioned in previous literature are only theoretical or whether they exist in reality. Then, if it finds that they do really exist, it will try to find appropriate solutions for them. It will examine the current legislation of arbitration in Qatar, the proposed drafts of arbitration law and the practice of arbitration in Qatar. These include arbitration judgments and the decisions of the Qatari Courts in order to recognise and enforce them. The culture and background of Qatari society as a factor affecting the practice of arbitration will also be examined.

This research will make a comparison between the current provisions and the proposed drafts in light of the UNCITRAL Model Law and the Egyptian Arbitration Law. At the end of the study, proposed recommendations will be made.
In support of the above-mentioned aim, the current study will seek to target its objectives by answering a list of questions, which will lead to answer the main question of the research, namely: Will the new Arbitration Draft Law solve all issues related to arbitration in Qatar? And will this, thereby, attract international companies to Qatar and its law for their arbitration?

### 1.2.1. Research Objectives

- Determine the importance of arbitration within the context of International Contracts, and why the arbitration clause should be included in such contracts (advantages of arbitration).
- Provide a critical analysis of the current regulations of arbitration in Qatar and compare them with the new draft. This is to examine if there is need for a new arbitration law and to determine whether the new draft covers all the issues or not.
- Provide a critical assessment of the role of Qatar International Centre for Conciliation and Arbitration, Qatar Financial Centre and its Arbitration Centre. In particular, the research will strive to assess whether these institutions support arbitration in Qatar or not.
- Finally, make appropriate recommendations on the study based on the findings drawn from critical analysis, assessment and appraisal of relevant issues.

### 1.2.2. Research Questions

1. To what extent do the differences in cultures and laws between the local and international organisations affect commercial contracts?

2. Do local companies prefer local law and international companies prefer English, American or international law to regulate their contracts?
3. What role does arbitration play in finding a compatible foundation law for multilateral international contracts?
4. Why are the current regulations of arbitration in Qatar inefficient?
5. Does the new draft of Arbitration Law cover all issues? If not, what are the criticisms that can be directed towards it? What are the best ways of avoiding and/or solving such criticisms and issues?
6. To what extent is the separation of Qatar Financial Centre judgment system from the Qatari judgment system efficient? What are the criticisms that can be made about this separation?
7. To what extent is Qatar International Centre for Conciliation and Arbitration successful? What are the issues affecting its success?
8. What are the procedures and methods used to make the arbitral awards of Qatar International Centre for Conciliation and Arbitration binding and enforceable in Qatari and foreign courts?
9. What are the difficulties that face arbitration when dealing with GCC laws, in particular, Islamic Law, and how to avoid such difficulties?

## 1.3. The Importance of This Research

The existing research focuses on deficiencies in the existing arbitration code. Unlike previous research, this work will examine the new draft code and suggest improvements to arbitration institutions.

- The importance of this research is that it comes after more than twenty years since the first adoption of arbitration in Qatar in 1990, after ten years of ratification of Qatar to the New York Convention and a sufficient period of practising arbitration.
- What is more, it comes during the time that new Bill of Arbitration Law has been drafted, which can propose amendments.

- Also it comes prior to the World Cup 2022, which will be held in Qatar, as mentioned previously, and the huge numbers of commercial contracts resulting from it.
- It Identifies the weakness and issues of the arbitration institutions in Qatar and recommends a solution for them
- Improvements to the arbitration culture in Qatar will make the use of arbitration more acceptable there, especially for Qatari judges, lawyers and experts.
- The integration of the UNCITRAL Model Law with the new draft of Arbitration Law to match international standards of arbitration will further encourage the use of arbitration in Qatar by international business.
- The interviews, which were held with significant participants of several categories of the arbitration stakeholders in Qatar including the Minister and the Undersecretary of Justice of the State of Qatar, will enrich the research as the information derived from them is authoritative and unique.
- The comparison between arbitration in Qatar and arbitration in other jurisdictions will help to identify the weakness in arbitration and suggest a solution.

Therefore, in addition to the current arbitration provisions, this research will discuss several aspects of arbitration in Qatar. In particular, issues related to: (1) Qatar International Centre for Conciliation and Arbitration; (2) Qatar Financial Centre and its Arbitration Centre; and (3) the new draft law of arbitration in comparison to the UNCITRAL Model Law and the Egyptian arbitration law, and whether the Qatari legislator has avoided defects in the current law. At the end of this research, there will be recommendations to improve arbitration in Qatar to match the global standard and be compatible with the country’s development and the growth.

## 1.4. Why the Comparison is Being Done in Light of Egyptian Arbitration Law

Qatar, like most Arab States, adopted its laws from Egyptian Laws. Therefore, the Civil and Commercial Code, which includes the current provisions of arbitration, is based on the previous Egyptian Civil and Commercial Procedures Code, Law No.13 of 1968 (Maita, 2013). In addition, the early versions of the Qatari Arbitration Law in Civil and Commercial Affairs Draft and the GCC Unified Arbitration Draft Law are copied almost exactly from the current Egyptian Arbitration Law. Therefore, the Egyptian law is a suitable comparator.

## 1.5. Research Methodology

The current study is qualitative research, divided into three phases: doctrinal study, empirical study and comparative study. Each phase uses different data collection methods: the doctrinal study is a library-based study, while the empirical study is based on semi-structured and structured interviews. The researcher interviewed 15 participants from various categories of arbitration stakeholders in Qatar. Among the interviewees were the Minister of Justice of Qatar, the Undersecretary of the Ministry of Justice in Qatar, the former CEO of the Qatar Financial Centre (who was the current one during the interview), the Current CEO of the Qatar International Court and Dispute Resolution Centre and the current General Secretary of the Qatar International Centre of Conciliation and Arbitration. The third phase contains a comparison between the draft laws and the current arbitration provisions in light of the UNCITRAL Model Law and Egyptian Arbitration Law in addition to referring to other jurisdictions and laws in some points. These three phases will be discussed in more detail in the methodology chapter.

## 1.6. Limitations of the Study

One significant issue to point out is that the participants of the study did not include judges. This resulted from political issues, as the researcher could not get a permit from contacted judges to have a formal interview.

Another consequential issue value to be highlighted is that the participants did not include business parties. The first reason behind this issue is that the time limit of the research and the proposed time for the interviews were very restricted (the proposed time for the interviews was three months; however, due to several issues, which will be mentioned in the methodology, it was extended to seven months). The other reason, which is based on the first one, that the business' parties are divided into several categories, such as local, international, governmental and foreign, and an interview with at least one from each category was required to avoid bias. Contacting participants and establishing relationships took extra time. Therefore, the researcher counted the interviews with lawyers as both lawyers and representatives of the business parties, since the lawyers are legal agents of business parties.

One more significant issue is that the participants did not include females. This is due to the fact that governmental positions, which were those proposed to be interviewed, were not occupied by females. Moreover, with regard to the other categories of participants, it is easier for a male to contact other males on account of cultural issues.

The last significant issue to be highlighted consists of two parts: the first one is that the comparison in this research does not contain cases as examples. This is because the comparison relies on draft laws, which have not been practised in reality yet. The second one is that the research does not contain statistics about foreign arbitral awards. This is because there is no official source of such statistics provided in Qatar.

## 1.7. The Research Structure

The first chapter of this thesis has briefly introduced an overall view of the research. It has provided a background. The scope and the importance of the study have been illustrated. The research methodology has been demonstrated in brief terms. Finally, the structure of the thesis has been determined. This research is concerned with arbitration in Qatar; in fact, arbitration runs parallel to litigation. In other words, arbitration is an alternative way of litigation. This requires us to allocate a chapter to describe the judicial system in Qatar and its development through its historical stages until the current situation. Furthermore, in line with all Middle Eastern Arab countries, the Constitution of Qatar confirmed that Islam is the official religion of the state of Qatar. Therefore, it is important and constructive to touch on the influence of Shari'a Law in Qatar and its judicial system.

In order to have a comprehensive and critical analysis of the Qatari judicial system, the legal system of the State of Qatar should be examined. Therefore, the second chapter deals with the Qatari Constitution, the nature of the Qatari legal system, the sources of Qatari law and the mechanism of law issuance. Moreover, it touches on the Legislative Council, the Council of Ministers, the Judicial Council and the courts.

The third chapter deals with arbitration in Qatar from the early stages to the current situation.

The fourth chapter details the methodology of the current research, including the research aim, objectives, questions and concepts, hypotheses, research purpose, research design, theories and strategy, research methods and data collection, analysis process, difficulties facing the researcher and, finally, the research outcomes.

While the findings of the interviews are described and analysed in the fifth chapter, the sixth chapter includes the findings of the black papers in addition to an analysis of the QFC Draft Law.

The seventh chapter is devoted to a comparison of the black papers.

Chapter eight is dedicated to a discussion of the research analysis and comparison. Finally, the ninth chapter includes the conclusion and recommendations.

# Chapter two: The Qatari Judicial System

## 2.1 Introduction

The main research topic is arbitration in Qatar, and since arbitration is an alternative to litigation, a brief study of the judicial system in Qatar and the evolution of the judiciary through history down to the present are required. This will allow the reader to become familiar with the legal system in Qatar. Research on the Qatari judicial system has shown that its evolution has been linked to the evolution of the executive organ of the state. Both have passed through various historical stages of development, although the state of Qatar became independent only on 3 September 1971.

In this chapter, the development of the judiciary is divided into different historical stages, and the most important changes in each stage are studied. After briefly presenting Qatar's historical background, this chapter will address the Qatari legal system from its early stages through to the present, the sources of the Qatari legal system, the permanent constitution and the three branches of authority: legislative, executive and judicial. Next, it will focus on the stages through which the Qatari judicial system has passed: the pre-independence basis of the judiciary in simple communities before the discovery of oil; the expansion of judicatory concept during the development of Qatari society as a result of the discovery of oil, and the post-independence structure of the judiciary and its evolution into its current components. This chapter will also examine the sources of the Judicial Authority Law. The formation of the judiciary according to the older law of the courts of justice and the new structure of the courts in accordance with Judiciary Law and its complementary laws will be briefly mentioned. Finally, this introductory chapter will conclude with a summary of the content.

### 2.1.1 Historical background of Qatar

As previously mentioned, Qatar is a peninsula on the west coast of the Arabian Gulf. It has maritime and land borders with Saudi Arabia and a maritime border with Bahrain, the United Arab Emirates and Iran. The official religion is Islam, and Arabic is the official language, while English is widely spoken.

The Al Thani family holds the reins of power in the State of Qatar. The family name derives from Thani, the father of Sheikh Mohammed bin Thani, who was the first governor of the Qatar Peninsula in the mid-nineteenth century (Diwan 2012).

The Qatari peninsula has been inhabited since 4000 BC. Qatar played an important role during the Islamic conquests by providing the first naval fleet to transport Islamic armies. Qatar experienced an economic boom during the Abbasid state, approximately the 14th century AD. The area has participated in major political events, such as the rule of the Portuguese and entry under the banner of the Ottoman Empire into the First World War, in which the British victory defeated the Turks and imposed their influence over the region, including Qatar (Ministry of Foreign Affairs 2013). Like other Arab countries, Qatar was under Ottoman rule and its governor was considered a representative of the Ottoman Sultan. Ottoman influence began to slowly weaken as the British encircled the Ottoman presence in the region. In the meantime, the First World War broke out and concluded with Britain’s victory over the Turks, which led to the end of Ottoman influence. Thus, the British became sovereign over the entire region, not only Qatar (Bayat 2009). Qatar gained independence on 3 September 1971 through the Treaty of Friendship between the State of Qatar and the United Kingdom (Diwan 2012).

## 2.2 Qatari legal system

Qatar's first experience of operating an official legal system came in 1970 when, in preparation for independence, the first basic system of governance was issued. Since then, the legal system has passed through several stages. After Qatar became an independent state on 3 September 1971, the constitution was amended in 1972 to reflect its new requirements and responsibilities (Ministry of Foreign Affairs 2013).

The legislative amendments to the Amended Provisional Constitution updated provisions relating to executive authority and succession rule based on the new constitutional situation in the country. In addition, laws establishing the judiciary and governing civil and commercial transactions helped build State agencies and lay the foundations of state institutions. This measured defined parameters and the objectives of state policies as well as the country's Gulf, Arab and Islamic affiliations (Ministry of Foreign Affairs 2013).

Qatar moved into a new stage in modern history when His Highness, Sheikh Hamad bin Khalifa Al Thani, the Emir of Qatar at that time, issued Emiri Decree No. 11 of 1999 on 13 July 1999. This decree established a committee to prepare a permanent constitution. In a speech delivered by the Emir himself, he explained the importance of the constitution. It was a basic document, stipulating the guiding principles of state policy, organisation of authorities, the governing system of the state and also rights and duties. In addition, the Emir asserted the need to expand popular participation through an elected parliament. Moreover, the Emir set forth the basic features of the upcoming Permanent Constitution of Qatar. It must be built on identification with the Gulf, Arab and Islamic world and on Arabian traditions and the principles of the Islamic religion (Ministry of Foreign Affairs 2013).

The constitutional committee was named the Permanent Constitution Committee and consisted of a chairman, vice chairman and thirty other members. The Emiri Decree ordered the committee to prepare a draft permanent constitution for the country within no more than 3 years and to report every six months to the Emir on the results of their work. At the end of the process, the entire project and

recommendations should be submitted to the Emir (Ministry of Foreign Affairs 2013).

On 2 July 2002, a draft of the permanent Constitution was submitted to the Emir. The Constitution contains five chapters and 150 articles. It provides for the establishment of an elected parliament called the Shura Council. Two-thirds of the Parliament members are elected by a free and direct vote, while the remaining third are appointed. The Parliament will have many duties, such as creating legislation and adopting the general budget (Ministry of Foreign Affairs 2013).

### 2.2.1. Referendum on the constitution

Establishing the principles of popular participation and democracy, the new constitution was put to the ballot box in a popular referendum on 29 April 2003. Those qualified to cast votes in the referendum were naturalised Qatari citizens who were at least 18 years old by 29 April. The proposed constitution was approved by 68,987 votes, or 96.6% of votes cast, while 2,145 voted against approval, and 274 votes were invalid (Ministry of Foreign Affairs 2013).

On 8 June 2004, Sheikh Hamad issued the Permanent Constitution of the State of Qatar. The first of five parts of the Constitution deals with the state and the system of governance, while the second states the fundamental pillars of society. The third part sets out the rights and duties of public, the fourth part regulates the authorities, and the fifth part consists of final provisions (Ministry of Foreign Affairs 2013).

### 2.2.2. Sources of the Qatari legal system

The first article of the Constitution points out that Qatar is an Arabic state and that its religion is Islam and so Shari’a, or Islamic law, is a main source of its legislation. The government system is a democracy and the people of Qatar are

part of the Arabic nation. In addition, Article Six requires that the State respects international treaties and conventions and works to implement all the agreements and international conventions and treaties to which it is a party (Constitution, 2004).

The Constitution clearly states that Shari'a is a main source and not the main source of law. This language leads to the conclusion that it is not the only legal source. Based on the texts of those two articles, the sources of the Qatari legal system, in addition to Shari'a, are the international treaties and conventions which Qatar has signed, democratic principles, other Arabic countries' law and any other legislation from other states those which do not conflict with Qatar's public policies (Constitution, 2004).

### 2.2.3. Constitutional powers

The first chapter of the fourth part of the Constitution organises the authorities. Article 59 states that the people of Qatar are the source of authority. They exercise their authority in accordance with the provisions of the Constitution, while, according to Article 60, the system of government is based on the separation of powers with their consent. Articles 61, 62 and 63, respectively, outline that Al Shura Council, or the Qatari Parliament, is the legislative authority, while the Emir serves as the executive authority with the assistance of the Council of Ministers as specified in the Constitution. The judicial authority lies in the courts, which issue judgments in the name of the Emir (Abou El Farag, 2014). The second chapter of part four, which extends from Article 64 to Article 75, explains the function and missions of the Emir (Constitution, 2004).

#### 2.2.3.1. Legislative authority

In the third chapter of part four, Articles 76 to 116 refer to the Al Shura Council. Article 76 explains the duties of the Al Shura Council: It is the legislative branch,

it sets the state budget and exercises control over the executive authority (Constitution, 2004).

According to Article 77, Al Shura Council has forty-five members; thirty are elected by direct, secret ballot, while the Emir appoints the other fifteen members. The term of the appointed members of Al Shura Council ends only by resignation or dismissal (Constitution, 2004). Articles from 78 to 104 set out the mechanisms of election, qualifications to be a member of Al Shura Council, duration of the Council sessions and other regulations (Constitution, 2004).

#### 2.2.3.2. The issuance of law

Articles 105 and 106 state that every member of Al Shura Council shall have the right to propose bills. The proposal should first be referred to the relevant committee in the Council, which will study it, make a recommendation and return the proposal to the Council. If the Council accepts the bill, it will be referred in draft form to the government for study and opinion. The government should return the draft to the Council during the same or the next term of the session. Any bill rejected by the Council may not be re-introduced during the same term of the session. If a draft is approved by the Council, ratification by the Emir is still required. If the Emir declines to approve a draft law, he shall return it, along with the reasons for the declination, to the Council within three months from the date of referral. The Council may attempt to pass a declined draft returned within the three-month period, and if the Council passes the same bill once more with a two-thirds majority of all members, the Emir shall ratify and promulgate it. In compelling circumstances, the Emir may suspend such a law for a time that he deems necessary to serve the interests of the country. However, if a two-thirds majority of the Council does not pass a draft law, it shall not be reconsidered during the same term of the session (Constitution, 2004). A bill gains the power of law after it is published in the official Gazette, which is issued by the Qatari Department of Opinion and Contracts within the Ministry of Justice (Constitution, 2004).

### 2.2.3.3. The executive authority

Articles 117 to 128, within the fourth chapter of part four, describe the executive authority, which is the Council of Ministers. These articles detail the qualifications to be met by each minister, the organisation of the Council of Ministers and the duties of the Council on Ministers (Constitution, 2004).

### 2.2.3.4. The judicial authority

The judicial authority is organised and explained in Articles 129 to 140 of the fifth chapter of part four. The Constitution states that the State's rule is based on the supremacy of law. The honour of the judiciary, its integrity and the impartiality of judges are safeguards of rights and liberties. The Constitution orders that judicial authority shall be independent and vested in courts of different types and grades. The courts shall make judgments according to the law. The law, in turn, regulates the categories and divisions of courts and defines their jurisdiction and powers. Court sessions should be public except when a court decides, in the interests of public order or morality, to hold them in camera. However, in all cases, judgments shall be pronounced in an open session.

Judges are independent, according to the Constitution. They are subject to no power in the exercise of their judicial functions, as they adhere to the law, and no interference whatsoever shall be permitted in court proceedings and the course of justice. Judges shall not be subject to removal from office except in cases specified by law. The independence of the judiciary is inviolable, and it is protected by law against interference from other authorities (Constitution, 2004).

## 2.3. Qatari judicial system

The Qatari judicial system has passed through various stages to reach its present situation. According to Judiciary Law No.10 of 2003 the Judicial Supreme Council comes on the top of the judicial pyramid and the courts come under the Council umbrella as follows: the Court of Cassation, the Court of Appeal and the Court of First Instance. The following diagram shows the new formation of the Qatari judicial system:

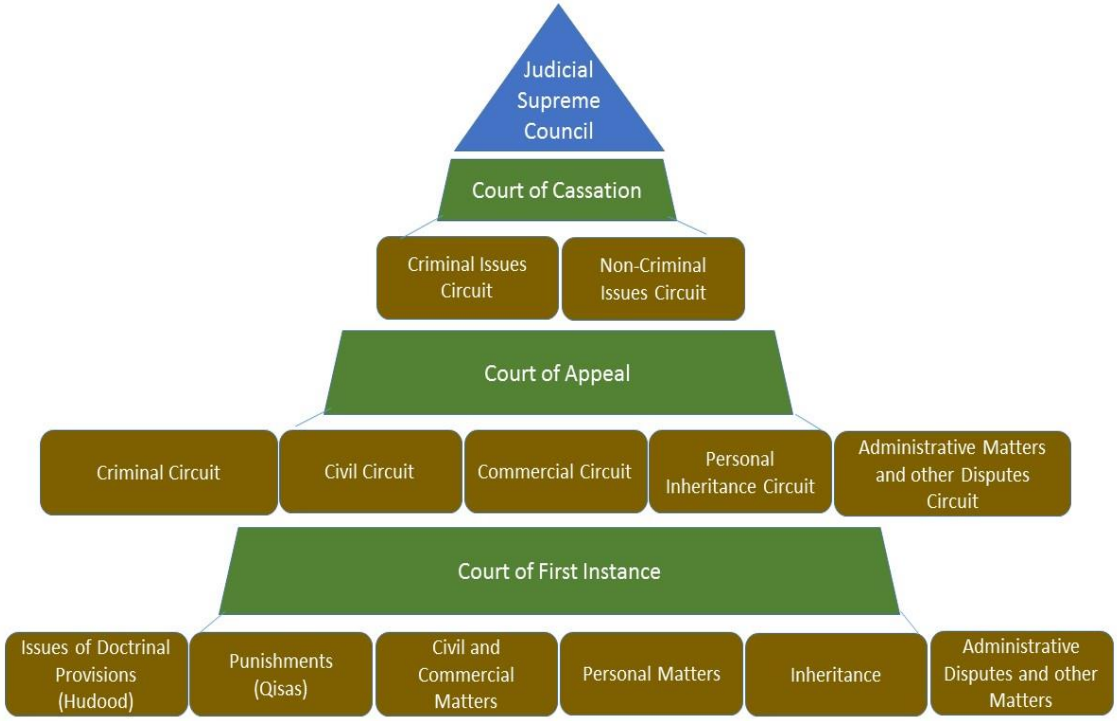


Figure 1: The new formation of the Qatari judicial system. As shown in figure1, there are several chambers and departments under each court. The Judicial Supreme Council, courts and their capacity will be discussed later in section 2.3.4.1.3.2

In the past, the judiciary in Qatar was formed by local national committees and joint foreign committees, which consisted of foreigners and Qataris. Nowadays, the judicial system in Qatar has been crystallised in a different form (Bayat 2009). Therefore, due to this long evolution of the judiciary in Qatar, this section reviews the judiciary from its inception to the latest changes it has undergone.

### 2.3.1. Need for a judicial system in Qatar

Qatari society is composed of a mixture of tribes and families, the great majority of whom are of Arab origin and follow the religion of Islam. Like all human society, many differences and disputes occur because of conflict of interests and desires. These disputes necessitate the presence of justice to resolve them, recognise rights and protect the interests of the people. Since the Qatari tribes have an Arabic and Islamic background, disputes in matters relating to Shari'a were the earliest controversies that these tribes had to solve. Those disputes were adjudicated based on Islamic law (Bayat 2009).

### 2.3.2. Pre-independence judiciary in Qatar

Qatar was dominated by the Ottoman Empire, as were other Arab countries. During this period, justice among the people was administered by the Sultan. After a time, Ottoman influence began to weaken, just as British activity and control in the region increased, further weakening the Ottoman presence (Alshalf 1999). After the First World War, the British victory over the Turks ended Ottoman influence in Qatar and the region. Qatar and the entire Gulf region came under British sovereignty (Alabid).

#### 2.3.2.1. Simple community before the discovery of oil

After the British gained sovereignty over Qatar, British immigration led to increased economic and other types of transactions with the British and other foreigners, who lived in Qatar. Consequently, disputes occurred. These relations were subject to a special system based on the 1935 treaty between Sheikh Abdullah bin Jassim al-Thani, the Governor of Qatar, and the British government, when disputes arising from Qataris' relationships with foreigners were adjudicated by the British mayor in Qatar or his representative. This system clearly demonstrates the absence of a Qatari judicial system, which handled

disputes between foreigners in Qatar. In addition, a joint court consisted of members of the ruling family of Qatar or their representatives and the British mayor or his representative. This court judged disputes arising between a foreign party and a Qatari one or between two foreign parties, if one was a Muslim and a resident in Qatar (Al-Asiri 2004).

At this time, pearl diving and the pearl trade held great significance in the lives of the people of Qatar. It was the main means of earning money and employed most of the Qatari population. Moreover, the pearl trade formed the foundation of Qatar's economic, social and political life. Oil had not yet been discovered. The professions of pearl diving and sea life, which includes fishing, transportation and overseas trade, were ruled by customs to which Qataris adhered and viewed as law. A special tribunal handled disputes arising from these traditions.

Thus, at this point, Qataris were subject to two types of judiciary: the customary, which called *Qadha Alsalfah*, and the religious judiciary (Almansour). It is worth mentioning that any dispute among Qataris was submitted directly to the governor of Qatar, who referred it to the religious judiciary if the issue related to personal matters or to the customary judiciary, if it related to pearl diving. The governor and his subordinates enforced the decisions reached by both types of judiciary in the disputes presented to him (Al-Asiri 2004).

#### 2.3.2.2. Development of Qatari society as a result of the discovery of oil

After the discovery of oil, great social and economic evolution occurred, which led to a decline in pearl diving. The discovery of oil and the development of Qatari society resulted in the development of the state apparatus. The governor's office formed four major departments, which specialised in legal affairs, finance, administration and petroleum affairs. As a result, British role in Qatar decreased (Alshalq 1999).

The development of the administrative system led to the formation of a Qatari judicial system, which eliminated the customary judiciary. However, the religious judiciary remained. In 1928, the first Shari'a court in Qatar was established. The

period of oral judgments then ended, and conflicts related to Shari'a and judgements were switched to officially legal recordings.

The expansion of Qatari society led to a larger presence of Arab Muslims foreigners, such as Egyptians, which established the precedence of Shari'a courts (Alshalq 1999). However, the British Mayor's Court, which had jurisdiction over issues relating to British citizens and other non-Muslim foreigners in Qatar, remained active, especially with the growing issues related to oil. At the same time, a judicial court was established to handle issues not related to Shari'a. The governor of Qatar and his deputies held jurisdiction over matters in this court. However, the judgements themselves were made by experts in the office of the governor or his deputy (Almansour).

#### 2.3.2.3. Expansion of the judicatory

The oil business attracted workers to Qatar; this necessitated Act No. 4 of 1963, which established the Labour Court. This court dealt with all issues related to Labour Law No. 3 of 1962. This pioneering law regulated the labour force. It determined the relationship between labourers and their employers and set forth their rights and duties. Law No. 5 of 1963 was made to regulate the procedures and litigation in the Labour Court (Explanatory Memorandum to Law No. 1 of 1963). By issuing this law, Qatar became the second Arabic country, after Egypt, to establish a specialised labour judiciary (Bayat 2009).

As Qatari society and the labour market continued to grow, the concept of litigation expanded. A civil and a criminal judiciary were established and given more powers than the Labour Court (The Explanatory Memorandum to Law No. 1 of 1963). In 1968, due to the increase in traffic accidents, a special court that considered traffic offences was established. It was the only court that had jurisdiction to consider offences stemming from vehicle accidents (Bayat 2009).

In 1970, Law No. 12 of this year created the Criminal Court of Qatar. The criminal cases over which the Court has jurisdiction were determined by an appendix to the law (Law (12) 1970). After the establishment of this court, the government of Qatar endeavoured to terminate British domination on an

important judicial issue: adjudicating disputes between British and other non-Muslim foreigners. To that end, the governments of Qatar and Britain signed an agreement to end the British practice of judicial authority in Qatar (Bayat 2009). In addition, Laws Nos. 13 and 18 were made about two weeks before independence. The first concerned the establishment of courts in a justice system (civil and criminal), while the second regulated the movement of foreigners' legal matters to the national courts (Qatar Set of Laws, Volume VI 1962). Thus, the period of British influence on the Qatari judiciary ended, and Qatar and its laws became sovereign over all residents in the nation, including foreigners.

### 2.3.3. Judicial structure after independence

Qatar gained full independence and sovereignty after the signing of the Protection Treaty between the governments of Qatar and Britain. Since then, Qatar has taken significant strides to establish its political, administrative and judicial systems. Many laws have been passed to transform the emirate and tribal society into a nation-state. In addition to the amended provisional constitution, principal laws have been made with the main purpose of organising and regulating the judicial system, most importantly, the Qatar Penalties Code, Criminal Procedure Code, and the law establishing the National Courts and transferring jurisdiction to them and the Law of Courts of Justice (Bayat 2009). The latter has obviously affected litigation and judiciary in Qatar, creating for the first time in Qatar a civil and criminal judiciary, along with a Shari'a judiciary. In addition, the position of the Chairman of the Courts of Justice was created, and each Judicial body given its own system courts.

A semi-complete judicial structure was then established (Law (13) 1971). This structure was as follows: the Lower and Higher Criminal Courts, which considered criminal cases as stipulated by Qatar's Penalties Code in accordance with the procedures in the Criminal Procedures Code (Law(15), 1971) and secondly, the Lower and Higher Civil Court which had separate jurisdictions (Law (8) of 1985). In addition, the Court of Appeal served as a second degree court

(Daf'Allah 1997). Several courts which were no longer needed were disbanded, including the Traffic Offences Court and Criminal Court of Qatar. However, the Labour Court remained (Law (13) 1971).

Although civil courts had been established, there was no civil code of procedure, which regulated litigation in these Courts. Therefore, the Procedure Code of the Labour Court was used to regulate litigation procedures in the civil courts (Law (8) 1962). Finally, in 1990, with the issuance of the Civil and Commercial Procedure Code, the Labour Court and all laws related to it were cancelled. Matters previously considered by the Labour Court then fell within the jurisdiction of the Lower or Higher Civil Court, depending on the severity of the claims (Almeezan, 2015b).

### 2.3.4. Completion of the judicial system and its components

With the issuance of the Law of the Courts of Justice, the foundations of the present judicial system in Qatar were completed. In addition, Law No. 13 of 1990 on Civil and Commercial procedures formed the components of the judicial system, which was designed to meet the basic needs of the individual. Law No. 13 of 1990 contains a set of legal rules that must be followed by conflicting parties and applied by the courts to resolve disputes before them. This law clearly details the rules and procedures to be followed from the time a conflict is raised until a final decision is made. The law also contains procedures for its implementation (Bayat 2009). Qatari legislators ordered that the general rules and procedures set out in this law should apply not only in civil courts, but also in the criminal courts if there is a gap in the Code of Criminal Procedure (Law(15), 1971). These provisions cancelled and replaced provisions of earlier laws (Bayat 2009).

Law No. 13 of 1990 has been amended twice: once in 1995 and again in 2005. Along with Law 12 of 2005 and Law 10 of 2003, the 2005 amendments formed a new structure of civil and commercial courts and their jurisdictions (Alzaman 2005). These new laws and amendments introduced a wider concept of the judicial system, both in its work and organisation. The new judiciary laws created

a new order of courts. Some courts were terminated and replaced, with new courts which are better fitting with the development of the judicial system. In addition, these laws first established the Court of Cassation in Qatar's judicial system. Laws Nos. 12 and 13 of 2005 are complementary to the new Judicial Authority Law, and an amendment to the provisions of Civil and Commercial Procedure Code No. 13 of 1990 brings it in line with the development of the judicial system, especially with regard to the formation of the new courts and their new functions and jurisdictions. As a result of these new laws, Qatar's judicial system assumed a modern form comparable to the judicial systems of leading Arab states, such as Egypt (Bayat 2009).

#### 2.3.4.1. Sources of the Judicial Authority Law, Civil Procedure Code and amendments to the structure and jurisdictions of courts

Qatari legislators have issued separate laws for the judiciary and for civil and commercial proceedings. The first law relates to judicial regulation, and the second to the procedures those have to be followed in civil courts. The first law of judicial authority in the state of Qatar was made in 1999 (Law (6) 1999). However, the judicial system remained unclear until the issuance of the new Judicial Authority Law in 2003, which completed the judicial structure and increased the independence of judges in the performance of their work. This section addresses the sources of the Judicial Authority Law and the Civil and Commercial Procedure Code. In the next section, the new structure and jurisdictions of the courts outlined by the new judiciary law and amendments to the Civil Procedure and Commercial Code are presented.

##### 2.3.4.1.1. Official sources

###### 2.3.4.1.1.1. Permanent Constitution of the State

The Permanent Constitution is the main source of the Judicial Authority Law. It contains the basic rules related to judiciary and its role in the administration of

justice. For example, Article 129 of the Constitution states that the rule of law is the basis of governing by the state and that the honour, integrity and justice of judges are the safeguard of rights and freedoms (Constitution, 2004). In addition, Article 130 of the Constitution declares that the judiciary is independent and composed of courts of different kinds and levels. It issues decisions according to law (Constitution, 2004). In addition, Article 131 states that the judges are independent, with no authority over them except that of the law, and that no party may intervene in cases or in the course of justice (Constitution, 2004). Finally, Article 135 states that the right to litigate is guaranteed to all people and that the law specifies the procedures and conditions to practise this right (Constitution, 2004).

#### 2.3.4.1.1.2. Law of Courts of Justice

Law of Courts of Justice organised the inception, jurisdiction and formation of the courts of justice. In addition, these laws concerned the appointment of judges and their immunities, duties and assessment. These laws also determined the system of court hearings and who can plead in front of this court (Law (13) 1971). Under this law, before the issuance of the Civil and Commercial Procedure Code in Law No. 13 of 1990, Qatar had a dual judicial system, with courts of justice and courts of Shari'a. The courts of justice applied ordinances, while the Shari'a courts applied Islamic law (Bayat 2009). This law was repealed and replaced by Law No. 10 of 2003, which came into effect on 1 October 2004.

#### 2.3.4.1.1.3. Civil and Commercial Procedure Code in Law No. 13 of 1990

This code was the first legal procedure in Qatar. It established the generally recognised principles of legal procedure to ensure the smooth functioning of the judiciary and its proceedings (Almeezan, 2015b).

#### 2.3.4.1.1.4. New Attorneys' Law in Law No. 23 of 2006

This law, which was issued on 29 June 2006 and came into effect two months later, cancels any provisions contrary to it (Law(23), 2006). After the issuance of this law, lawyers no longer monopolised the legal profession. The law authorised the staff of the government and non-government bodies, such as Qatar Petroleum and its subsidiaries, to practise law (Law(23), 2006). In addition, the law gave the staff of public bodies and institutions and private corporations and enterprises the right to practise law (Law(23), 2006). In addition, the law gave the Minister of Justice authority to grant licenses to international law firms to operate in Qatar, renewable up to five years (Law(23), 2006). Finally, the law permitted non-Qatari lawyers to practise law in Qatar. However, the practice is subject to some conditions:

- Lawyers should attend court on behalf of a Qatari law firm.

- A non-Qatari lawyer who wants to practise law in Qatar should be licensed to practise law in his own country.

- He should join a Qatari law firm for at least three years (Law(23), 2006).

#### 2.3.4.1.1.5. Judicial treaties and conventions

International treaties and conventions are considered as official sources of Qatari procedures law, because they regulate aspects of judicial work. Qatar has ratified many judiciary treaties and conventions with Arab states and the Gulf Cooperation Council (GCC). Riyadh Convention on Judicial Cooperation, which has been accepted as the framework for most Arab countries, is one of the most important conventions. In addition, the Treaty of the Enforcement of Judgments and Rogatory and Judicial Declarations of the Gulf Cooperation Council for the Arab States of the Gulf is one of the most important treaties (Riyadh Convention on Judicial Cooperation 2002). It should be noted that under the terms for implementation in domestic law, foreign bonds in the state of Qatar must not violate any of the provisions of the treaties and agreements reached or those

held between the State of Qatar and other countries in this regard (Almeezan, 2015b).

#### 2.3.4.1.2. Unofficial sources

Informal sources include known judicial tradition, the rules of jurisprudence and the courts' views of doctrine and jurisprudence.

##### 2.3.4.1.2.1. Judicial customs

Judicial customs are a set way of thinking and acting, which have been passed from one judicial generation to another and have become settled in the judiciary and respected by judges who work under them. For example, if the confidentiality of deliberation in the deliberation room and the inadmissibility of the participation of non–judges are violated, a judgment will be voided (Almeezan, 2015b). It is worth mentioning that this style of debate is no longer only a judicial tradition but has been codified by lawmakers (Almeezan, 2015b).

##### 2.3.4.1.2.2. Jurisprudence

When the text of laws does not directly address a specific legal issue, the judiciary can resort to rules of jurisprudence to deduce the basis for their rulings. For instance, a judgement could be based on the principles that the appellant cannot be harmed because of his appeal, no one can be judged before being heard, and lawsuits cannot be brought against verdicts or proceedings without harm (Hattab 1999).

The judiciary used to work out these jurisprudences, especially in the absence of specific legal text, and they have since been codified in legislation. For example, the Qatar Procedure Law stipulates that no request or defence may be accepted

if the one who applied for it does not, by law, have an approved interest (Almeezan, 2015b).

#### 2.3.4.1.2.3. Courts' opinions and interpretations of jurisprudence

In most civil law, the courts' views of jurisprudence act as an interpretative source for procedures law. They are not binding, but judges can use them as a guide and determine when they apply to law. Judges can refer to high-level legal literature for guidance and explanation of solutions in confusing legal disputes. For instance, judges in various Arab countries consult Sanhoori's writings. When a judge refers to an author, he is under no obligation to do so, but does so because he holds the conviction that this author's individual opinion is just and he could not find any official source to resolve the dispute (Awwad 2004).

In addition, the jurisprudence of the courts, particularly the decisions of the Court of Appeal and the judgments of the Court of Cassation, are another interpretative source of legal principle (Bayyat 2003). Judges may domesticate the judgements issued by other judges who handle a higher degree of litigation than they do. There is no doubt that the decisions of the Court of Cassation, which include legal principles, are binding for lower courts. In addition, if the General Authority the Court of Cassation decides a legal principle, all other bodies should comply with it. Therefore, if the Court of Cassation so conducts itself, other lower courts should follow the example of this higher court.

### 2.3.4.1.3. New formation and jurisdictions of the courts

#### 2.3.4.1.3.1. Overview of the formation of the judiciary according to the earlier Law of the Courts of Justice

Previously, the judicial system had two judiciaries: the religious and the ordinary. The religious judiciary was embodied in Shari'a Courts, which applied

positive laws along with Shari'a law. These courts were concerned with personal disputes among Muslims, such as marriage, divorce and alimony. In addition, these courts had jurisdiction over offences excluded from the jurisdiction of the criminal courts of justice, such as murder, suicide, sexual crimes, moral issues and offences relating to marriage, adultery and incest (Law(13), 1971)(Article 2 of Law No. 13 of 1971). It should be noted that in order to switch the jurisdiction to Shari'a courts, the accused must be a Muslim. These courts applied Shari'a law for such offences instead of Qatari legal penalties (Law(14), 1971). Meanwhile, the ordinary judiciary, which was embodied in the courts of justice, applied positive law to disputes under their jurisdiction. The courts of justice were the backbone and foundation of the judicial system. According to the 1971 law, they consisted of three bodies: the criminal courts, civil courts and Court of Appeal. Criminal and civil courts were divided into low and high criminal courts.

Since the establishment of the courts of justice, the principle of litigation on two levels has been adopted. In both criminal and civil courts, the low court has a single judge, while the high court has three. Each court covers multiple jurisdictions in accordance with the laws under which it was established.

The High Criminal Court performs an appellate capacity, and its principal formation is no different. It has a jurisdiction over appeals that arise from irregularities in the judgments of the Low Criminal Court of Criminal, and its decisions are final. Similarly, the High Civil Court has jurisdiction over appeals from the Low Civil Court, and its decisions are final.

The president of the Court of Appeal, which had three judges, was the head of the courts of Justice, because at this time, this was the highest court. It considered appeals from the High Criminal and Civil Courts and first-instance courts and judgments of the Low Criminal Court on misdemeanours. The appellate judgment was not subject to appeal, because the Court of Appeal, under repealed Law of the Courts of Justice, was at the head of the judicial structure (Law(13), 1971).

#### 2.3.4.1.3.2. New structure of courts in accordance with the new Judiciary Law and its complementary laws

The Qatari legislators who made the laws that brought about the new judicial system were greatly influenced by the Egyptian and Syrian judicial systems (Bayat 2009). Since Judiciary Law No. 10 of 2003 was issued and put it into practice, the judicial system has undergone development and modernisation, particularly the consolidation of disputes once under the jurisdiction of Shari'a courts or the Courts of Justice. As a result, the new first-instance courts have been given universal jurisdiction to adjudicate all disputes brought to it, except those concerning sovereignty and nationality issues (Almeezan, 2015a). Such issues are not under the jurisdiction of these courts, either directly or indirectly, in order to give the executive authority more flexibility to handle the high politics of the state without being exposed to risks arising from judicial review of its actions. Decisions by these courts are part of public order.

The Court of Cassation has been established at the top of the judicial hierarchy by the new Judiciary Law (Almeezan, 2015a). According to the new legislation, the Qatari judicial system has a hierarchical structure, led by the Court of Cassation and followed by the Court of Appeal and the Court of First Instance.

##### 2.3.4.1.3.2.1. The Court of Cassation

The Court of Cassation sits at the peak of the judicial pyramid. Its basic function is to regulate and supervise the lower courts' application of law and correct their interpretation. The judicial system was created in 1971 and was named as the Courts of Justice system; it lacked a supreme court, such as the Court of Cassation, to perform the function of monitoring judgments for violations of the law. The Court of Cassation has assumed this responsibility, but its jurisdiction is limited to certain issues - the criminal issues and non-criminal issues and it may not exceed this jurisdiction (Bayat 2009).

The Court of Cassation consists of the president and a sufficient number of vice-presidents and judges (Almeezan, 2015a). It hears appeals to abrogate judgments and procedures prescribed by law. Passed on 5 April 2005, Law No. 12 was intended to determine cases and proceedings to challenge abrogation in non-criminal cases. In addition, the abrogation cases are similar to those in any court of cassation, such as those of Egypt, Syria, Lebanon and France because the Court of Cassation is a court of law, not a court of issue.

The Court of Cassation hears appeals to determine whether to impugn a judgment based on violations of the law, error in the application or interpretation of the law, or if signed in contraindication of judgments or procedures that impact on the ruling (Law(12), 2005). The General Attorney also has the right, at any time, to challenge abrogation in favour of the law in the final judgments and other issuances handed down by the court if it was based on a violation of the law or error in the application or interpretation of the law. However, the law does not allow some judgments to be challenged and imposes a deadline for appeal. In some judgements, opponents may have their right of appeal waived if it does not hurt nor benefit them (Law(12) 2005; Hasheesh 2007).

Within the Court of Cassation, several chambers have been established, each headed by the chief justice, a vice president or a judge of the court. For example, one chamber hears appeals in civil and commercial matters, and another in personal matters. Based on the advice of its General Assembly, the president of the Court decides the membership of these chambers (Almeezan, 2015a).

If one Chamber of the Court is considered to have abandoned a legal principle agreed upon in previous judgments issued by this chamber or another chamber, or to have presented an issue related positively or negatively to a conflict of jurisdiction, the case should be referred to the joint chamber for adjudication in accordance with what has been decided by this chamber. The process ensures that the chambers do not apply law differently.

As in other Arab countries, the Court of Cassation in Qatar does not reconsider the merits of the dispute considered by the impugned judgment but, rather,

accepts these facts as a matter already supported by the judge. Instead, it examines if the law has been properly applied and on the basis of that evaluation decides to reject the appeal or accept it and abrogate the impugned judgment. The duty of this court of law is to closely monitor and ensure the correct application of the law given the facts of the dispute as demonstrated in the impugned judgment (Bayat 2009).

However, the Qatari legislation opposed this concept in Law No. 12 of 2005 for cases of appeals against the Court of Cassation. This permits the Court of Cassation the discretion to consider if an impugned judgment has been abrogated for a reason irrelevant to the rules of jurisdiction. In these particular cases, the court works as a merit court, no longer just a court of law. Article 22 of Law No. 12 of 2005 states that cases of appeal to the Court of Cassation should adhere to the following procedure: if the impugned judgment has been abrogated for violating the rules of jurisdiction, the court should consider only the issue of jurisdiction and designate the competent court, to consider this case with new procedures, when appropriate. In addition, if the impugned judgment has been abrogated for other reasons, the court may consider the merit of the case itself or return it to the court, which issued the impugned judgment for consideration by a new body, composed of other judges. This court must abide by the decisions of the Court of Cassation in these matters. The consideration of the merit of an appeal by the Court of Cassation, in this particular case, is optional; however, it becomes mandatory if the Court of Cassation accepts the consideration of the impugned judgment and determines that the merit was valid for the decision or if a case has been challenged before the Court of Cassation for the second time (Law(12), 2005).

Finally, the Judicial Authority Law stipulates that the Court of Cassation should have a technical office run by a chairman and a sufficient number of judges and supporting staff (Almeezan, 2015a). This office handles various matters, including extracting the legal principles approved by the Court in issued judgments, classifying and publishing those principles, issuing the group's judgments, researching and reporting on jurisprudence research and supervising the tables of the Court. This technical office also reports to the Chief of the Court identical or linked appeals and those whose adjudication needs agreement on a

legal principle or on conflicting decisions by chambers in order to avoid different judgments by these various chambers on appeals (Almeezan, 2015a).

#### 2.3.4.1.3.2.2. The Court of Appeal

The Court of Appeal is a second–degree court of litigation. Disputes presented to this Court are appeals against judgments by the Court of First Instance (Hasheesh 2007). The Court of Appeal consists of a chairman and a sufficient number of presidents, vice presidents and judges. It has different departments to consider the appeals in criminal, civil, commercial, personal inheritance and administrative matters and other disputes. The establishment of these departments and their terms of jurisdictions require decisions by the Judicial Supreme Council (Almeezan, 2015a). The Judicial Supreme Council bases its decisions about the composition of these chambers' memberships on the advice of the General Assembly of the Court of Appeal (Almeezan, 2015a).

#### 2.3.4.1.3.2.3. The Court of First Instance

The Court of First Instance is a first-class court, which considers dispute for the first time. It has a universal jurisdiction to consider all issues, except those that relate directly or indirectly to nationality issues and acts of sovereignty (Almeezan, 2015a). This system is contrary to the Courts of Justice system enforced prior to the 2005 New Judiciary Law, in which the courts of first instance were divided into Shari'a courts and the courts of justice (Badawi 1999).

When the Judicial Authority Law was enforced, cases pending in the Shari'a courts and the Courts of Justice were transferred to the competent departments of the Court of First Instance, because the former courts have been terminated and no longer exist (Almeezan, 2015a). In addition, on the grounds that the Judicial Authority Law governs the judiciary and determines the general framework of the courts, the Civil and Commercial Procedure Code No. 13 of 1990 complements the new law. This code determines the procedures which

courts must follow based on the judiciary law. Therefore, Law No. 13 of 2005 has amended the Civil and Commercial Procedure Code No. 13 of 1990 to conform to and be consistent with the new structure of the courts established under the new judiciary law. Law No. 13 of 2005 expressly states that the terms "Higher Civil Court", "Lower Civil Court" and "Courts of Justice", wherever they appear in the Civil and Commercial Procedures Code No. 13 of 1990, should be replaced by the terms "Court of First Instance", "District Court" and "courts". This change means that the law does not create a new structure of courts but redefines the courts.

However, Law No. 24 of 2005 does amend the jurisdiction of these courts. It gave the courts general jurisdiction over civil, commercial and administrative disputes. In addition, the courts hear disputes once under Shari'a Law, because the law closed the Shari'a courts and Courts of Justice.

The jurisdiction of the courts' value, though, was amended by the same law. The quorum of the District Court has been increased to 100,000 Qatari riyals; if the value of the alleged claim exceeds this amount, the jurisdiction goes to the Court of First Instance. Moreover, Article 22 of Law No. 13 of 2005 states that the primary judgment in all cases and disputes of civil, commercial and administrative contracts whose value does not exceed 100,000 riyals, falls under the jurisdiction of a Court of First Instance with one judge, which is called District Court. In addition, Article 24 of the same law states that the Court of First Instance with three judges shall consider the first instance of lawsuits involving civil, commercial and administrative contracts whose value exceeds 100,000 riyals, those suits of unknown value and disputes over personal and inheritance matters. The three-judge Court of First Instance also has the jurisdiction to consider disputes related to an original or incidental demand regardless of the value and kind. In addition, this court has unique jurisdiction over bankruptcy claims, reconciliation to avoid bankruptcy, suits of tenure and other cases as provided by law regardless of their value (Law(13), 2005). Thus, the Court of First Instance has broad, comprehensive jurisdiction, because it handles all conflicts formerly under the jurisdiction of Shari'a courts, the Courts of Justice or the Labour Court, in addition to its own unique jurisdiction.

The Court of First Instance issues two types of judgments: final judgments and those subject to appeal. Judgments of disputes related to inheritance, wills, *Waqf*

and dowry are final if the alleged value of the claims in these disputes does not exceed 30,000 riyals. All other judgments are subject to appeal in accordance with the general rules of appeal.

The Judicial Authority Law states that the Court of First Instance shall be composed of a chairman and a sufficient number of presidents and judges. In addition, it has departments to consider the issues of doctrinal provisions (*hudood*), punishments (*qisas*), civil and commercial matters, personal matters, inheritance, administrative disputes and other matters (Almeezan, 2015a). The Judicial Supreme Council establishes these departments and their jurisdiction based on the advice of the president of the Court of First Instance and its General Assembly. The judgments of these departments should be issued by three judges, presided over by the oldest judge. In the absence of the chairman of the Court, the oldest judge should act on his behalf (Almeezan, 2015a). In addition, the Judicial Supreme Council can create departments headed by an individual judge based on the advice of the chairman of the Court to consider some cases that should be determined by law (Almeezan, 2015a).

#### 2.3.4.1.3.2.4 Judicial Supreme Council

Article 22 of the Judicial Authority Law establishes the Judicial Supreme Council in order to ensure the independence of the judiciary. This Article stipulates that the Council shall be composed of seven members exclusively from the judiciary: the president of the Court of Cassation as president of the Council, the oldest vice presidents of the Court of Cassation as deputies and the oldest judge of Court of Cassation, the president of the Court of Appeal, its oldest vice presidents and judges, and the president of the Court of First Instance as members. This Council is the practical implementation of the principle of the separation of legislative, judicial and executive powers. The Council shall exercise its powers in accordance with the law and ensure the proper functioning and development of the judicial system. The Judicial Supreme Council concerns itself with all matters relating to the judiciary and judges. The Judicial Authority Law mandates that the Council act to achieve the independence of the judiciary and

manage its affairs by expressing opinions on matters related to the judiciary, such as the establishment of new courts; the appointment, promotion, transfer, assignment, and secondments of judges; grievances involving judges' affairs and jurisdiction to hold judges accountable (Almeezan, 2015a).

## 2.4. Conclusion

Qatar has passed through various stages of historical development since it was under Ottoman rule and then British sovereignty, which covered the entire region. During that time, the Qatari community was characterised by a tribal nature, and its economy was based on pearl diving and trade. After the discovery of oil, a new phase began, in which the governor's office attempted to assert authority on both the state and local level. Thus emerged the stage of independence and the formation of state institutions. Finally arrived the modern stage, accompanied by an economic and construction boom and the formation of the permanent constitution of the state.

Each historical stage was accompanied by significant developments in the legal and judicial systems. As Arabic Muslims, the Qatari tribes resolved disputes based on issues of legitimacy according to Islamic law. Therefore, the Shari'a judiciary was created. In addition, the customary judiciary, called *Qadha Alsalfah*, emerged because Qatari society was based mainly on the pearl-diving trade, as previously stated. The customary judiciary was limited to considering issues of pearl diving based on customs and traditions. These judgments were of one degree and not disputable. At this time, the legal system operated under the principle of one-degree litigation.

Since the development of the administrative system in Qatar and the discovery of oil, *Qadha' Alsalfah* has disappeared, and the judicial system has evolved. As a result of the establishment of Shari'a' Court for the adjudication of personal disputes, oral judgments are no longer issued. In addition, the presidency of Shari'a courts was established due to the development of governance and administration and the expansion of the foreign Arab Muslim population.

The discovery of oil led to the creation of a variety of jobs, prompting increased immigration of the British and other foreign, non-Muslim nationals to Qatar. Disputes among these groups were adjudicated by the British Court, which sat in the British Council and was headed by a British judge. In addition, individual disputes involving foreigners did not fall under the jurisdiction of the national judiciary, but of the Joint Court composed of the governor or his deputy and the British mayor. The increasing number of expatriate labourers in Qatar led to the establishment of a court to adjudicate in all labour disputes. This court was considered a judicial body specialised in labour issues.

Gaining independence in 1971, Qatari society ceased being tribal and became communities belonging to a nation-state. This transformation led to the transfer of judicial authority to national courts, established by the Law of the Courts of Justice. This law marked a new era in the history of the law and the judiciary in Qatar. It closed all courts except the Shari'a courts and Labour Court, because it created the framework of separate codes of civil and penal law. Further, the law formed the first judicial system based on the principle of two degrees of litigation, single and group. In addition to the Law of the Courts of Justice, the Civil and Commercial Procedure Code No. 13 of 1990 served as Qatar's first law concerning legal procedure. This law determined the general legal principles recognised in most Civil Procedure laws that aims to ensure the proper functioning of the judiciary. The enforcement of this law led to the cancellation of several laws. Finally, Law No. 13 of 2005, which amended the Procedure code, granted the Court of First Instance Courts general and comprehensive jurisdiction and closed the Shari'a, justice and Labour courts.

The establishment of the Court of Cassation stands as a significant expansion and modernisation of the Qatari judicial system. In addition, the existence of the Judicial Supreme Council, which monitors the judiciary and judges in order to ensure proper administration of justice, is another significant development. In particular, headed by a judge and composed of other judges who are members of the judiciary, it mixes judicial and executive authority.

This system presents some disadvantages. First, it is incomplete and lacks the important administrative judiciary. No judicial authority can cancel a high-level administrative decision issued by the executive authority. An administrative

department within the Court of First Instance has jurisdiction over administrative disputes, but does not have the same power as an administrative judiciary. Its jurisdiction is limited to specific cases and by law. In addition, although law No. 12/2008 established the Constitutional Court, the court itself does not exist yet (Abou El Farag, 2014). Therefore, there is no Constitutional Supreme Court, which decides the constitutionality of laws.

Finally, the influence of Shari'a law in Qatar was extremely significant in the early stages because Qatari society consisted of Arab Muslim tribes. This influence, though, slowly faded with the establishment of the Courts of Justice. Shari'a courts retained jurisdiction over personal and doctrinal (*hudood*) matters and punishments (*qisas*), while civil and commercial disputes came under the jurisdiction of the Courts of Justice.

While the first Article of the Constitution states that Islamic Shari'a law is a main source of legislation, it is not the only one. Consequently, Shari'a courts have been closed, and their jurisdiction transferred to the Court of First Instance. However, Shari'a law continues to regulate personal status and inheritance matters.

After this brief view of the Qatari legal and judicial systems, the next chapter will concern arbitration in Qatar.

# Chapter three: Arbitration in Qatar

## 3.1. Introduction

The previous chapter provided an overview of the Qatari Judicial system and its development from the early stage when society was composed of tribes and families, to the current stage, which started in 2003 with the introduction of the Judicial System Law. It showed how the judicial system developed according to the circumstances and the needs of Qatari society and the economic system, from a system based on Shari'a Law to a multi- stage litigation system, which is based on modern codified law.

This chapter concerns the emergence of arbitration in Qatar as a form of dispute resolution and examines its founding principles and its development. It also discusses the scope of the Arbitration Code (Civil and Commercial Procedures Code 1990) and issues related to this law. It examines the modern institutions of arbitration in Qatar and finally it identifies issues related to the current situation of arbitration in Qatar, the solution to which will enhance and develop the law and practice of arbitration in Qatar.

## 3.2. Historical background

Even though Qatar is a Member State of the Arab League of States and the Gulf Cooperation Council (GCC), it did not ratify the Arab League Convention of 1952, which deals with the enforcement of judgments and awards (S. Saleh, 2009). Moreover, this Convention has now been replaced by the Convention on the Judicial Cooperation between the States of the Arab League, which was signed in Riyadh on 8 April 1983. Although this new Convention was signed by all the GCC Countries including Qatar, it has been not ratified by any of these States (Al-Baharna, 2009). Therefore, prior to 1990, Qatar was obliged to depend on Islamic law in the recognition and enforcement of foreign judgments and arbitral awards, due to the fact that it did not have modern domestic legislation on such

cases and was not bound by any international conventions concerning the recognition and enforcement of foreign arbitral awards (S. Saleh, 2009). In addition, arbitration itself, in Qatar, was ruled by Islamic law on the authority of the Hanbali School of thought, which is known as *sulh* (Al-Kuwari, 2008), which means conciliation. This conciliation depends on the readiness of the parties to think about settling the disagreement by making mutual concessions (Al-Emadi, 2008). However, in modern transactions, such conciliation may not be able to resolve disputes, especially for the foreign party (Al-Emadi, 2008). Furthermore, there was no reference to arbitration in the Qatari Civil and Commercial Code, which was issued in 1971 (Law (4) 1963). Therefore, when Qatar issued and passed the 1990 Code of Civil and Commercial Procedure, in which Part 1 Chapter 13 dealt with arbitration and Part 3 Chapter 3 dealt with the enforcement of foreign judgments and decrees, it was a great step forward in enhancing arbitration in Qatar. It is notable that the grounds, set out by the Qatari Arbitration Law, on which an award may be set aside were similar to those mentioned in Article V of the New York Convention with slight differences in language, even though Qatar had not acceded to the New York Convention when this law was issued (Al-Emadi, 2008). Furthermore, Qatar acceded to the New York Convention in 2003 and this accession was another important step toward enhancing arbitration in Qatar after the issuance of the Civil and Commercial Procedure Code (NYC 1958).

As can be seen from the above, prior to the issuance of the Civil and Commercial Procedure Code in 1990, arbitration in Qatar was governed by Islamic law according to the thought of the Hanbali School. Therefore, a brief overview of arbitration in Islamic Law should be presented.

### 3.2.1 A brief overview of arbitration in Islamic Law

Arab people were familiar with arbitration pre-Islam, as their societies were divided into tribes and families and there were no governments. Every tribe had a chief (*Sheikh*), who administrated the affairs of the tribe. Any dispute between parties from the same tribe or different tribes was treated by the *Sheikh* or by an arbitrator (called *Hakam* in Arabic), whom the parties agreed on as arbitrator. There were many famous arbitrators in Arabic tribes, such as Aktham bin Sayfi,

who was from Bani Tamim tribe and Abdulmuttalib from Quraish Tribe (Al-Jarba 2001). One of the most famous cases of arbitration before Islam was *the case of the Removal of the Black Stone* (Al-Jarba, 2001). The Quraish tribe decided to rebuild (Al-Ka'ba), which is the building located in the centre of Al-Masjid Al-Haram in Makkah, the most sacred mosque. When it came to fitting the Black Stone in the corner of (Al-Ka'ba), every sub-tribe wanted to have the honour of carrying the Black Stone and setting it in place, because it was such a religious honour. Finally, they agreed to arbitrate with first person entering to Al-Ka'ba from (Bab-Al-salam Gate). This man was the Prophet Mohammed (Peace be upon Him) before he received inspiration. He asked them to bring a piece of cloth to put the Black Stone on and he asked the Chiefs of the sub-tribes to take hold of one side of the cloth piece and transfer the Black Stone to its place, while he held the Black Stone in his hands and placed it in the corner (Al-Jarba, 2001). After the arrival of Islam, arbitration remained a method of dispute resolution; however, the difference was only that after the arrival of Islam were the arbitrators forced to deal with disputes according to the principles of Islam, derived from the Qur'an and Sunnah (Al-Jarba, 2001).
Muslim scholars extracted evidence from the Holy Qur'an, Sunnah, Consensus and analogy which proved that arbitration is approved and compatible with the Shari'a.

#### 3.2.1.1 Evidence from the Holy Qur'an

The Qur'an contains evidence of the legality of arbitration. For example, the Almighty said: O ye who believe? Kill not game while in the sacred Precincts or in the state of pilgrimage. If any of you doeth so intentionally, the compensation is an offering, brought to the Ka'ba, of a domestic animal equivalent to the one killed as adjudged by two just men among you, or by way of atonement, the feeling of the indigent….'(AlMa'ida, Verse 97)(Quran, 1987). The above verse refers to the prohibition of hunting by Muslims during the time of pilgrimage. It includes choosing two arbitrators by the one who has killed any animal while doing the pilgrimage in order to compensate the other. Thus, it is clear that

arbitration is permitted. This case the deals with the rights of Allah, which are not disputable; as a result, arbitration is allowed with regard to people's rights.

### 3.2.1.2 Evidence from the Sunnah

Several sayings of the Prophet Mohammed (Peace be upon Him) (*Hadiths*) prove the legality of arbitration; for example,
Abu Hurairah narrated a *Hadith*. He said: "The Prophet said:' A man sold a piece of land to another man. The buyer found a piece of gold in this land. He asked the seller to take this piece of the gold, as he had only bought the land and not the gold. The seller refused to take the gold as he had sold the land and everything in it. They agreed to arbitrate with an arbitrator, who asked them if they had offspring. One of them answered that he had a boy, while the other one said that he had a girl. The arbitrator asked them to marry the boy and the girl and grant them the gold as expenses.' This *Hadith* is proof that arbitration is permitted. The final arbitration was given by a third party, who was chosen by the disputing parties and not by the Prophet himself (Al-Jarba, 2001).

### 3.2.1.3. Al-Ijmaa' (The Consensus)

There are several cases, in which the Prophet's Companions were parties of disputes and thus proving the legality of arbitration. One of these cases was a dispute in a garden between Omar Bin Al-Khattab (the second Caliph after the Prophet), who was the Leader of Believers or the Governor at that time, Vs. Ubai Bin Kaab. They agreed that Zaid Bin Thabit, who was a famous jurisprudence and Islamic scholar, would be the arbitrator. The award of Zaid's arbitration was against Omar, the Leader of Believers (Al-Jarba, 2001).

### 3.2.1.4. Al-Qiyas (Analogy)

Analogy is the fourth source of jurisprudence of Islam. Scholars of Muslim jurisprudence refer to analogy when they cannot find any laws or articles from the Qur'an, Sunnah or consensus that apply to the case. They search for a case,

which has similar conditions and circumstances to the one that they are dealing with, and apply its rules. Arbitration contracts were considered a method of solving disputes in the Arab region before Islam and do not contradict Islamic rules. Therefore, this means that arbitration is permitted in Islam (Al-Jarba, 2001).

From the above, it is clear that arbitration was recognised and permitted in Islamic law. This resulted in arbitration being accepted and permitted in Qatar during the early stage, which was governed by Islamic Law that was the law of the Ottoman Empire. However, there was no clear record of any commercial arbitration in Qatar before the discovery of oil.

### 3.2.2. Arbitration in Middle East during twenty Century

In the 1950s there were several significant cases, which led most Middle Eastern Arabic States to regard arbitration as an unfair western system of resolving disputes (Stovall, 2010). These cases are: *the Case of Sheikh of Abu Dhabi Vs. Petroleum Development*,(*Petroleum Development (Trucial Coast) Ltd. v. Sheikh of Abu Dhabi,* 18 International Law Reports I.L.R. 149 (1953)) *the case of the Ruler of Qatar Vs. International Marine Oil Co. Ltd.*(20 International Law Report 534 (1953)) *and the Case of Saudi Arabia Vs. Arab American Oil Co. (ARAMCO).*(Saudi Arabia v. Arabian American Oil Co. (Aramco), 27 I.L.R. 117, (ad hoc arbitration August 23, 1958)) These three cases ended in the same result as their arbitrations were reliant on general principles of law, which were based on the laws of Western jurisdictions rather than domestic law. For example, in the case of *the Ruler of Qatar Vs. International Marine Oil Co. Ltd.,* the arbitrator held that the proper law to be applied was Qatari law; however, he rejected it by stating "I am satisfied that Qatari law does not contain any principles which would be sufficient to interpret this particular contract." As a result, he dismissed Qatari Law and applied English legal principles to resolve the dispute (20 International Law Report 534 (1953)).

These bad experiences of arbitration for Arabic States created a negative impression of the process on the Arab states including Qatar, which continued for decades (Stovall, 2010).

### 3.2.3. Early stages of arbitration in Qatar

The first mention of arbitration in Qatari Legislation was in Article 14 of Decree No. 1 of 1954, the Amended Decree of the Income Tax of Qatar 1/1954, issued under Article 82 of the Constitution of Qatar in 1953 (1) 1954 – The List of Income Tax of Qatar in 1954, which was issued in English. Article 14 of the aforementioned Law stipulates the following: "Any dispute between the managing director of income tax, who is appointed by the Emir, and the person in charge of Order emerging with respect to the application of this decree or amounts of income tax owed based on it, may be forwarded by any of the parties to the courts to sue unless it has submitted to arbitration by mutual agreement of the parties (Almeezan, 2015a).

Moreover, like most Arab States, Qatar codified its laws, including its Civil and Commercial Code, which was modelled on Egyptian Law No. 13 of 1968. The Egyptian Civil Code No.77 of 1949 was considered as the first step of the modernisation of the law of Arab States. The law was drafted and revised by the godfather of Egyptian scholars, Al-Sanhoury (1895-1971), who drafted the Iraqi Civil Code and assisted in drafting the Jordanian, Libyan Civil Code and the Kuwaiti Commercial Code (N. Saleh, 1993). It was a mixture of the principles of Shari'a Law and the French Civil Code (Maita, 2013). This law was repealed by the Civil and Commercial Procedure Code, the Law No.13 of 1968 (Law (13) 1968).

In 1990, Law No.13, Civil and Commercial Procedure Code, was issued including a special section for arbitration, which is section 13 of Part 1. In addition, section 3 of Part III of this Code applies to the recognition and enforcement of foreign judgments and awards (Almeezan, 2015b). Although this law was a first step towards the development of arbitration in Qatar, it is not perfect. This is due to several factors, the most significant being that it was issued based on the Egyptian Civil and Commercial Procedures Code No.13/1968 and the part which dealt with arbitration in this law, was eliminated by Arbitration Law No.27/1994 as it was not compatible with the UNCITRAL Model Law.

## 3.3. The scope of Arbitration Code (the 1990 Law of Civil and Commercial Procedures)

As mentioned above, the Law No.13/1990, Civil and Commercial Procedure Code, was the first legislation on arbitration in Qatar. It transformed arbitration in Qatar from the Islamic view to an international one, which can resolve disputes between parties, even if one of the parties is foreign.[2] This Code codified domestic arbitration and the enforcement of foreign arbitral awards in Qatar (Almeezan, 2015b).

As this chapter concerns issues related to arbitration, it will critically examine Part 1 Chapter 13 of the Law 13/1990, which deals with arbitration, and Part 3 Chapter 3, which deals with the enforcement of foreign judgments and awards.

### 3.3.1. Arbitration clause and arbitration agreement

Article 190 of the Civil and Commercial Procedures Code states that:

*"In an agreement to arbitrate, one may agree to arbitrate in a determined dispute. Likewise, one may agree to arbitrate all disputes arising out of performance of a determined contract.*
*An agreement to arbitrate may only be made in writing. The subject-matter of the dispute must be determined in the agreement to arbitrate or during the proceedings, even if the arbitrators are authorised to settle the case by conciliation, otherwise the arbitration may be set aside. There can be no arbitration in matters which the parties cannot settle amicably. Arbitration is only valid if those persons who resort to it have the capacity to dispose of their rights."* (Almeezan, 2015b).

From this article, an arbitration agreement must fulfill four provisions to be valid. The arbitration agreement will be rendered null and void if it fails to meet any of these provisions:

1. The agreement must be in writing. This means that the parties are not free to reach an agreement in any other form, and if they do, the agreement will not be considered. However, unlike modern laws, which follow the UNCITRAL Model Law, the CCP Code does not specify the form of writing. Article 7 of UNCITRAL Model Law states that: Arbitration agreement is in writing if its component is

[2] See above paragraph.

inscribed in any form, including electrical, such as electronic mail, telegram, telex or telecopy, or if it is included in an exchange of claim and defence statements in which an agreement's existence is asserted by one party and not refused by the other. The reference in a contract to any document including an arbitration clause forms an arbitration agreement in writing, given that the reference is such as to make that clause part of the contract (UNCITRAL, 2006)(Sharar, 2011).

2. The subject matter of the dispute must be determined in the agreement. The arbitration may be set aside if the subject matter of the dispute was not determined in the agreement to arbitrate or during the proceedings, even if the arbitrators were mandated to conciliate.

3. Arbitration agreement is not permitted in matters where compromise is not allowed. However, the law does not clarify which matters may and may not be resolved by arbitration (Sharar, 2011).

4. All of the parties must have full legal capacity (Almeezan, 2015b). Articles 49-52 and Articles 53-54, respectively, of the Civil Law No. 22 of 2004 regulate the capacity of a natural and legal person. According to these Articles, minors, mentally incapacitated persons, persons without legal capacity and bankrupt persons or persons deprived of their civil rights as a result of criminal conviction for certain crimes are prevented from entering into arbitration (Almeezan, 2015c). Article 53 further provides that the state and government bodies and municipalities may exercise the rights of individuals as they have legal personality, unless if limited by law. Therefore, as long as there are no statutory restrictions presenting such institutions to enter into arbitration, they have the implicit right to do so (Almeezan, 2015c).Contrary to this, in 1986, those institutions were precluded from entering into arbitration, as dictated by the Ministry of Finance and Petroleum. This doctrinal, which is still valid, states that:

*"No arbitration clause shall be embodied in any governmental contract, whether the arbitration is local or foreign. Such a clause shall be replaced by one that Qatari courts are the competent courts to resolve any dispute between the parties. Such a clause shall be removed from all standard contracts to which the state is a party. It has to be ascertained that such a clause is removed in case any government or state is renewed. The Financial Affairs Department shall*

*return any contract or payment order in which this circular on the issue is disregarded"* (Sharar, 2011).

From the above, the parties' legal capacity in relation to arbitration needs to be defined and clarified in more detail.

## 3.3.2. Finality of arbitral award

Article 203 states that within fifteen days following the making of the award, the award must be filed with the clerk of the court originally having jurisdiction over this dispute. In addition, it must be accompanied by the original of the agreement to arbitrate. In addition, if the arbitration was made in an appeal case, the filing must be made with the clerk of the Court of Appeal. In all cases, the clerk of the court shall make a record regarding this filing and notify a copy to the parties (Almeezan, 2015b). Further, unless the President of the court, whose clerk the award was registered with upon request of the concerned party, granted leave to enforce the arbitral award, the award is not enforceable (Almeezan, 2015b). After consideration of the award and the agreement to arbitrate and having made sure that there is no obstacle against its enforcement, this leave can be granted (Almeezan, 2015b). Furthermore, the award shall endorse the leave to enforce (Almeezan, 2015b). What is more, jurisdiction over all questions relating to enforcement are referred to the enforcing judge (Almeezan, 2015b).

There are three ways permitted by the Civil and Commercial Procedures Code, to review an arbitral award: an appeal, a petition for reconsideration (review or challenge) and a request for the award to be set aside. However, an award can be appealed on questions of fact and law, as there are no pre-established grounds for appeals.

### 3.3.2.1. Review/ challenge or appeal of the award

According to the rules provided for appeal against judgments made by the court originally having jurisdiction over the dispute, arbitral awards are subject to

appeal within fifteen days of the date of the filing of the original award with the clerk of the court. In addition, it must be made before the competent court of appeal (Almeezan, 2015b). Nonetheless, if the award was made by arbitrators, or those who were authorised to do reconciliation or arbitrators in appeal or if the parties explicitly waived their right to appeal, the award is not subject to appeal (Almeezan, 2015b).

Besides, according to the same rules as those provided for court decisions, arbitral awards are subject to a request for review except in the cases mentioned in Article 178 (5) and (6) (Almeezan, 2015b).

### 3.3.2.2. Setting aside of the award

Article 207 specifies the cases for setting aside the arbitral awards according to the request of the parties, which are the following:

1. Non-arbitrability:

The award may set aside by request of the parties, if it was made without there being an agreement to arbitrate, or if there is one, it was void or expired to arbitrate; if the award is outside the scope of the agreement to arbitrate; or if the award violates one of the rules of public order or morals (Almeezan, 2015b). As an illustration, in its decision, the Qatari Court of Appeal states that setting aside section (27) of the agreement, which requires that Korean law should be applied, and setting aside the arbitration's requirement on the basis that the rules of Korean Law are contrary to Islamic law rules, on which the rules of Qatari public policy are based, is a misunderstanding of the law. This is because each national law has its own attribution rules, which determine the foreign law that should be applied to disputes between foreign parties. What is more, rules of foreign applicable law may not be in conflict with public policy in Qatar (Judgment, 1997a).

2. Invalidity of the arbitration agreement or incapacity:

By request of the parties, an award may be set aside if the provisions of paragraphs 3,4 and 5 of Article 190, or paragraph 1 of Article 193 were violated by the award. Article 190 in its paragraphs Nos. 3,4 and 5 states that, the subject-matter of the

dispute must be determined in the agreement to arbitrate or during the proceedings, even if the arbitrators are delegated to compromise the dispute, otherwise the arbitration may be set aside. There can be no arbitration in matters where compromise is not allowed. Arbitration is only valid if those persons who resort to it have the capacity to dispose of their rights. Further, paragraph 1 of Article 193 states that, the arbitrator must not be a minor, under custody or deprived of his civil rights due to a felony or bankruptcy, unless he is since rehabilitated. (Almeezan, 2015b).

3. Irregularity of the arbitrators:

The party may request the setting aside of an arbitral award if the arbitrators were not elected in accordance with the law or the award was made by some arbitrators, who were not enabled to do so in the absence of other arbitrators (Almeezan, 2015b).

4. Voidance of the award or nullity of its proceedings:

The award may be set aside at the parties' request, if it is void or its proceedings produce nullification, by which the award can be affected (Almeezan, 2015b).

In addition, Article 208 states that the rules applicable to the court originally having jurisdiction over the dispute must be followed by requests for setting aside (Almeezan, 2015b). The inadmissibility of such request for setting aside has not been affected by waiving the right to have the award set aside, before such award is made (Almeezan, 2015b). Further, unless the court decided to continue enforcement, the request for setting aside the award suspends enforcement (Almeezan, 2015b). Additionally, the award may either be confirmed or be set aside totally or partially by the court having jurisdiction over the request for setting aside (Almeezan, 2015b). In case the award is totally or partially set aside, the court may refer the case back to the arbitrators to repair the violations contained in the award or, if the court holds that it has jurisdiction to decide on the merits of the case, it may do so (Almeezan, 2015b). In addition, opposition is not allowed to judgments thus made. However, under legally provided terms, they may be subject to appeal (Almeezan, 2015b).

### 3.3.3. Recognition and enforcement of foreign arbitral awards

Article 379 sets out the principle of reciprocity regarding the enforcement of foreign arbitral awards in Qatar (Almeezan, 2015b). However, the Qatari Courts, in many cases, did not follow this principle. For instance, an award, which was issued by an arbitral tribunal located in a foreign state and this state does not apply reciprocity with Qatar, should be attributed to the International arbitral tribunal and not to the state itself. The Qatari Court of Appeal in its decision issued on 25th November 1997 refused an appeal, which was applied by the defendant, on the grounds that the award was made in Greece, which is a state that does not apply reciprocity with Qatar (Judgment, 1997b). Furthermore, by summoning the other party to appear, the request for performance must be referred to the judge of the court of first instance with regard to the normal conditions for legal proceedings (Almeezan, 2015b).

### 3.3.4. Grounds for refusing recognition and enforcement under the 1990 Law

According to Article 380, recognition and enforcement of an award may be refused and will be not granted if one of the following grounds is not ensured:

#### 3.3.4.1 Lack of jurisdiction

Article 380(1) sets out that enforcement of an award or a judgment may be refused or will not be granted if Qatari Courts have exclusive jurisdiction over such dispute or that the court that made it does not have jurisdiction according to the international rules of jurisdiction provisions under Qatari law (Almeezan, 2015b). For example, on the basis that Qatari legislation is tasked to make the award, it must be referred to the judge of the court of first instance, the Qatari Court of Appeal in its decision made on 4/12/1999, refused the appeal of Hassan Ali Bin Ali, as one of Ali Bin Ali's heirs, which was based on the lack of jurisdiction of the

judge of the court of first instance, as the arbitral award should be recognised by the Supreme Court of the UK where the award has been issued. (Judgment, 1999).

#### 3.3.4.2. Procedural unfairness

Article 380(2) states that enforcement of an award may be refused or will not be granted if the parties to the proceedings where the award was made were summoned or represented in an irregular fashion (Almeezan, 2015b). For instance, in the judgment of Qatari Court of Appeal No. 170+171/99, the court refused an appeal applied by Ali Bin Ali's heirs that they were not be presented in an arbitral dispute. The appeal was based on the fact that the award was enforced against Al-E'timad Co. (Electrical & Mechanical Branch) and not against the heirs themselves. However, the refusal was on the grounds that the court referred to a previous decision, which – 'a part of Ali Bin Ali Est. (the appealers' executor). In addition, neither the branch nor the establishment has a separate juridical personality of the executor. What is more, the award shows that parties, including the appealers' executor (the owner of the establishment), were called to arbitration according to the rules of the arbitral tribunal (Judgment, 1999).

#### 3.3.4.3. Not yet binding or set aside

Article 380(3) presents that enforcement of a judgment or an award may be refused or will not be granted if it has not become *res judicata* regarding the law of the court, which made it (Almeezan, 2015b).

#### 3.3.4.4. Conflicts with public policy and good morals

Article 380(4) sets out that enforcement of a judgment or an award may be refused or will not be granted if it is contrary to a Qatari Court's prior judgment or it conflicts with the rules of public policy and good morals in Qatar (Almeezan,

2015b). See, for example, the above-mentioned decision of Qatari Court of Appeal, judgment No.: 145/94, dated on: 1/4/1997 (Judgment, 1997a).

## 3.4. The situation after accession to the New York Convention

Qatar acceded to the New York Convention in 2003 to enhance its position in the modern international community (Al-Emadi, 2008). As mentioned above, there are many similar grounds found in both Art. V of New York Convention and Qatari Arbitration Law. In addition, the adoption was made without any reservation (Decree (29) 2003) with the result that, like as many parties to the New York Convention, Qatar did not exercise the reciprocity reservation.[3] Accordingly, Qatari Courts are not capable of refusing the enforcement of any foreign arbitral award in Qatar based on the principle of reciprocity (Al-naddaf, 2008). This makes paragraph 1 of Article 379 of the 1990 Law void. In addition, with regard to the Convention's Article I (2), which states that arbitral awards include those issued by arbitration institutions in addition to those issued by arbitrators appointed for each case, two kinds of awards are now enforceable in Qatar (Al-naddaf, 2008). Nonetheless, no foreign arbitral award has been enforced in Qatar since it brought the Convention into force on 30 March 2003, at least to the extent of the researcher's knowledge. Furthermore, by creating the Qatar International Centre for Conciliation and Arbitration (QICCA) in 2006, Qatar took another step forward in the area of arbitration (Al-Kuwari, 2008). With less cost to resolve disputes and a group of world-famous arbitrators consisting of famous scholars, prestigious lawyers and professional persons, QICCA has been selected by many investors to arbitrate their cases (Al-Kuwari, 2008). What is more, the establishment of Qatar Financial Centre (QFC) in 2005 was a further stage concerning investment and economy in Qatar, while the Regularity Authority of QFC, which uses the Common Law legal system, offers

[3] According to the Convention's Art. I (3), reciprocity reservation means that states' Courts will only enforce an award under the Convention if it has been rendered within the territory of another state, which is also a party of the Convention.

another choice of arbitration style for the investors to arbitrate (QFC, 2013). The following section will consider arbitration institutions in Qatar.

## 3.5. Arbitration institutions in Qatar

As a result of being a member state of the Gulf Co-operation Council (GCC), Qatar became a member state of the GCC Commercial Arbitration Centre, which was established on 19 March 1995 by GCC leaders. It is located in Manama, the capital of the Kingdom of Bahrain. The member states with this centre, other than Qatar, include: the United Arab Emirates, the Kingdom of Bahrain, the Kingdom Of Saudi Arabia, the Sultanate of Oman and Kuwait (GCCAC, 1993).[4]
In addition, as mentioned above, there are two arbitration centres in Qatar: Qatar International Centre for Conciliation and Arbitration (QICCA) and the Regulatory Tribunal of the QFC.

### 3.5.1. Qatar Financial Centre

The Qatar Financial Centre "QFC" is an on-shore centre, established by the Government of Qatar in 2005. Providing a stage for domestic, regional and international growth, the QFC helps the Government to build a world-class financial and business environment in Qatar. There are four independent bodies under the QFC's umbrella: the QFC Authority; the QFC Regulatory Authority; the Civil and Commercial Court (First Instance and Appellate Divisions); and the Regulatory Tribunal (QFC, 2013).
The QFC Authority is the concerned party of the commercial affairs of the QFC. One of its responsibilities is to lead the expansion of the financial service sector in Qatar and promote relationships with the regional and global financial community. Another responsibility of the QFC Authority is to ensure that the QFC recruited a highly efficient and effective team and to ensure that its rules and guidance are up-to-date and meet the requirements of the business customers. In addition, the QFC Authority is responsible for attracting qualified institutions

[4] A Unified GCC Law for Commercial Arbitration final draft was completed in 2012.

and corporations of financial services. The administration of the Companies Registration, Standards of Employments and Immigration Offices are also part of its responsibilities. It is also responsible for the granting of licenses for all firms, which apply to progress non-regulated permitted activities; for example, the business of Ship Broking and Shipping Agents, the business of provision of classification services and investment grading and other grading services. Such activities are included in Part 2 of Schedule (3) of the QFC Law No. 7 of 2005 (QFC, 2005).

The QFC provides, for the licensed firms an international standards environment, a principles-based regulatory regime, which uses the English Common Law based legal system, and a competitive tax system. In addition, 100% ownership by foreign companies is allowed by the QFC and they can remit all profits outside of Qatar. Since 2005, over 170 licenses have already been issued to international and domestic firms, including well-known global financial services firms, such as AIG/Alico, Allianz, AXA, Barclays Capital and Deutsche Bank (QFC, 2013).

The QFC Regularity Authority is the QFC independent regulator, which was established by the Law No. 7 of 2005 of the State of Qatar, to authorize and regulate firms and individuals progressing financial services in of and from the QFC (LLP, 2014). In addition, appeals against the decisions of the QFC Regularity Authority, which are filed by entities, individuals or corporate bodies, can be heard by the Regulatory Tribunal (QFC, 2013).

The Tribunal and Dispute Resolution Regulations established the QFC Civil and Commercial Court to deal with and resolve disputes that might arise between the QFC firm and their counterparties. These resolutions include arbitration and litigation (QFC, 2013).

Furthermore, in May 2012, the Civil and Commercial Court received the agreement of the Qatari Cabinet to use the official name Qatar International Court and the overall trading name, which is the Qatar International Court and Dispute Resolution Centre (QICDRC). These new names expand the coverage of the Centre to cover court, arbitration and mediation. In addition, the Centre became able to accept international commercial disputes from non-QFC bodies (Musgrove, 2012).

#### 3.5.1.1. Qatar International Court and Dispute Resolution Centre (QICDRC)

The Civil and Commercial Court of the QFC, which is now known as the Qatar International Court (QIC), was established in 2009 according to Qatari Law. The initial jurisdiction for it was restricted to disputes coming out of the QFC (Finizio & Howitt 2013). However, in May 2012 the Court received its current name QIC and it became part of the QICDRC, which includes, besides the Court, the Alternative Resolution Centre. As a result, international commercial disputes from non-QFC bodies can be accepted by the Centre (QFC, 2013).

Although the Court has a common law jurisdiction, it is a national Court of Qatar, which is a civil law state. In addition, its judges have significant experience of resolving complicated disputes, as most of them have acted previously as judges in their countries, such as the Court President the Rt. Hon. Lord Phillips of Worth Matravers (English), who retired in October 2012 from his last position as the first president of the Supreme Court of the United Kingdom from the first of October 2009 (QICDRC, 2014).

By the Law No. 2/2009, the Court was divided into two divisions; the First Instance and Appellate division. The Court's rules state that the first instance and appeal proceedings should be heard and determined by three judges. In addition, all of the Court Judges are able to sit in either of the two divisions (Maita, 2013).

With regard to the Alternative Dispute Resolution (ADR), in partnership with CEDR, the QIC operates the ADR Centre. The Centre offers, in a friendly business environment, resolution of all non-litigation disputes. These include: arbitration; mediation; neutral evaluation, which offers disputing parties access to judges for an initial evaluation on the merits of the case and so provides a speedy judicial indication; and construction disputes, which is a newly developed fast track scheme to resolve construction disputes in a short period, which supposedly takes weeks rather than months (QICDRC, 2014).

### 3.5.1.2. Arbitration under QICDRC

Based on the UNCITRAL Model Law with some additions, the QFC Arbitration Regulations were enacted in November 2005. These regulations can be used if the parties of disputes choose the QFC as a seat of arbitration (Maita, 2013). The QFC Arbitration Regulations contain many interesting elements.
The following are listed as examples:

1) At the request of a party, the arbitral panel may grant interim measures of protection unless otherwise agreed by the parties (Regulation, 2006).
2) The parties are free to agree on the procedure to be followed by the Arbitral Panel in conducting the proceedings. This is subject to the Regulations' provisions (Regulation, 2006).
3) Only the QFC Tribunal may set aside an Award if:
   A) The applicant party furnishes proof that:
      - A party to the arbitration agreement was under some incapacity or the agreement is invalid;
      - Proper notice was not given to the applicant party, of the appointment of an arbitrator or of the proceedings or the applicant party was unable to present his case;
      - The award itself exceeds the terms of the arbitration agreement, or contains decisions on matters beyond the scope of the submission to arbitration. However, the part of the award, which contains decisions on matters not submitted to arbitration may be set aside if this part of the award can be separated from the decisions of the submitted award; or
      - The composition of the arbitral panel or the arbitral procedure was in conflict with the agreement of the parties;
   B) If the QFC Tribunal finds that:
      - The dispute subject matter, under the QFC Law, is not capable of being settled by arbitration; or
      - The award is in conflict with the interest of the QFC (Regulation, 2006).
4) According to Article 42 of the QFC Regulations, a sole and exclusive jurisdiction has been provided to the QFC Courts to hear applications for the

enforcement of an award in the QFC. In addition, the QFC Tribunal may refuse to recognise or enforce an award only:

A) At the request of the party who is affected by the enforcement of the award, if this party proves that:

- A party to the arbitration agreement was under some incapacity or the agreement is invalid, under the relevant law;
- Proper notice was not given to the applicant party of the appointment of an arbitrator or of the proceedings or the applicant party was unable to present his case;
- The award itself exceeds the terms of the arbitration agreement, or contains decisions on matters beyond the scope of the submission to arbitration, provided that only the part of the award which contains decisions on matters not submitted to arbitration may be set aside if this part of the award can be separated from the decisions of the submitted award as above; or
- The composition of the arbitral panel or the arbitral procedure was in conflict with the agreement of the parties or with the relevant law;
- The award has yet to become binding on the parties, or an application has been made to the court under the law of which the award was made to set aside or suspend the award; or

B) If the QFC Tribunal finds that:

- The dispute subject matter, under the QFC Law, in not capable of being settled by arbitration; or
- The recognition or enforcement of the award would be contrary to the public policy of the QFC (Regulation, 2006).

However, there are some shortcomings of the QFC Arbitration Regulations. The following listed are examples:

1) The QFC Arbitration Regulations are silent about confidentiality as no provision for it has been made in the Regulation.

2) No required time limits have been specified, by the QFC Arbitration Regulations, for the tribunal to issue its award (Norton Rose, 2008).

It is worth noting that the QFC does not yet have institutional arbitration; currently, they do Ad Hoc arbitration only. What is more, as they have not dealt

with any dispute yet, no enforced arbitral award has been issued by them (Interview).

#### 3.5.1.3. Interaction with other laws

As mentioned above, the QFC is an on-shore institution, which has been established by the Law No.:7 of 2005. Therefore, it is integrated in the State of Qatar as a part of it. Unlike other State Laws, which are issued in Arabic, the QFC Laws and Regulations are issued in English. Despite this difference, the procedures of issuing State Laws and Regulations apply to the QFC Law and Regulations. These include approval of the Consultative Council, the Council of Ministers, Emiri Decree and publication in the Official Gazette.

In addition, this unique institution has special conditions in dealing with State Laws and Regulations (Interview). Articles 11 and 18 of the Law No.:7 of 2005 regulate the relationship between the QFC and its body and institutions, on the one hand, and State Laws and regulations on the other as follows:

The exclusive power to approve, authorise or license, to incorporate or establish corporations, individuals, businesses and other entities in the QFC has been granted to the QFC Authority by Article 11. In addition, by this law, only the QFC Authority has the power to carry on Permitted Activities in or from the QFC and to determine the terms and conditions on which such approvals, authorisations or licences may be issued, the conditions which must be satisfied for the grant of any such approval, authorisation or licence and the types of business which may be conducted pursuant thereto. Article 18 of Law No.:7 of 2005 provided that QFC entities fall outside the jurisdiction of the other institutions of the State. Therefore, to carry on such business in or from the QFC, no further licence, consent, permit, membership or registration are required from any other institutions of the State, including the Ministry of Economy and Commerce the Qatar Central Bank, the Qatar Commercial Registry, the Qatar Chamber of Commerce and Industry and The Municipality of Doha (QFC, 2005).

What is more, the power to issue all requirements or relating visas, permits and other documents for employment or business with or in the QFC has been given

to the QFC Authority notwithstanding any provision to the contrary in other law or regulations of the State (QFC, 2005). Also, the contracts of the employees of the QFC Authority, the Regulatory Authority, the Appeals Body, the QFC Institutions, and any of their respective employees are bound by QFC employment regulations rather than State Labour Law (QFC, 2005).

On the other hand, with regard to any activities outside the QFC between any entity established in the QFC and any part of the State, the laws, rules and regulations of the State shall apply. In this case, the entity established in and conducting operations from the QFC were established in a jurisdiction outside the State (QFC, 2005). In addition, the criminal laws and sanctions of the State shall apply in the QFC. In addition, the Civil law, rules and regulations of the State shall apply only where the QFC Law is silent and without limitation, to contracts, transactions or arrangements made in the QFC between entities established in the QFC or between such entities and employees and contractors thereof (QFC, 2005).

## 3.5.2. Qatar International Centre for Conciliation and Arbitration (QICCA)

### 3.5.2.1. Establishment of the Centre

As an alternative to the National Court, in 2006 the Board of Directors of the Qatar Chamber of Commerce and Industry established the QICCA as a means of rapid and efficient resolution of disputes between the members of the Chamber (national companies), or between them and other foreign companies (Qatar Chamber, 2012). Sheikh Khalifa Bin Jassim Bin Mohammed Al Thani is the president of the QICCA, while the Board of Arbitration Chairperson is Mr. Abdul Rahman Abdul Jalil Abdul Ghani. In addition, Dr Minas Khatchadourian is the current Secretary General. He is the second person to hold this role, Dr. Ahmed Sheta being the first (Interview).

The QICCA was a local centre in the beginning; however, it became increasingly popular as an alternative means of dispute resolution in Qatar. This was due to

several factors the arbitration fees in QICCA are reasonable, as compared to other centres; the QICCA offers a group of well-known arbitrators; and the language of arbitration by default is Arabic, which is most accepted in Qatar, as it is the official language there. In addition to Arabic, arbitration is available in English. Qatari Government entities set the QICCA as the chosen arbitration forum in almost the contracts they enter into. In fact, the QICCA renders forty to fifty awards per year (Interview).

#### 3.5.2.2. Rules and bylaws

From the establishment of the QICCA until 2012, the QICCA applied the rules of arbitration contained in the Civil and Commercial Procedure Code. However, on the first of May 2012, new adopted rules of arbitration compatible with the UNCITRAL Arbitration Rules (the latest revised one), became effective (Interview). Many gaps that were not mentioned in the Civil and Commercial Procedure Code have been filled by these new rules, such as Competence-Competence, party autonomy and independence of the arbitration agreement. Importantly, a model arbitration clause has been provided by these rules to be included in contracts and agreements (Maita, 2013).

#### 3.5.2.3. Costs of Arbitration

Articles 43 - 48 of Chapter V of the new rules of Conciliation and Arbitration of QICCA concern the costs of arbitration, which should be determined by the arbitral tribunal. The term "Costs" includes only: (a) the registration fee; (b) the administrative fee; (c) the arbitral tribunal fee; (d) the costs of reasonable travel and other expenses incurred by the arbitrators; (e) the reasonable costs of expert advice and any other assistance; (f) the costs of expenses approved by the arbitral tribunal, such as reasonable travel and other expenses of witnesses; (g) any other costs, including legal costs, incurred by the parties in relation to the arbitration; and (h) any fees and expenses of the appointing authority, if the Centre is not designated as the appointing authority. In addition, there are two tables to demonstrate these fees, which are designed according to the amount in

the disputes. The registration fee, which the claimant shall pay upon file notice of arbitration, is always QR 5000 (almost £815) and it is non-refundable. The respondent shall pay the same amount upon filing a counterclaim. Table (1) determines the administrative expenses while Table (2) determines the fees of the arbitral tribunals (Qatar Chamber, 2012).

Table 1: Registration Fees and Administrative Expenses (in Qatari Riyals; £1000= Approximately QR5800),

(Adapted from QICCA's Leaflet)

| **Amount in Dispute** | **Registration Fees** | **Administrative Expenses** |
|---|---|---|
| Up to QR 500.000 | 5.000 | (1) % of the amount in dispute (Minimum 5.000) |
| From QR 500.001 to 1.000.000 | 5.000 | (1) % of the amount in dispute |
| From QR 1.000.001 to 2.500.000 | 5.000 | (1) % of the amount in dispute |
| From QR 2.500.001 to 5.000.000 | 5.000 | (1) % of the amount in dispute |
| From QR 5.000.001 to 10.000.000 | 5.000 | (1) % of the amount in dispute |
| From QR 10.000.001 to 20.000.000 | 5.000 | (0.75) % of the amount in dispute |
| From QR 20.000.001 to 30.000.000 | 5.000 | (0.75) % of the amount in dispute |
| From QR 30.000.001 to 40.000.000 | 5.000 | (0.75) % of the amount in dispute |
| From QR 40.000.001 to 50.000.000 | 5.000 | (0.75) % of the amount in dispute |
| From 50. QR 000.001 and more | 5.000 | Maximum 375.000 |

Table 2: Arbitration Fees (in Qatari Riyals), (Adapted from QICCA's Leaflet)

| **Amount in Dispute** | **For a Sole Arbitrator** | **For a Panel of Three Arbitrators** |
|---|---|---|
| Up to QR 500.000 | 15.000 | (6) % of the amount in dispute (maximum amount 30.000) |
| From QR 500.001 to 1.000.000 | 15.000 plus (3) % of the amount exceeding 500.000 | 30.000 plus (5) % of the amount exceeding 500.000 |
| From QR 1.000.001 to 2.500.000 | 30.000 plus (2.5) % of the amount exceeding 1.000.000 | 55.000 plus (5) % of the amount exceeding 1.000.000 |
| From QR 2.500.001 to 5.000.000 | 67.500 plus (2) % of the amount exceeding 2.500.000 | 115.000 plus (2) % of the amount exceeding 2.500.000 |
| From QR 5.000.001 to 10.000.000 | 117.500 plus (1.25) % of the amount exceeding 5.000.000 | 165.000 plus (1.5) % of the amount exceeding 5.000.000 |
| From QR 10.000.001 to 20.000.000 | 180.000 plus (0.4) % of the amount exceeding 10.000.000 | 240.000 plus (0.8) % of the amount exceeding 10.000.000 |
| From QR 20.000.001 to 30.000.000 | 220.000 plus (0.2) % of the amount exceeding 20.000.000 | 320.000 plus (0.4) % of the amount exceeding 20.000.000 |
| From QR 30.000.001 to 40.000.000 | 240.000 plus (0.15) % of the amount exceeding 30.000.000 | 360.000 plus (0.2) % of the amount exceeding 30.000.000 |
| From QR 40.000.001 to 50.000.000 | 255.000 plus (0.125) % of the amount exceeding 40.000.000 | 380.000 plus (0.1) % of the amount exceeding 40.000.000 |
| From QR 50.000.001 and more | 267.500 | 585.000 |

### 3.5.2.4. Awards

According to the current Qatari provisions of arbitration, one of the arbitrators, usually the chairman, or the sole arbitrator, if the dispute was solved by a sole arbitrator, lodge the arbitral award with the Court. This should be within 15 days of releasing the arbitral award. If the award was made in a different language other than Arabic, an Arabic translation of the award should be attached when lodging the award itself to the Court. After that, the party, in whose favor the arbitral award was rendered, should present a request in order to enforce the award. By going through these procedures, the award becomes like any Qatari ruling and becomes enforceable by the public courts office (Interview).
As mentioned above, forty to fifty awards are rendered per year by the QICCA and most of them are enforced. However, in June 2012, the Court of Cassation of Qatar made a strange ruling, which has set aside an arbitral award rendered by the QICCA in 2009. The Court stated that the award violated the public order, as it was not rendered in the name of His Highness the Emir of Qatar (QICCA, 2010) (Interview). According to this ruling, more than five awards have been set aside for the same reason (Interview). This means that the ruling of the Court of Cassation may disrupt every arbitral award made in the State of Qatar, and, accordingly, suspension of the arbitration centres in Qatar. This ruling will be analysed in the following section.

#### 3.5.2.4.1. Analysis and comments on the Ruling of the Court of Cassation

This rule, from the view of several researchers, is incorrect as it based on a lack of precision, which resulted from urgency. What is more, there is no formal system of precedent or reporting of court decisions that can be relied on by the Qatari Courts (Maita, 2013).
Background:
A Plaintiff had been obliged to pay to the Defendant more than QAR 8M by an award, which was issued by Qatar International Center for Conciliation and Arbitration. (Arbitral award no.: 11/2009 QICCA).

In 2010, the Plaintiff filed a civil case seeking to nullify the validity of the impugned award with the Court of First Instance in Qatar. However, the case was rejected by the Court of First Instance in 2011. (Civil case no.: 1245/2010).

Further in 2011, the decision of the Court of First Instance was brought before the Court of Appeal by the Plaintiff himself. However, the finding of the Court of First Instance was affirmed by the Court of Appeal by its Judgment, which was delivered in January 2012. (Appeal no.: 1031/2011)

Seeking to nullify the validity of the impugned award, the Plaintiff lodged a further appeal with the Court of Cassation in March 2012.

The Court of Cassation decided to tackle, *ex proprio motu*, the arbitration ruling and overturned it because of the violation of public order. This was because, in the Court of Cassation's view, any arbitral award should be rendered in the name of H.H. the Emir of Qatar.[5]

The Qatari Court of Cassation regarded the decision of an arbitrator as "judgment" in light of its binding effect on the parties and the power of the Court to issue an execution order to implement and enforce its terms. Therefore, by virtue of Article 204 of the Civil Procedure Code, the arbitrator's judgment (Award) should have been issued in the name of H.H. the Emir of Qatar. Since this condition was not fulfilled, the arbitrator's decision shall not be recognised and should be set aside as being contrary to both the Constitution and the Law.

However, this judgment fails to recognise the true nature of arbitration and is therefore unsound for several reasons. Firstly, regarding the lack of precision, under Qatari law, the process of arbitration is not regarded as an integral part of the court system. Article 63 of the Qatari Permanent Constitution states that Judicial Authority shall be vested in the Courts in the manner prescribed in this Constitution and Judgments shall be issued in the name of the Emir (QICCA, 2010). Article 4 of the Judicial Authority Law determined the Courts as follows: the Court of Cassation, the Court of Appeal and the Court of First Instance

[5] More details can be found in the researcher's published article: Jassim Al-Obaidli, "Concerns about the enforceability of arbitral awards in Qatar" (2014) 80 Arbitration 326-331.

(Almeezan, 2015a). Arbitration centres are not included in this article because the legislator did not, in fact, classify the arbitration centres as courts. This aligns with the true nature of arbitration, which is an extrajudicial process. For instance, according to the autonomous theory, which is the most recent theory in this field, arbitration is a private instrument of dispute resolution. Such a method of dispute settlement needs a support from specific legal and judicial systems to work efficiently. Arbitration should be in accordance with a particular legal system, whether this system is national or international, despite being based on the agreement of the disputing parties. It is, however, based on the parties' will, as partners choose to resolve their disputes in a private forum without resorting to the judicial one. The arbitrator's jurisdiction and scope of arbitration are determined by the agreement of the parties (Sklenyte, 2003).

In addition, Article 133 of the Permanent Constitution states that: "Court hearings should be held in public unless the court decides to make them secret in the interest of public order or public morals and in all cases, the verdict should be given in an open session" (QICCA, 2010). This is contrary to arbitration, where privacy is one of its advantages (Roberts, 2004). The given difference is another factor, which determines that the arbitration centres are not part of the Judicial Authority.

Further evidence of the arbitration system being different from the court system is the separation of arbitrators and judges in Qatar. On one hand, Article 33 of the Judicial Authority Law states that the Judges' salaries and allowance should be determined by Emiri Decree (QICCA, 2010). On the other hand, Article 210 of Civil and Commercial Procedure Code states that "Arbitrators' wages should be determined by an agreement between the parties in the arbitration agreement or in a subsequent agreement, otherwise it should be determined by the court originally competent to hear the dispute, at the request of a party ……" (Almeezan, 2015b). This is another example of the difference between the judge and the arbitrator.

Moreover, Article 35 of the Judicial Authority Law stipulates that the judge should not be an arbitrator, paid or unpaid, in a dispute, which is raised before the judiciary or not, without the approval of the Judicial Council. After approval by

the Council a judge may be assigned to be an arbitrator for the government or one of the bodies of public institutions (Almeezan, 2015a). This article differentiated between the judges and arbitrators. Thus, judges cannot be an arbitrator without prior approval.

In accordance with the provisions of Articles 200 and 201 of the Civil and Commercial Procedure Code, the arbitral tribunal shall request the court, which is originally competent to hear the dispute, to issue a decision to present any document, which is in the possession of third parties, and is required for the arbitration, or assigning a witness to testify in front of the arbitral tribunal. In addition, the arbitrators should refer to the court, which is competent to hear the dispute, to the following procedures:
1 - Judging the witnesses who did not attend or those who refrain from answering by sanctions, which are set forth in section III of the second book of this law.
2 – Assigning the required rogatory commission to consider the dispute (Almeezan, 2015b).
Judging by the facts mentioned above, an arbitrator cannot be a judge.

The essential nature of the arbitration process, being separate and different from the judicial process, presupposes that there is a difference between arbitral awards and court judgments. Although the Qatari legislator used the same word to define the court judgment and the arbitral award (he used the word "*hukum*" judgment for both the court judgment and the arbitral award), he addressed some articles in the Civil and Commercial Procedure Code, which drew a line between the two. The statements below help define the given difference.
Article 198 of the Civil and Commercial Procedure Code, Arbitration section states that:

"The arbitrators issue their judgment not bound by the procedures, which are set forth in the Procedures of this law, except as provided in this section and have their judgment on the applicable rules of law, unless they are authorised to conciliation, provided they do not breach the rules of public order and morality. If the arbitration agreement is based in Qatar, the law of the State of Qatar is applicable to the elements of the dispute, unless the parties agree otherwise."

Article 69 of the Civil and Commercial Procedure Code states that judgments, which should be issued and executed in the name of H.H the Emir of Qatar, are procedural and, according to Article 198 (above), arbitral awards are not bound by procedural rules. In other words, Article 69 does not apply to the issues regarding arbitral awards.
In addition, Article 202 determines the form of Arbitral awards in the following ways: arbitral judgment (award) must be in writing and. in particular, include a copy of the arbitration contract and a summary of each party's case, their documents, the reasons for the judgment, the verdict, the place where it was made, the date of its issuance and the signatures of the arbitrators.
There is no mention of the award having to be issued by the Emir (Almeezan, 2015b).

What is more, Article 203 provides that all arbitral judgments, even those issued by an investigation procedure, by knowledge of one of the arbitrators, as well as the original documents related, must be filed with the original arbitration contract by the arbitrator with the clerk of the court originally competent to hear the case, within fifteen days following the issuance. In his turn, the clerk of the court should write a report of this filing and send a copy of this report to the concerned parties. If the arbitration is in a case of appeal, the filing should be carried out with the help of the clerk of the Court of Appeal (Almeezan, 2015b).

Moreover, Article 204 stipulates that the Arbitrators' award is not enforceable except by an order issued by the judge of court that the original award is filed by a clerk, at the request of any of the stakeholders. The judge issues the command of implementation after reviewing of the judgment (the award) and arbitration contract, as well as after verifying that there is nothing that may prevent the implementation and execution of the order. The command of implementation should be written at the bottom of the original document of the judgment (award). The Implementation Judge is responsible in respect of all issues related to the implementation of the judgment (Almeezan, 2015b).

Based on the information provided above, it can be seen that the powers of the arbitrator are limited compared to those of the judge. As a result, an arbitral award cannot be equal to a court's ruling. It is, therefore, submitted that arbitral awards are not bound by Article 69 of the Civil and Commercial Procedure Code, which states that judgments should be issued and executed in the name of H. H the Emir of Qatar.

This aligns with the common understanding of the nature of arbitration as being separate from the legal and judicial system of the state. It is well known that any arbitration award, which has not been issued by judges representing the judicial authority of the state or by an attribution directly from the state, is not included in the legal and judicial system of the state. Thus, it functions as an arbiter of its provisions only through procedures to formulate the implementation of the arbitration award, making the latter binding and enforceable. This step will be implemented by the competent court, with the absence of any cases of invalidity provided by its own arbitration law if a case is filed against the invalidity of the arbitration award and the availability of the conditions for the implementation of the provisions of the arbitrators (Khatchadourian, 2012).

Further, regarding the lack of formal system of precedent or reporting of court decisions that can be relied on by the Qatari Courts, as the Qatari legal system is derived from the Egyptian, just as the litigation system, it is helpful to refer to the rules and decisions issued by the Egyptian Courts in similar cases, especially in matters arising in court for the first time.

A similar case to the one being considered, the Cairo Court of Appeal - Seventh Department - Economic – in its judgment on 9/2/2008 Cases No. 61 and 147/124, ruled the following:

"For the fourth reason, in which the plaintiff claimed that the judgment is invalid because it was not issued in the name of the supreme authority of the State, this claim is clearly invalid. Hence Article 43, paragraph III of the Law No. 27 of 1994 states that: "arbitral award should include the names of the litigants and their addresses, the names of the arbitrators, their nationalities and their attributes, a copy of the arbitration agreement, a summary of requests liabilities, their words and their documents and the verdict, date, place of issue and its causes, if it was necessary, "and it is not required that the awards of arbitrators to be issued on behalf of the people [of Egypt] as regular courts' decisions are" (Qushayri, 2009).

After this unexpected ruling of the Court of Cassation of Qatar on the Appeal No 64 of 2012, many arbitration awards have been rejected by the lower Courts in Qatar. Some of them have been completely rejected and others have been returned to the arbitrator to solve some issues so that it can be enforced in Qatar (Khatchadourian, 2012). In other words, to render the award under the name of H.H the Emir of Qatar, which is, in the researcher's view, another big mistake as the judges ask from the arbitrators to render the award under the name of H.H the Emir of Qatar without any legal ground that gives them the right to do so. Furthermore, disregarding to the New York Convention, the lower Courts of Qatar refuse to enforce many foreign arbitral awards for the same reason (Khatchadourian, 2012). However, the Court of Cassation finally determined its view regarding the enforcement of arbitral awards in appeals nos.: 45 and 49 of 2014, which were about the enforcement of an arbitral award. This award was issued by a sole arbitrator in Qatar, who was assigned by ICC using its regulations. The Court of first instance refused to enforce the award on the grounds of violating public policy, as it was not rendered under the name of H.H the Emir. The Court of Appeal agreed the decision of the lower court. However, the Court of Cassation has a different view. It deals with this award as a foreign award as it has been issued according to the ICC regulations, even though the seat of arbitration was in Qatar. As a result, this award should not be rendered under the name of H.H the Emir and it should be enforced according to the NYC.

Although this award is not a foreign award, as the seat of arbitration was Qatar, even though it adhered to the ICC regulations, it was a good step towards forming a friendly environment of arbitration in Qatar (ElGhatit, 2014).

Further, in the appeal no.: 164 of 2014, which has been filed to the Court of Cassation of Qatar, the Court accepted the appeal as the award had been issued in the ICC in Paris by arbitrators, who were assigned by the ICC and under its regulations. Therefore, it should not be rendered under the name of the Emir of Qatar and should be enforced in Qatar regarding to the NYC. By issuing these two rulings, it is clear that foreign awards are excluded from the requirement of rendering under the name of H.H. the Emir and they should be enforced

according to NYC. However, the Court of Cassation still needs to examine the situation of domestic arbitral awards, as the current situation is not settled.

The next section will discuss the other issues related to arbitration in Qatar.

## 3.6. Issues related to arbitration in Qatar

From the above, issues related to arbitration in Qatar can be classified under three main groups: Issues related to cultural attitude towards arbitration, issues related to the law and regulations and issues related to confidence. However, some of the previous literature does not mention these issues at all. The remaining literature gives only vague comments; such as the current law is outdated without any explanation.

### 3.6.1. Issues related to cultural attitude towards arbitration

The previously mentioned awards issued in the 1950s, which were unfavorable to the Arab States' Governments, adversely affected Qataris' attitude towards arbitration and it was considered unacceptable as a method of dispute resolution, not only in Qatar, but throughout the Middle East Region (Brown, Mayer & Lexis, 1996). This idea was prevalent in the region for a long period (Brown, Mayer & Lexis, 1996). In addition, it reflected on the laws, which were passed in the states of the Middle East region. As a result, the laws that existed in the region at that time did not mention arbitration (Almeezan, 2015b). The impact of these negative views was the reason behind the reluctance of the Region States to join global conventions relating to arbitration, such as the Convention of New York, for a long time (Interview). This trend resulted in a negative view of arbitration to the extent that parties of contracts either avoid mentioning arbitration in the contract completely or draft uncertain arbitration clauses. Therefore, they cannot refer to arbitration when a dispute related to the contract arises (Interview).

Nowadays, this view has changed in most Middle East States. This is due to the fact that arbitration awards have become more powerful and easily enforced due

to ratification by a large number of states, of the international conventions concerning enforcement of arbitration awards, such as the NYC (Brown, Mayer & Lexis, 1996). What is more, international parties of contracts prefer to resolve disputes by arbitration rather than by domestic litigation of the Middle East States, which they feel they are strange (Interview).

However, domestic parties still have their previous opinion of arbitration. In addition, they tend to use a ready-made style of contract agreements, which are based on previous weakly drafted agreements. As a result, the avoidance of arbitration as a means of dispute resolution still continues (Interview).

With regard to the foreign view of Qatar and the choice of Qatar as arbitration seat, Qatar is unfavorable to foreigners as a seat of arbitration. This is due to several reasons related to the recognition and enforcement of arbitral awards as Qatari Law is unfamiliar (Interview). In addition, with regard to the QFC, there is a misconception, which is widespread, that the QFC is an off-shore centre, although it is not. This notion led foreign parties to believe that any award issued by the QFC will not get the benefit of reciprocity of arbitral award enforcement, which is the benefit of the NYC (Norton Rose, 2008).

These issues were identified by the interviews which were held by the researcher as they were absent from the related literature.

### 3.6.2. Issues related to the Law and regulations

There are dual jurisdictions for arbitration in Qatar, as mentioned above: that of the QFC, which is based on the Common Law legal system and the Civil Law legal system, which is the main approach of the State of Qatar (Maita, 2013). However, both of these are currently out of date and contain significant disadvantages (Almeezan, 2015b).
On one hand, the QFC Arbitration Regulations, as previously mentioned, do not address the confidentiality term. What is more, they do not specify a time limit for the tribunal to make its award within this duration (Norton Rose, 2008).

On the other hand, the Qatari Civil and Commercial Procedure Code, as issued in 1990 based on the Egyptian Civil and Commercial Procedure Code, the Law No.13 of 1968, is very old and out of date and contains many weaknesses (Sharar, 2011). It deals with arbitration in the same way as commercial litigation (Al Ahdab, 1998). This is clearly shown in terms of appeal against arbitral awards, which is allowed in this law. Furthermore, with regard to arbitration agreements, although the law states that the agreement should be in writing, it does not interpret the requirements of writing (Sharar, 2011). In addition, the principle of the autonomy of the arbitration agreement has been entirely ignored in the Qatari Civil and Commercial Procedure Code (Sharar, 2011). However, some issues related to the regulation of arbitration were not mentioned in the previous literature. Examples of such issues include important matters which the law is silent on such as the fact that the law does not determine which matters may and may not be resolved by arbitration, the confidentiality of the arbitration process and arbitral judgment. Also, the Law, in its language, uses terms which lead to confusion; for example, it uses the term judgment (*Hukum*) instead of (*Qarar*) award when dealing with arbitration award (Almeezan, 2015b). This led to the misunderstanding and misinterpretation of the law by the court (as discussed above)(Rule, 2012).

### 3.6.3. Issues related to confidence

When the parties to the contract draft their agreement, especially when dealing with arbitration agreement terms, they are looking for a well-based law and institution, which guarantee the enforcement of the arbitral award. They are also looking for clear and uncomplicated procedures, run by experienced staff and leading to predictable results (Interview). Like most other Civil Law Legal Systems, the Qatari Courts do not offer any formal reporting of court decisions and they do not depend on the principle of precedent from the case law system (Maita, 2013). Therefore, they might deal with two cases, which have similar circumstances in two different ways, forming uncertain resulting in different outcomes. Thus the parties' lawyers cannot assume or expect the result of any case that might be resolved in Qatar. Consequently, they will avoid choosing Qatar as a seat of arbitration and avoid choosing Qatari Law as the law which

governs the agreement. As outcome consequence of the above- mentioned rule of the Qatari Court of Cassation and the issues already discussed, arbitration in Qatar has lost the confidence of investors and contract parties (Interview). Except what was mentioned by Aida Maita in her thesis about the principle of precedent, issues related to confidence were not raised by the previous literature but have been raised by interviews which were held by the researcher.

## 3.7. Conclusion

Arbitration has deep historical roots in the Middle East Region. Like any principle which does not conflict with the principles of the Islamic religion and facilitates the procedures of transactions, Islam agreed and recognised arbitration as a means of dispute resolution. This agreement can be shown in the Holy Qur'an, Sunnah, Al-Ijmaa' and Al-Qiyas, which are the sources of legislation in Islamic doctrine, according to Islamic jurisprudence (Al-Jarba, 2001).

As a Middle Eastern State, which was part of the Ottoman Empire, Qatar was governed by Islamic Law. As a result, arbitration was known and accepted in Qatar for a long time. However, international arbitration was not experienced in the Middle East, including Qatar, until the 1950s, when disputes arose related to oil contracts, between the governments of Middle Eastern Arabic States and Western Companies. The results of arbitration in these disputes were against the Government's interests, which led to an unfavourable perception by these governments of arbitration in that they regarded it merely as a means for the West to steal their money (Stovall, 2010).

Further, Qatar codified its laws based on Egyptian Laws (Maita, 2013) and the first special section for arbitration and another one for recognition and enforcement of foreign judgments and awards were included in the Law No.13 of 1990, the Civil and Commercial Procedure Code. The law was issued prior to ratification of the New York Convention by Qatar. Therefore, despite being a significant step towards arbitration, it has fallen short of ideal because it was incompatible with the UNCITRAL Model Law, especially since it was based on the

previous Egyptian Civil and Commercial Procedure Code No.13/1968, which was outdated.

The Civil and Commercial Procedure Code uses confused terms, such as (*Hukum*) judgment instead of (*Qarar*) award. One of its significant disadvantages is that it does not contain any definition of arbitration, whether institutional arbitration or an ad hoc one. It also does not define arbitrators. In addition, the Code was not well drafted with regard to the arbitration agreement, as it does not interpret the written requirements. Also, the Code does not mention the principle of autonomy in the agreement. What is more, appeal against arbitral awards is allowed in this law by procedures which are similar to those of appeal in the Civil Court (Sharar, 2011).

Moreover, as arbitration become more of a valuable alternative to commercial dispute resolution all over the world, the Gulf Co-operation Council decided to establish the GCC Commercial Arbitration Centre in Manama. As a member state of the GCC, Qatar benefits from this Centre's services (GCCAC 1993).

In a further huge step towards arbitration, Qatar acceded to the New York Convention in 2003. Since that date, several steps have been taken by the Qatari Government to attract investors, to enhance the economy in Qatar and to create an international arbitration hub there. The QFC was established in 2005, based on the Common Law Legal System, to assist the Government in building a world-class environment of finance and business in Qatar. After that, the QICCA was established in 2006, based on the State law system, which is the civil one. It offered a low-cost dispute resolution method and a team of world-famous arbitrators. The QICCA adopted new rules of arbitration, which are compatible with the UNCITRAL Arbitration Rules, in May 2012. As a result of establishing those two centres, dual jurisdictions for arbitration are offered in Qatar. However, Qatar is still not an attractive seat of arbitration for several reasons:

- The Qatari peoples' negative view of arbitration, shared by other states in the Middle East, and their preference to resolve disputes arising from contracts by litigation rather than arbitration. This view resulted from the previous opinion of arbitration, which had prevailed in the Middle East region, including Qatar, since the 1950s when some arbitrators' awards in issues related to oil

contracts had been enforced against a number of governments of Middle Eastern States in favour of the interests of Western companies. As a result, arbitration was viewed by these states as a way for western companies to extort money from these states.

- The foreign view of Qatari law is that it is old-fashioned, as it is based on Islamic Law. In addition, most foreign law firms are not familiar with Qatari courts and the procedures of recognition and enforcement of arbitral awards in Qatar or the Arabic language, which is the official language of the State. What is more, when Qatar established the QFC, it tried to avoid the language and the law issues in order to attract the foreign parties. However, when foreign investors draft their contract agreements, they still avoid selecting the QFC as a seat of arbitration. Although being a false view, it is commonly believed that the QFC is an offshore centre, which means that its awards cannot benefit from the reciprocity of enforcement by the NYC.

- Arbitration laws, the State Law, which is Law No. 13 of 1990, and that of the QFC issued in 2005, are out of date and need to be amended.

- With regard to the enforcement of arbitral awards, uncertain procedures and unexpected results, caused by lack of experience in dealing with arbitration and the absence of a judicial precedents system, can lead to a loss of confidence in the Qatari arbitration system. Perhaps the rule of the Court of Cassation of Qatar No. 64 of 2012 is evidence of the unexpected results those might have on arbitration in Qatar.

From the above, it is clear that arbitration in Qatar suffers from various problems and faces many challenges. There are significant issues related to the law and regulations; however, there are other issues which are equally complicated and deep-rooted. On one hand, amending the law might solve those issues which are related to the law and regulation. On the other hand, some other issues, such as those related to education or cultural attitude towards arbitration may need time to be resolved.

Indeed, many researchers and those with an interest in arbitration in Qatar have called for an amendment of the Qatari Laws relating to arbitration (Sharar, 2011)(Al-Emadi, 2008). Therefore, in its plan to modernise laws to enhance the

business field and attract foreign investors, Qatar has started to draft a new bill of arbitration law as well as the QFC, which is drafting its new law too. More broadly, but for the same purpose, a unified arbitration law for the GCC has been drafted and submitted to the General Secretariat of the GCC for adoption. These drafts and other solutions, which are offered by the Government of the State of Qatar, administrations of the QICCA and QFC, will be discussed later in this thesis.

This conclusion leads us to the end of this chapter, which critically analyses arbitration in Qatar beginning with the history and background of arbitration, passing through the current law and situation and reaching its significant advantages and disadvantages. The next chapter will be devoted to methodologies of this research beginning with the research aim, research objectives, question and concept, hypotheses, research design, theory and strategy, research methods and data collection. It will present the difficulties which faced the researcher during the research stages and finally, it will present the research outcomes.

# Chapter four: Methodology

## 4.1. Introduction

The previous chapters have set out the theoretical background of the study. This chapter is devoted to the methodology used to conduct this study in terms of reaching its goals and answering its questions. The chapter first will consider the difference between the terms "methodology", "research method" and "research design". It will then determine the aim of the research and its objectives, restating the research questions. Research hypotheses, purpose, design, theory and strategy will be determined. After that, the methods adopted in this study will be illustrated, discussed and justified in addition to discussing research methods in general, demonstrating several types of research methods and data collecting and analysis strategies.

## 4.2. Research Methodology, Method and Research Design

The research methodology is the way of solving a research problem using a systematic theory. It is about how to carry out the research in a scientific way. More precisely, it is about the reasons for doing this research, the purpose of doing it in this particular way, the research problem itself and the data analysis technique, which has been used (Rajasekar, Philominathan, & Chinnathambi, 2006). On the other hand, the research method also involves the procedures used by the researcher to gather data (Rajasekar et al., 2006) Research design is a scheme or a framework for data collection and analysis, which is planned by the researcher in order to answer the research questions (Bryman, 2012).

## 4.3. Research Aim

In the interview, held with the Minister of Justice of the State of Qatar, the Minister summarised the objectives and aims of the Qatari Government concerning arbitration. He stated that:
"We intend to make arbitration a dispute mechanism accessible to everyone. There are those who think that commercial arbitration is restricted or available only to large companies., …Wider awareness and a wider legal culture of arbitration will make the people understand what arbitration is. …. In addition, as the current provisions are general, the new law when issued, if ALLAH wills, will be a quantum leap, as it will provide a legal framework, which people can work within... … To establish arbitration centres, we have two plans: (1) encourage the local legal sector by inviting large law firms to make arbitration a part of their activities and practice arbitration. Therefore, they will not send every case to the court. The lawyer can act as arbitrator between the disputing parties and take the same fees. In other words, for example, if the fees of the lawyer to defend his client in court were 10000 QR and the case would be solved within one or two years, he can have 30000 QR from both parties and arbitrate to resolve the dispute. However, the lawyers right now do not have the legal framework to do so. (2) We are encouraging the international arbitration centres to have branches in Qatar. In addition, we are seeking to have branches of Arbitration Courts of London, Paris and Singapore in Qatar. This either through joint ventures or the existence of the whole branch itself (Interview)."

As Minister of Justice of the State of Qatar, Dr. Hassan Al-Muhannadi, stated in the above-quoted sentences from the interview, Qatar aims to establish a new arbitration system, which will make arbitration as an alternative method of dispute resolution available for everyone. This will be achieved through three procedures. The spread of the legal culture and awareness of arbitration throughout society, but especially between judges, lawyers and business parties is the first procedure. The second will be the establishing of arbitration centres, which will be done through two ways: supporting local law firms to practice arbitration and stimulating the international arbitration centres to either have branches in Qatar or joint ventures with a Qatari law firm. The third and most

important procedure is to have a well-drafted modern law, which must be compatible with international laws.
According to the research aim, which is mentioned in the introduction chapter, this research thesis will assist in achieving the aim of the Qatari system of arbitration, as determined by the Minister of Justice. As it aims to propose appropriate methods of enhancing arbitration legislations, bodies and practice in Qatar to match the international standards in order to make Qatar a leading hub of arbitration in the Middle East region.

## 4.4. Research Objectives

This thesis seeks to determine the advantages and importance of including an arbitration clause in international contracts. The study examines the necessity of a new arbitration law and whether the new draft law covers all issues regarding the current provisions. It seeks to appraise the efficiency of the arbitration institutions in encouraging arbitration in Qatar. However, the most important objective of the research is to provide suitable recommendations, which will help in improving the practice of arbitration in Qatar.

## 4.5. Research Questions and Research Concepts

The main question which the study attempts to answer is: Will the new Arbitration Draft Law solve all the issues related to arbitration in Qatar, thereby attracting international companies to Qatar and its law for their arbitration?
Three concepts were chosen to analyse the main research question and break it down into nine sub-questions for the sake of obtaining detailed answers to the research question about issues, efficacy and success. The first concept, issues, needs to identify which issues are adversely affecting arbitration in Qatar. It is important to discover whether all the issues are related to the current Arbitration Code or whether they are related to other factors, such as the practice of

arbitration. In addition, the elements which cause those issues must be identified, as well as the ways in which these issues are currently being avoided. The second concept, efficacy of the solutions provided to enhance arbitration in Qatar, must be measured by comparing the findings. The third concept, success in enhancing arbitration and attracting parties to arbitrate in Qatar, must be extracted from findings as well.

These concepts have been determined through answering the following nine sub-questions, which have guided the nature of the current study investigation:

1. To what extent do the differences in cultures and laws between local organisations and international organisations affect commercial contracts?
2. Do local companies prefer local law and international companies prefer English, American or international law to regulate their contracts? Why? Are their reasons sound or just unfounded perceptions?
3. What role does arbitration play in finding a compatible foundation law for multilateral international contracts?
4. Why are the current regulations of arbitration in Qatar inefficient?
5. Does the new draft of Arbitration Law cover all the issues? If not, what are the criticisms that can be directed against it? What are the best ways of avoiding and/or solving such criticisms and issues?
6. To what extent is the separation of the Qatar Financial Centre judgment system from Qatari's judgment system efficient? What are the criticisms that can be directed against this separation?
7. To what extent is Qatar International Centre for Conciliation and Arbitration successful? What are the issues affecting its success?
8. What are the procedures and methods used to make the arbitral awards of Qatar International Centre for Conciliation and Arbitration binding and enforceable in Qatari and foreign courts?
9. What are the difficulties facing the arbitration when dealing with GCC laws, in particular, Islamic Law, and how to avoid such difficulties?

## 4.6. Hypotheses

During the early stage of this research, critical reading of the literature relevant to arbitration in Qatar led to the realisation that doctrinal study alone is not sufficient to fully understand the situation due to the shortage of relevant material.Due to the confidential nature of arbitration,there are few reported cases and very little has been written about the subject. In addition, there is more than one proposed draft law of arbitration; the GCC Unified Arbitration Draft Law and the Qatari Arbitration Draft Law in the Civil and Commercial Affairs. What is more, the QFC drafted a new law, which seeks to establish an alternative dispute resolution centre within the QFC. Therefore, hypotheses have been constructed to decide what kind of study should be adopted and what kind of data should be collected. These hypotheses are:

(i) If the draft law is well-drafted, then the current issues related to the arbitration provisions will be solved.

(ii) If new well-established arbitration centres are established in Qatar, then foreign parties of contracts will not refuse to arbitrate in Qatar.

(iii) If cultural issues are solved, then the local parties of contracts will be familiar with arbitration.

## 4.7. Research Purpose

The main purposes of this study are: (1) to examine issues related to legislation and the practice of arbitration in Qatar, and (2) to examine whether the new arbitration draft law will solve these issues or whether other solutions have to be adopted to enhance arbitration in Qatar in order to make Qatar a leader in arbitration in the Middle East region. In doing so, the study must be divided into three main phases: doctrinal study, empirical study and comparative legal study. As a result, this is a socio-legal research study, which prefers to use different approaches for each phase.

## 4.8. Research Design

The current study uses a mixed research design. It is a case-study research, which analyses arbitration practice and laws in Qatar intensively on one hand. However, on the other hand, it is also a comparative study research, as it compares the current provisions of arbitration included in the CCP Code with the two proposed draft laws, namely the GCC Unified law and the Qatari law, in light of other jurisdictions and the UNCITRAL Model Law for the purpose of improving the laws and practice of arbitration in Qatar.

## 4.9. Research Theory

Theory can be defined as the description of monitored normalcies (Bryman, 2012). Nigel Gilbert said that:

"A theory highlights and explains something that one would otherwise not see, or would find puzzling. Often, it is an answer to a 'Why?' question. For example, why are some people poor and others rich; why are so many people unemployed in western capitalist societies, and so on. Thus, one characteristic of a theory is that it can be used as an explanation." (Gilbert, 2007).

The importance of theory for the social researcher is due to the fact that theory supplies a structure to understand the social phenomena and to interpret the findings (Bryman, 2012).

The aim of the research is to answer the questions posed by theoretical considerations (deductive study). However, in some research, the researcher aims to view theory as something which happens after data collection and analysis (inductive study) (Bryman, 2012).

### 4.9.1. Deductive Versus Inductive

A deductive study, as mentioned above, is used to examine a theory rather than to create it, while an inductive study is used to construct a theory. In other

words, while a deductive study constructs a theory in at the beginning and then starts to observe and test the findings, the inductive study observes and gets the findings before creating a theory (Bryman, 2012). Accordingly, the current study is, on one hand, an inductive study because analysis of the literature resulted in three hypotheses, which determined the type of study that should be adopted for this research, and how the required data should be collected to carry out this study. On the other hand, it is considered as a deductive study in the later stages as it uses the hypotheses to test the findings.

### 4.9.2. Legal Research as a Normative Social Science

Christopher McCrudden mentioned two types of legal approaches: the internal approach, which was adopted by the traditional legal analysis, and the external approach. He defined the internal approach as "the analysis of legal rules and principles taking the perspective of an insider in the system", while he quoted the definition of the external approach from David Ibbetson, who defined it as: "the study of the law in practice, of legal institutions at work in society rather than legal rules existing in a social, economic, and political vacuum." (McCrudden, 2006). Furthermore, analytical questions, such as how to define the legal concepts and how they can be matched together, attract the interest of the lawyers, on one hand. On the other hand, lawyers are interested in normative questions of what the law should be. Then, both the present practice of the law and what the law should be are topics of interest to lawyers. This hybrid interest makes the law a branch of normative and political philosophy and not just an empirical social science (Bell 2013).

The developers of socio-legal research believe that using empirical investigation in legal research can provide a more comprehensive view (McCrudden, 2006). Therefore, the methodologies, which are used to study political, social or economic practice, can and should be applied when examining the law (McCrudden, 2006). Accordingly, legal research, then, is practical as well as being analytical and descriptive.

As it is a part of legal research, which seeks to answer the question of what law should be, comparative law is normative research (Bell 2013). Comparative law

shares, in general, a number of attributes with legal research. It concerns the view of the insider of all studied legal systems. Therefore, it is hermeneutic. It is institutional in that it inserts knowledge of the law in the concepts' institutional structures, thinking's structures and the systems' organisations in questions (Bell 2013).

Furthermore, legal research can be described as a purposive research, as it contains a concept of what the purpose of law is and how that purpose might be reached.

### 4.9.3. Functionalism Approach

Functionalism is related to comparative law due to its search for the purpose of the practical (Brand, 2007). Functional comparisons are based on three premises the first of which is the realistic concept that the law cares about social needs or interests. The problem-solution approach established according to this premise is based on choosing a particular problem of practice, examining the resolutions of this problem in legal systems and then listing the solutions, illustrating and appraising them. The second premise of functionalism addresses the notion that the actual function of legal institutions is a sociological concerns, while the third premise of functionalism is the *praesumptio similitudinis,* which affirms that practical questions are resolved in the same way by different legal systems (Brand, 2007).

By applying the current study to the above-mentioned functionalism grounds, it is obvious that the current study should adopt the problem-solution approach, as it seeks to find solution for the current issues of arbitration in system in Qatar.

## 4.10. Research Strategy

Distinguishing between the two types of research, quantitative and qualitative is common among scholars of methodology (Bryman, 2012).

### 4.10.1. Quantitative versus Qualitative

Quantitative research examines the questions of what, where, when, how much and how many (Rajasekar et al., 2006). It aims to determine quantity and test statistics; it is based on numbers and is non-depictive. As it evaluates the evidence, it is a repetitive process. In addition, as its data exists in the form of numbers and statistics, the results of quantitative research can be presented in graphs and tables; the results of the quantitative research are extremely convincing as they are based on objective data.

Using words rather than numbers and implementing reasoning, qualitative research aims to provide detailed descriptions of the information gathered and examined to discover its significance by examines the questions of why and how. However, such data cannot be represented in graphs (Rajasekar et al., 2006).

From the above comparison between quantitative and qualitative research, it is clearly seen that the current study adopts the qualitative research strategy, as this is more suitable for legal studies. This due to the fact that this research seeks to find and describe the reasons behind the issues which affect arbitration, such as the weakness of the current law, the impact of culture and other issues, which can be described by using words rather than numbers. In order to do this, a hybrid qualitative method was used to provide a more holistic view of issues: a doctrinal study, an empirical study and a comparative legal study.

## 4.11. Research Methods and Data Collection

As mentioned above, this study is divided into three main phases:  a doctrinal study, an empirical study, namely interviews, and a comparative study.

The first phase of the thesis uses a doctrinal study in analysing documents. However, the researcher found that this is not sufficient to have a clear vision of the issues related to arbitration in Qatar, especially those issues, which relate to the practice of arbitration. This, as previously mentioned, is due to the shortage

of material related to arbitration in Qatar. Therefore, the researcher decided to use another type of study to support the analytical study of the available documents. The study in the second phase, based on the interviews, is one of socio-legal empirical study, which is a form of empirical research.

Empirical research, which also called Experimental Method or Cause and Effect Method, is a research method based on data, results and conclusions that can be proved with observation or experiment (Brandes, 2011). It does not depend on a system or theory; it relies on experience or observation only (Goddard, 2004).

Empirical research in law is used to describe the meaning of the text to discover the law. In other words, looking at something and deriving ideas from this data or understanding the meaning of different words. In particular, Socio-legal empirical research in law analyses the law by going beyond legal documents and using different media. These media can be surveys, questionnaires, interviews and so on. However, it is important to adhere to the rules and methods of the discipline. If the method does not consider the validity and reliability of the thesis from which the method is derived, the thesis may not be defensible (Webley, 2013).

Finally, the third phase of the study adopts a comparative legal study to assist in finding solutions for the issues, which were listed from the two previously mentioned phases. "Comparative research or analysis is a broad term that includes both quantitative and qualitative comparison of social entities" (Mills, 2006).

The main purpose of comparison is falsifying or verifying the relationship between two phenomena. The comparative method is used by some of the best works related to this field of law. The comparative method provides a good foundation for analysis and research. What is more, comparative analysis can broaden our horizons and make us more open-minded. In addition, learning from the experience of others and previous mistakes is one of the benefits of comparative research. On the other hand, comparative analysis requires studying a variety of contexts and cases, which makes it more demanding intellectually and challenging. Moreover, cross-national comparative analysis often requires familiarity with foreign languages (Xanthaki, 2013).

In the following section, the three used methods will be described.

### 4.11.1. Doctrinal Study

The doctrinal study concentrates on the history, legislation and case law relating to arbitration in Qatar. It examines the legislation and case law in order to identify the rules and principles relating to arbitration in Qatar and the ways in which they do or do not meet the objectives of the system of arbitration in Qatar.

It has been achieved mainly through library-based research, which has relied on a comprehensive review of available literature, relevant books, journals and theses, legislation, arbitration awards and the courts' decisions related to them as well as relevant websites.

### 4.11.2. Interviews

An interview is a conversation, which consists of questions and answers, between two or more persons leading to a targeted purpose (Duck & McMahan, 2012). In social research the interviewer aims to extract all types of information from the interviewee: opinions, attitudes, feelings, norms, beliefs and values (Bryman, 2012). There are several kinds of interviews:

#### 4.11.2.1. A structured interview

It is also called a standardised interview and requires a plan of the interview designed and managed by the interviewer. The questions of this type of interview should be the same for all interviewees and provide a fixed range of answers for them. The questions used in this type of interview in known as closed, closed ended, pre-coded, or fixed choice (Bryman, 2012).

#### 4.11.2.2. A qualitative interview

This is a general term, which includes both semi-structured and structured interviews (Bryman, 2012).

#### 4.11.2.3. An in-depth interview

This is the same as a qualitative interview and includes two kinds of interviews: the semi-structured and structured (Bryman, 2012).

#### 4.11.2.4. A semi-structured interview

This type of interview covers a number of topics, which form the structure of the interview. The questions of this type of interview are more general and the interviewer has the freedom to ask further questions according to the answers of the respondent (Bryman, 2012).

#### 4.11.2.5. An unstructured interview

In this type of interview, the interviewer usually uses informal questions to cover a list of topics or issues, which guide the interview. In general, the questions are subject to be changed from an interview to another (Bryman, 2012).

#### 4.11.2.6. A focused interview

It is a type of interview in which the interviewer asks the interviewees open questions about a particular situation or event related to the interviewees and important to the researcher (Bryman, 2012).

#### 4.11.2.7. A focus group

It is the same as the focus interview; however, the discussion is usually in a group rather than separate interviews for each respondent (Bryman, 2012).

#### 4.11.2.8. A group interview

It is the same as focus group except for a significant nuance, which is that the group members discuss several matters which have some relation to each other (Bryman, 2012).

#### 4.11.2.9. An oral history interview

It is an unstructured or semi-structured interview, in which the interviewee is inquired to remember past events and give an impression of them (Bryman, 2012).

#### 4.11.2.10. A life history interview

This type of interview is often an unstructured interview, which aims to gather as much as possible information about the entire biography of each interviewee (Bryman, 2012).

In this study as the interviewees are from different categories, this means that some different questions must be addressed to each category in addition to the general questions addressed to all participants. A structured interview restricts the interviewees and guides them to a specific shape of answers. In contrast, the unstructured interview gives the interviewees more freedom to talk about each topic or issue as introduced by the interviewer, which may lead to exceed the determined time of the interview without covering the whole list of topics or

some might be covered in more detail, while the rest are just dealt with superficially. Therefore, the current research prefers to choose a type of interview which is a hybrid of those two types. As a result, it conducted semi-structured interviews to give the interviewees freedom to express their opinions on each question, which may lead the interviewer to ask further questions from the list of topics according to the answers provided by the interviewees. In addition, by using the semi-structured interview, the interviewer can have more control over managing and guiding the interview itself. Semi-structured interviews were conducted with some of the stakeholders of arbitration in Qatar to find out how the legal system works in practice, thus gaining insight into the ways in which the system meets or does not meet the objectives in practice from the point of view of those stakeholders. The other purpose of the interviews is to view the match between the stakeholders' view of practising arbitration in Qatar and the findings of the doctrinal research. However, some of the participants, due to their circumstances, were not be able to do a face-to-face interview. Therefore, they responded to the interview in writing, which led to their interviews being counted as structured.

The participants in this research study are varied and include both the Minister and the Undersecretary of the Ministry of Justice of Qatar. One of the law-makers who share in drafting and reviewing the draft law was chosen to be a participant. A representative of the Legal Department of the Ministry of Justice was also chosen, as were the General Secretary of QICCA, the former CEO of the QFC and the CEO of the QICDR. Finally, combinations of lawyers from governmental corporations, local law firms, joint venture law firms and international law firms participated in this research. However, the participants did not include judges or business parties. The researcher tried to interview more than one judge, but he could not contact any of them. In addition, the time limit was very restricted. Therefore, the researcher preferred to interview lawyers as clients' agents instead to interview several categories of business parties, local, foreign and international, who deal with arbitration. The participants also did not include women because none of the chosen positions to be interviewed was occupied by a woman. In addition, with regard to the lawyers, it was easier to contact men rather than women.

### 4.11.3. Sampling

The selection of the sample plays a significant role in the validity and reliability of the research. According to Bryman, there are two types of sampling: probability sampling and non-probability sampling. Probability sampling is the randomly selected sample, which offers a known chance for each unit in the population to be chosen. The non-probability type, also called purposive sampling, is a non-randomly selected sample. Choosing the sample (cases or participants) is based on a strategy which guarantees that those samples are related to the research questions, and this is the target of the purposive sampling. The later type of sample is the most used in qualitative research (Bryman, 2012).

As the present study concerns arbitration in Qatar, it is very appropriate to adopt purposive sampling, as this is the most suitable one in this regard.

The researcher proposed a list of participants and semi-structured interviews consisting of two sections: general questions addressed to all participants and specific questions, according to matters relating to him or his organisation. Both the proposed list and proposed interviews were submitted to gain permission from the ethics committee of the Robert Gordon University.

After getting the required permission to commence the interviews, the researcher started contacting the participants and forwarded to each of them the proposed interview with adequate information about the study and the right of proceeding or withdrawing from the participation at any time without the need to provide a reason to get their approval and let them prepare for the interview. The ethics committee of the Robert Gordon University contact details and the researcher's contact details were provided to the participants in case if any information about the researcher or the research are required. Some of them suggested other participants to be interviewed instead of them and, as already mentioned, some of them chose to respond to the interview questions in writing.

All of the interviews were audio recorded and transcribed verbatim. In addition, due to the fact that some of the interviews were held in Arabic, the interviewers' questions were translated into Arabic and the transcriptions of those interviews were translated into English. The reason behind this is that the written text is

easier to deal with in terms of analysis than the audio. Research assistants transcribed the interviews and the researcher revised them to make sure that the transcription is more accurate.

Each interview's transcript has been sent to the interviewee and he has been given the opportunity to approve, review and comment on the transcript (member checking). Unless permitted by the participant himself, the participant's name was not recorded in the transcript and a unique identifier was allocated instead of the name. so that the participant was assured about the confidentiality of their responses to the interview questions. The recordings are stored securely in a password protected file and will be destroyed when they are no longer required.

The sample was then divided into four main groups using the stratified purposive sampling technique, which divides the samples of cases or individuals into same interest subgroups (Bryman, 2012): Arbitration Centres Representatives (ACR), Education Sector Representative (ESR), Governmental Sector Representatives (GSR) and the Lawyers Sector Participants (LSP). The last group is divided into three sub-groups: Local Law Firms (LLF), International Law Firms (ILF), Joint venture Law Firms (JLF) and Representatives of Legal Department of Supreme Committee for Delivery & Legacy (the new name of Supreme Committee of Qatar 2022) (LSC).

### 4.11.4. Comparative Legal Study

A comparative study seeks to examine the view and practice of law in other legal systems and choose an appropriate view and practice to apply it in the studied system. Another type of comparative study examines the change of legal system and transformation of society (Banakar *et al* 2005).

The current study chooses Qatar as a case study to examine its arbitration legislation and practices. The doctrinal study showed that there are some issues related to the practice of arbitration and the legislation of arbitration in Qatar. In addition, the Qatari legislator has drafted new laws of arbitration and the

government has created some institutions of arbitration in Qatar. Therefore, it is helpful to look at other more developed and experienced legal systems for solutions to some of the issues, which have been identified by the doctrinal research and the interviews.

The last version of both the QFC Draft Law and the Qatari Arbitration Law in Civil and Commercial Affairs Draft were analysed for the first time in this study. The study compared the Qatari draft with the GCC Unified Arbitration Draft Law and the current provisions of arbitration, which are included in the CCP Code. This comparison was done in light of the UNCITRAL Model Law and Egyptian Arbitration Law. In addition, if the above mentioned laws and draft laws deal with the issue in the same way and fail to solve it, the current research looks for solutions from other laws and International Arbitration Institutions, imports them, lists them and chooses the most relevant and suitable ones to apply them to the Qatari Arbitration Law in Civil and Commercial Affairs Draft.

## 4.12. The Analysis Process

The current study gathers data from two different qualitative research methods interviews (semi-structured and structured) and the analysis of the black papers of draft laws.

### 4.12.1. Interviews Analysis Process

The study includes more than twelve and a half hours of semi-structured interviews and three written structured interviews carried out with members of stakeholders of arbitration in Qatar, belonging to one of four main groups: Arbitration Centres Representatives (ACR), Education Sector Representative (ESR), Governmental Sector Representatives (GSR) and the Lawyers Sector Participants (LSP), as mentioned above.

The researcher uses a (Sony IC Recorder), which has a direct USB output, to record these interviews and download them in his computer. The transcription and translation process have been mentioned in the sampling section above.

Following Bryman's advice (Bryman, 2012, pages 565-609), the researcher used a thematic analysis, as he found it more suitable for this research, and made a framework of themes and sub-themes according to the following steps:

1. Step one: The researcher read through all of the transcriptions. Once he had finished reading them, he noted what was interesting and important.
2. Step two: The researcher read through the data again and wrote notes in the transcriptions' margins about important remarks and observations.
3. Step three: the researcher started coding the texts as well as participants into categories, themes and sub-themes.
4. Step four: the researcher reviewed his codes to avoid using two or more words or phrases in describing the same phenomenon and to unify the description of the same phenomenon.
5. Step five: The researcher used the thematic analysis approach to transmit the findings of the analysis into a framework approach, which contains categories, themes and sub-themes.
6. Step six: The researcher used NVivo10 in coding to make the coding process easier and to obtain the percentage of agreement and disagreement on each subject.

### 4.12.2. Black Paper Analysis Process

The findings of the black paper were imported from the Drafts of the Qatari Arbitration Law in Civil and Commercial Affairs, the GCC Unified Arbitration Law and the QFC Law.

The researcher again used the thematic analysis approach in analysing the draft laws. As the QFC Draft Law includes significant changes to the current QFC Law, the researcher quoted articles which included these changes and analysed them directly by comparing them with the current QFC Law.

In contrast, in both Qatari Draft Law and the GCC Unified Law, he used the draft laws' Chapters as themes and their Articles as sub-themes. As previously mentioned, the last version of the Qatari's Draft Law was reviewed for the first time by this study; the researcher quoted every article of it and described them. However, with regard to the GCC Unified Law, as it has been reviewed in other studies before, the researcher quoted the most significant articles in each chapter of the draft law and described them.

A specific chapter was created to analyse the two above-mentioned draft laws with the current provisions of arbitration in light of the UNCITRAL Model Law and the Egyptian Arbitration Law. As the researcher found that the Qatari Draft Law is better organised than the GCC Unified Law, he used its chapters as the main themes of comparison.

## 4.13. Difficulties Facing the Researcher

Some difficulties confronted the researcher during several stages of this research, which need to be declared.

In the early stage the most significant issue was the shortage of materials about arbitration in Qatar. Qatar is a modern new developed State and although there is some legal literature concerning Qatar, there is no Qatari jurisprudence yet. Most of the available literature is in Arabic and very little of it can be accessed online.

With regard to the interviews, the researcher encountered the refusal of some elected participants to be interviewed. The researcher planned to hold the interviews within three months. However, some appointments were cancelled an hour prior to the scheduled time, which led to choose other participants and some of the interviews were delayed and rescheduled several times. As the researcher resides in Aberdeen in the UK, and the participants are in Qatar, the researcher was forced to travel between Aberdeen and Qatar to carry out the interviews several times, which resulted in extending the planned period of

holding the interviews to seven months instead of three and increased financial costs for the journeys between Aberdeen and Qatar.

Regarding to black papers, the researcher spent time analysing Qatari Draft Law, reviewing the literature, which analysed it and drawing up interview questions relating to it. Then, while holding the interviews, the final version of the Draft Law, which is completely different to the all-previous versions, was written and passed to the researcher by the Minister of Justice, as the first researcher to review it. In addition, the QFC Draft Law was also passed to the researcher at a late stage of the analysis. These procedures were significant events which enriched the research itself and its originality, but required extra time to review the new versions of the Draft Laws.

All of the black papers are in Arabic and so require translation. The researcher sought for assistance from specialist translation companies. Although the translation was very expensive, the translations of the black papers and Arabic interviews were not up to the high standard required.

## 4.14. Research Outcomes

The doctrinal study (see Chapters 2&3), which was held as a part of this research, discovered some important issues related to arbitration legislation and practice in Qatar. In order to assure the validity and reliability of this study, the researcher decided to hold interviews with members of arbitration stakeholders in Qatar and to analyse proposed draft laws and compare them with the current provisions in light of some experienced jurisdictions to find solutions for the issues identified. This discussion can be found in Chapters five, six and seven respectively.

Further, in the discussion chapter, which is Chapter eight, the study confirms that these issues exist in reality and are not theoretical. It also shows that the Qatari Draft Law is more appropriate and almost ready to be enforced in Qatar rather than the GCC Unified Law, which still needs time to go through political procedures. The Qatari Draft Law will assist in improving arbitration legislation

and enhancing arbitration practice in Qatar. However, the Draft does not solve all the issues. Therefore, the study, in its conclusion, proposes some recommendations, which contains solutions imported from the other foreign jurisdictions, to solve these issues.

Regarding the institutions of arbitration, the study shows that the Qatari Draft Law will assist in improving the practice of arbitration in the only current arbitration centre, which is QICCA, and will establish a strong system of arbitration, which will offer the chance of establishing new well-established arbitration entities and centres, whether new or branches of experienced international ones. These entities and centres will be under the umbrella of the government. In addition, the study shows that according to the QFC Draft Law, a centre of alternative dispute resolution will be set up, which will include a well-established arbitration centre.

Finally, the study shows that some of the cultures issues have been solved relating to lawyers, who have started thinking seriously about arbitration as an alternative way to resolve disputes arising between contract parties. It shows, also, that some efforts are being made by universities, the Ministry of Justice, QICCA, QFC and some law firms, whether international or joint ventures, to attract parties of the disputes to solve their issues via arbitration instead of litigation. However, these efforts need to be more intensive and arbitration really needs to be marketed in Qatar in a better way, especially for local parties and international companies.

With regard to the academic contribution of this research, the existing literature did not review the new Draft Law or the QFC Draft so this research provides the first analysis of these pieces of legislation. In addition, the research provides a unique example of socio-legal research in this field. It investigates the practical issues related to the law as well as the law itself. It uses the results of this investigation as the basis for the solutions and recommendations proposed. These are intended to improve the law in a way which meets the needs of society. Therefore, it urges future legal researchers to take the interests of society into account as well as the law itself. As the law should care about the needs of society (Brand, 2007).

## 4.15. Conclusion

This chapter has been committed to discussing the research methodology. It started by expressing the research aim and objectives, followed by demonstrating the main research question, the three chosen concepts to analyse the research questions and the nine sub-questions, which resulted from this analysis. This chapter clarified that the current study uses a mixed research design, which consists of case study research and comparative study research. Also, it explained how the current study follows several approaches, as it is a qualitative socio-legal study. It is an inductive-deductive/ normative/ functionalist study, which uses the problem-solution approach. It showed that the present study adopts a qualitative research strategy and has been divided into three main phases: doctrinal study, empirical study and comparative study. It showed that in collecting the required data and analysing them, a hybrid qualitative method, which consists of a doctrinal study, semi-structured and structured interviews and a comparative legal study, has been adopted by the researcher. The sampling and the analysis process of both the interviews and the black papers were demonstrated in this chapter. The chapter states the difficulties that faced the researcher during the journey of this research. Finally, this chapter presented the outcome of the current study and clarified the benefit of combining theories, designs, and methods of legal and sociology studies. The next chapter will deal with the findings of the empirical study, which consists of several interviews held with a number of participants among the stakeholders of arbitration in Qatar.

# Chapter five: The findings of the empirical study

## 5.1. Introduction

The situation of arbitration in Qatar was critically discussed in chapter three of this thesis, beginning with the first special section for arbitration included in the CCP Code, passing through the ratification of NYC by Qatar and the establishment of QFC and QICCA and finally reaching the current situation of arbitration. Qatar succeeded in modernising its laws, especially the Civil and Commercial, since it converted its law from one which was totally Islamic-based into a mixed system, by following the hybrid Egyptian Law, which was a mixture of the principles of Shari'a Law and the French Civil Code (Maita, 2013). This law was fit for purpose in its early stages. However, according to the fast development of the economy in Qatar, as well as globally, this law has become outdated and requires modernisation. Although Qatar has made huge steps towards enhancing arbitration, attracting foreign investors and being a significant hub of arbitration in the Middle East, several challenges and barriers stand in its way. According to the literature review, these barriers can be classified into three types: issues related to cultural attitude towards arbitration, issues related to the law and regulations and issues related to confidence.

The main cultural issue is the previous negative view of the Middle East Region States toward arbitration, which resulted in arbitration becoming unpopular as a method of dispute resolution in the region's States, including Qatar (Brown, Mayer & Lexis, 1996).

The second type of issue is that related to the law and regulations. As mentioned above, the Code is out dated and needs to be modernised (Al-Emadi, 2008)(Sharar, 2011).

The third type of issue affects the confidence of the foreign investor parties, who are looking for an enforceable arbitral award, clear and certain procedures, experienced staff and expected results. These factors are not guaranteed in the Qatari system (Maita, 2013).

This chapter is based on findings from interviews with a number of participants who are arbitration stakeholders in Qatar. The methodology is discussed in detail in chapter four. The objective of these interviews is to get feedback from the participants on the current issues of arbitration in Qatar and the draft law of arbitration. This will help ascertain whether the issues identified in chapter 3 exist in practice and are not purely theoretical issues and to identify any additional issues which are encountered in practice. What is more, the participants' feedback might be used to improve arbitration in Qatar by finding efficient, acceptable, practical and useful solutions for the current issues.

## 5.2. Empirical study findings

Believing that no one understands the problem as well as those who suffer from it, several interviews have been carried out with a number of participants, who are stakeholders in the arbitration process, and are in a position to comment with authority on the issues related to arbitration in Qatar. An additional aim was to seek their views on how arbitration in Qatar can be improved. The total number of participants is 15, 13 of whom were targeted, while the remaining two were invited by participants to attend the interview and share their opinion to enrich the interview. The interviewees were classified into specific categories: Arbitration Centres Representatives (ACR), Education Sector Representative (ESR), Governmental Sector Representatives (GSR) and the Lawyers Sector Participants (LSP). The last category was divided into: Local Law Firms (LLF), International Law Firms (ILF), Joint venture Law Firms (JLF) and Representatives of Legal Department of Supreme Committee for Delivery & Legacy (LSC). These codes will be used when dealing with the responses of participants on themes and sub-themes.

The results were divided into six main themes, some of which were divided into sub-themes, while some of them were further divided into semi-sub-themes. The main six themes include: the current issues about arbitration in Qatar, the preferred arbitration centre, Qatar Financial Centre (QFC), factors which can improve arbitration practice in Qatar and attract international companies to

arbitrate in Qatar, the Draft Law and, finally, the role of the Ministry of Justice in enhancing arbitration in Qatar.

## 5.2.1. The current issues about arbitration in Qatar

This theme was created to find out the issues which arise when practising arbitration in Qatar. It was divided into two sub-themes: the current law and other issues, namely issues related to arbitration institutions, education, the judicial system, procedures and badly drafted agreements, in other words, all issues which are not classified under the issues related to the current law.

### 5.2.1.1. The current law

Six participants from all the categories, which form 40% of total participants, mentioned that the current law has some advantages.

The CCP Code of 1990 provides another way to settle disputes besides the court option. This was the opinion of the participant of (ACR) category, Dr. Minas - the General Secretary of QICCA. He said that:

> "Qatar's legislator leaders since 1990 have given an option for an out-of-court settlement of disputes. In other words, Qatari companies, Qatari individuals, any Qatari legal entities, may use this option, and instead of resorting to the courts, they can select arbitrators and they can opt for arbitration as detailed in the law."

Three participants of (GSR) agreed that the current law has some significant advantages, such as organised organisation of the rules, principles and foundations of arbitration in Qatar and many arbitration issues,

H.E. Mr. Sultan Al-Suwaidi –, Undersecretary of the Ministry of Justice, in this regard, said:

> "The Code of Civil and Commercial Procedure No. 13 of 1990 has organised the rules of arbitration in State of Qatar."

In addition, he mentioned the allowance of appeal against the arbitration judgment as another advantage, in his view.

> "This law allows the challenge of the arbitral judgment before the court of appeal and the court of cassation, which guarantees revising the award from the issues of fact and from the correctness of implementation."

Mr. Al-Suwaidi also referred to * the possibility of judgments by the recognition and enforcement of the arbitral judgment by the judiciary* as the third advantage:

> "The possibility of enforcing arbitral Judgments by the judiciary."

The representative of the Legal Department of the Ministry of Justice found that the CCP Code organised arbitration and matters related to it in general:

> "The current law organises many arbitration matters and sets important provisions, which deal with the basic issues resulting from arbitration."

From the point of view of the representative of the Legislation Department of the Ministries Council, the current provisions approved that arbitration is an alternative method of litigation:

> "The current code is putting the principles and the basics of arbitration as a judicial route parallel to the normal judiciary route."

Finally, two last participants in the (JLF) category had another view of current law advantages.

Mr. Sultan Al-Abdullah, who is the CEO of Sultan Al-Abdullah & Co. Law firm, thinks that organising arbitration by the current Code, even though it is general, is an advantage of the current Code. In other words, the presence of provisions which govern arbitration is an advantage. He said that:

> "Arbitration in Qatar is currently regulated by virtue of Chapter 13 of the Procedure Law. This Chapter, consisting of 21 Articles, deals in very generic terms with the concept of arbitration. The key provisions of the current legislation deal with the sanctity of the arbitration agreement and the effects thereof, how the arbitration agreement is made, the matters where the courts would aid the arbitration parties in the event of differences, the arbitral tribunal appointment, dismissal and duties, the arbitral award and its

components, and the appeal, annulment and/or enforcement of the arbitral award. The current legislation is very brief in nature and addresses some pertinent issues but only in very generic terms. The legislation leaves considerable latitude for the parties to delineate the rules applicable to their arbitration in the terms of reference. It allows the parties to outline the procedures to be applied to their arbitration."

In addition, Mr. Hani Al-Naddaf, who is a Partner of Al-Tamimi & Co. Law firm, thinks that the stability of the situation, resulting from the common understanding of the provisions, is an advantage of the current Code.

"It has been tested before the court on many occasions and there is kind of common understanding or stability in that sense." [Mr. Hani Al-Naddaf]

However, with regard to the disadvantages of the current law, all those who responded to this question agreed that the current law is outdated and does not respond to the economic development of Qatar. Therefore, this should be reflected according to the UNCITRAL Model Law. However, each participant thinks that the law is outdated for a different reason. For example, from Dr. Minas, the current code is not compatible with the current practices of commercial arbitration, whether domestic or international, as it contains only 21 articles dealing with arbitration in general. In addition, it is based on the previous Egyptian procedural law of 1965. He said that:

"The actual Qatari provisions are obsolete. They are not going into the current practices of commercial arbitration, and even more into international commercial arbitration. As we know these 21 articles are not detailed enough to meet all the situations arising in arbitration proceedings. The Qatari provisions of 1990 were largely inspired from earlier provisions existing in the Egyptian procedural law of 1965. So, you will agree with me that a law drafted in 1960 can hardly meet today's requirements of a modern arbitration law."

Mr. Robert Musgrove, former CEO of QICDR, said:

"the State Arbitration Law and the QFC Arbitration Law are not contemporary. They are not up-to-date. Both laws and regulations are somewhat outdated."

Indeed, the current CEO of the QICDR- Mr. Faisal Al-Sohuoti thinks that arbitration should have a separate law. He said:

> "we don't have a separate or actual arbitration law. Articles, which are between 192 to 210, if I'm not mistaken, So I think, those articles of Civil and Commercial Procedure Code are doing, let me say, fine but as we know everything needs to be updated and needs to be changed to suit the actual situation now these days in Qatar and so I think it has done a good job in the past, but it doesn't work now. We need to get a new law which should be based on UNCITRAL. This is my personal view."

In addition, Prof. Khawar Quraishi- CEO of McNair Chamber mentioned that the current law is not compliant with NYC Convention.

Mr. Ahmed Sabir from the Al-Shammari and Al-Hajri Law firm, a participant in (LLF) category, added more issues other than being out dated. He also mentioned some procedural issues, which are found in the current provisions, such as the time limit of the arbitration period and the appeal on arbitration, which according to H.E. Mr. Sulatan Al-Suwiadi is an advantage. In this regard, He said:

> "These articles include general principles but do not cover the procedural rules of the arbitration and they are also not compliant with the modern approaches towards arbitration; hence the current status of arbitration involves many disadvantages such as: Article (197), limited the arbitration period, in the event of disagreement, to three months. This is a short period and it would have been better to be six months, for example. Regarding articles (205) and (206), which state the possibility to appeal the arbitration decisions and their vulnerability by a petition to review, it is better for the arbitration to be ultimately decisive to the dispute and to limit the decision review to only the claim of nullity to save time and effort, as arbitration is an alternative and parallel track to the judiciary which aims to avoid the judiciary by permanently and quickly settling the dispute. Articles 207, 208 and 209 (when filing the claim of nullity) did not determine a definite date to file the claim of nullity, which puts the stability of legal status of the arbitration parties at high risk. Article 209 gave the court hearing the claim of nullity the right to settle the

dispute on its own. The resolution issued in this case is going to be appealable, and this is not consistent with the logic of arbitration and results in many problems and obstacles, which finally lead a lot of people to abstain from resorting to arbitration and also to distrust arbitration practice in Qatar according to Qatari law. This explains why companies resort to international arbitration centres outside Qatar and subjection of arbitration to foreign laws, and not to Qatari Law."

Moreover, Mr. Hani Al-Naddaf added that the current law is out- dated because it does not deal with new concepts of arbitration.

"The current law does not deal with the difference between international and local, doesn't deal with the new concept of arbitration such as the concept of competence-competence."

While the representative of the Legal Department of the Ministry of Justice talked about issues not mentioned by other participants, such as electronic arbitration centres and other issues. He said:

"It does not address the following issues: It does not organise the penalty accountability of the arbitrators upon violating the assigned tasks. It does not define the body that supervises the arbitration activities conducted within the country. It does not define the procedures to establish arbitration centres and the body that supervises them. It does not organise the criminal responsibility of the arbitrator upon receiving any amounts of money to violate his responsibility, as the related penalty law provisions apply only to public employees.

Because the current law does not require any specific academic or professional qualification, this may open the door for unqualified people to enter the arbitration field, which in turn affects negatively the role played by arbitration to settle disputes and mitigate the load of justice.

The current law needs to be updated to conform to the recent legislative trends and to treat the emerging issues and legal problems in this field; for example, recently, electronic arbitration centres have spread on the internet, and the current law does not organise such issues or include any procedures to deal with these centres."

However, H.E. Minister of Justice, Dr. Hassan Al-Mohannadi, went further than other participants as he thinks that there is no current law at all. He said:

> "Unfortunately, there is no current law organising the arbitration process in general, but we have certain stipulations in the code of procedures, which lack two things: (1) An issue pertaining to it, as it did not organise arbitration, which means that the entity which accredits arbitrators and arbitration centres including all detailed texts is merely some articles mentioned in the code of procedures, which controls the effects of arbitration and executes international arbitration awards."

#### 5.2.1.2. Other issues

The participants mentioned some issues affecting on arbitration in Qatar beside the law itself.

##### 5.2.1.2.1. Issues related to Arbitration Institutions

Qatar suffers from a lack of experienced well-established international arbitration centres.

H.E. the Minister of Justice talked in detail about this issue. He said that:

> "It is sure that there are no arbitration centres in the State and no accredited mechanism for arbitrators. The Chamber of Commerce established the arbitration centre and the centre needs support and more organisation. Qatar has no arbitration centres except, as I have said, the Qatar Chamber of Commerce which is not organised as a legitimate tool, so people will not resort to it. The Centre at the Chamber of Commerce, so as not to be unfair, does not have legitimate coverage and we can say it is an individual initiative from them and they did not get any support from anywhere. There is only one centre, but if there are more than one centre. We are speaking about centres which convince all the persons to resort to as standard organisation, strength

and its reaction to their cadres, they have accredited arbitrators. Certainly, this achieves greater confidence for international companies."

In addition, the QFC still does not operate their arbitration centre well. Mr. Hani Al-Naddaf agreed with this view as he said:

"QFC is as yet very immature, they don't have proper rules and even they don't have cases they are not promoting the centre as it should be. I am not aware of any case which has been heard by the QFC arbitration if any."

What is more, QICCA, which was established by Qatar Commerce Chamber, adopted new rules in 2012 compatible with UNCITRAL Model Rules. However, it is still not up to the professional international standard. Mr. Ahmed Sabir explained the reason behind this view. He said:

"The procedures of Qatar International Centre for Conciliation and Arbitration do not specify a time to oblige the centre to notify the respondent on one hand, and on the other hand, article 8 of the procedures related to the number of arbitrators stating: "If the parties did not agree in advance on the number of arbitrators…, three arbitrators should be appointed (which is illogical and may not primarily serve the arbitration process, as the dispute itself may not require appointing three arbitrators, which leads to increasing arbitration expenses without justification, and leads to refraining from arbitration at this centre, in addition to the lack of specifying times clearly as mentioned above."

Mr. Sultan Al-Abdullah agreed with Mr. Ahmed Sabir in his view about the case management in QICCA. He said:

"The current QICCA rules, adopted in 2012, seem to also follow the UNCITRAL model rules and have addressed many of the deficiencies that existed in the previous version. Sadly however, many organisations that dealt with QICCA have raised concerns about case management by the Centre.

QICCA has its own list of arbitrators and going through that list I don't think will give a lot of comfort to international firms in terms of the quality and the experience of arbitrators that are listed there, so I think we have to promote

QICCA more through training, through good organisational support and a good reputation that has to be built up over many years of practice."

Mr. Hani Al-Naddaf agreed that management is the main problem of QICCA. He said:

"CICCA issued new rules two years ago I think with the new CEO Dr. Minas. However, they are still struggling and we just have been trying to appoint an arbitrator with them for more than one year and yet the arbitrator has not even been appointed just to start. So there is definitely a deficiency in the procedure and they don't have the proper personnel for this institution so definitely I would say the comparison is unfair."

#### 5.2.1.2.2. Issues related to education

The lack of courses in arbitration and advertisements for it mean that people in Qatar became not aware to resort to arbitration in solving their issues. The Minister of Justice talked about the awareness of arbitration:

"People and society are not aware of the importance of arbitration, as it may be an alternative for the procedures of adjudication. In society in general, few people realise that there is another means of settling the disputes with others rather than police, judiciary and the entities executing the law, so this is one of the most important problems - the integral organisation of arbitration is unknown, but also making the people aware of the existence of an alternative way to the judiciary is one of the biggest problems." [H.E. Minister of Justice].

What is more, Judges and local lawyers are not familiar with arbitration as an alternative way to resolve disputes. This view has been agreed by several participants.

For example, Mr. Faisal Al-Sohuoti said that:

"Arbitration needs to be promoted in itself between parties and lawyers as well, and not only them but the essential part in the court. In Qatar we are in

a position that many of the classic schools at the local courts consider arbitration is not a proper way to be used to resolve the problem, which we accept, well, not accept but we respect their view but I think it's a cultural point, which we need to raise. We need to educate parties, the local community, and the business community as well to know what arbitration is and then we can update our law and update our courts so it's linked together. There are many elements to be updated."

The former CEO of QICDR, Mr. Robert Musgrove, said that:

"It's an education matter more than anything else. The inexperience of the judges in handling that high level complex arbitration process, you're inevitably going to get problems with procedure."

"Judges need training", according to Dr. Yassin Elshazly, from the University of Qatar.

Continuing legal education is not required for lawyers and judges, which in Mr. Sultan Al-Abdullah's view leads to the fact that judges and lawyers suffer from lack of legal knowledge.

"We do not have yet the concept of continuing legal education. It's not a requirement, it's not mandatory, once you get the license, you don't have to go to any training, which is a shame, because it means that the knowledge of licensed lawyers is never updated. If you don't go to seminars and conferences, education groups, training is a must. Yes." [Mr. Sultan Al-Abdullah].

The Legal and Judicial Studies Centre and some International and Joint venture law firms hold some courses, conferences and training in arbitration. However, they are not enough.

Talking about the Legal and Judicial Studies Centre, H.E. Mr. Sultan Al-Suwaidi said:

"the centre making efforts and has the qualifications to provide courses to the afore mentioned categories."

Dr. Yassin Elshazly suggested that arbitration centres shall offer courses in arbitration:

> "Arbitration centres in Qatar must be supported in offering courses for lawyers and judges in the developments of arbitration."

Mr. Faisal Al-Sohuoti added that:

> "The arbitration centre, I think, one of its objectives is to educate people in order to attract them, to prove to them that this is an efficient way to resolve their dispute."

#### 5.2.1.2.3. Issues related to Judicial System

Local courts in Qatar are affected by a lack of experience and training with regard to arbitration. This leads to a non-friendly environment in Qatar in which enforcement of arbitral awards is not assured. The rule of the Court of Cassation in the Appeal No. 64/2012 proved this view.

> "Judicial practice does not understand the nature of arbitration. The rule of the Court of Cassation in the Appeal No. 64/2012 has caused many problems and disrupted the arbitration process, as. It has caused many parties, namely those against whom arbitration decisions were issued, and not issued under the name of His Highness the Emir of Qatar, to file claims of invalidity due to its violation of the public order. In addition, the absence of specific times to file invalidity claims in the current law leads to instability of the legal statuses, wasting time and effort, and the invalidity of the content of the arbitration. It also affirms misunderstanding and misinterpretation of the law by the cassation court which is concerned with ensuring appropriate enforcement of the law." [Mr. Ahmed Sabir]

Dr. Minas. the General Secretary of QICCA, responded in detail on this point. He said that:

> "The courts in Qatar are not friendly or arbitration-friendly enough. The national Qatari judges should also learn about the arbitration process, to be

able to enforce or to invalidate, depending on the case, the arbitral awards. So, there are some remarks that in Qatar, many of the foreign arbitral awards have not been enforced. They have been set aside. And, this is not a good sign for foreign investors or foreign companies.

People are looking not only to obtain an award in their favor, but to enforce these awards. In fact, enforcement doesn't come from the Centre of Arbitration, as you know. The enforcement comes from the national courts.

The Court of Cassation in Qatar on June 2012, almost 30 months ago, made a very strange ruling, which has set aside an arbitral award rendered in Qatar, in the centres, dating back to 2008. And the reason for setting aside this award was that the award was not rendered in the name of His Highness, the Emir of Qatar. Since then, there are 4 or 5 awards, which have been set aside for the same reason. In my opinion, this ruling of the highest restriction of Qatar, the Qatar Court of Cassation, should be reviewed…should be withdrawn. Because, as you know, the arbitrators do not form part of the judicial authority. They are not judges. They are sometimes even called private judges. But, when we say "private" this means they are not delegated by the Emir of Qatar to become part of the judicial authority.

Since then, QICCA has instructed all the arbitral tribunals to render their awards in the form required to avoid being annulled later before the courts in Qatar."

Mr. Sultan Al-Abdullah referred the issue of this rule to the lack of training and technical support for judges.

"The key factor behind this rule is the lack of training for judges. Lack of training, lack of updated information and lack of technical support for judges. Judges are also not trained and they don't have adequate support. As you know, the judges here do their own research, whereas if you were to go to the States, or Europe or Australia and elsewhere you will find that the judges have their own research teams who work for them, bring them up to date information." [Mr. Sultan Al-Abdullah].

Mr. Hani Al-naddaf, a partner of AL-Tamimi & Companies Law firm, agreed with the view of other participants. However, he talked about the other two judgments, which arose after the above-mentioned one, as they gave foreign awards precedence over those issued in Qatar.

> "The court of cassation has made a distinction between an arbitration award issued in Qatar and an arbitration award issued outside Qatar but they are still insisting that the arbitration award in Qatar should be issued in the name of the Emir, while if it's outside Qatar it's not subject to Qatari procedure law and hence it should not be issued in the name of the Emir." [Mr. Hani Al-Naddaf]

#### 5.2.1.2.4. Issues related to procedures

A third of participants in their responses noted that procedural issues are one of the main reasons why foreign parties avoid choosing Qatar as a seat of arbitration to settle their contract issues.

> "My issues are more with the procedure of arbitrations and the practicalities of arbitrations than the actual way the law is drafted." [Mr. Robert Musgrove]

The registration of non-Qatari lawyers requires many lengthy procedures.

> "All the non-Qatari lawyers will need to have a special license from the lawyers' committee to appear before the arbitration tribunal. This license will need at least one month to be obtained, there is lot of paper work and you need to do a lot of certifications." [Mr. Hani Al-Naddaf]

H.E. the Minister of Justice, Dr. Hassan Al-Mohannadi, talked about the long period of adjudication as another factor, for procedures Qatar not being chosen as a seat of arbitration. He said:

> "slow procedures of adjudication that is the issue, which made the foreign companies choose to arbitrate outside Qatar, as many of them choose to arbitrate in Paris or London."

#### 5.2.1.2.5. Badly drafted agreements

Badly-drafted arbitration agreements or contracts with a weak term of arbitration result in making arbitration voidable. Most local contracts, especially those between companies and Qatari individuals, are ready-made contracts, produced by the companies or taken from previous contracts without any amendments.

With this regard, H.E. the Minister of Justice said:

> "The contract is usually made by a contracting company and they submit it to the citizen. I had a meeting with the Contracts Department and I, incidentally, asked them to prepare for me a typical individual construction contract and within two weeks, the first copy will be ready and discuss it with our colleagues in the Municipality, and we propose it as a guiding contract for the citizens. I shall not tell him that this is the contract, so as not to be committed, but I shall tell him that this is the contract, which he should sign with the contractor. This means, do not let the contractor impose a contract of two pages upon you, but it has to be with appendices and with a warranty to guarantee the products which he will bring for you."

The other participant, who added his comments in this regard, was Dr. Minas. He said:

> "In the ready-made contracts, by the way, you are copying the same mistakes. The arbitration clause is not at all well-drafted. Legal literature or terminology, pathological arbitration clauses. They are clauses that you cannot implement. Like, for example, a clause, which says—and this is sometimes written either in Arabic or in English— In case of a dispute between the parties, the parties will resort to arbitration. And, if arbitration is not successful, they will go to the national court of Doha. It's either this or that. From the beginning, you either choose and you opt for arbitration, or you choose litigation. But, you cannot put both of them in the same clause. And, when you have both of them in the same clause, the clause becomes void. The clause is nullified. And, when the clause is nullified, it means you have to go back to your natural judge, which is the national court. So, if you are taking the jurisdiction from the national court, you have to know how to draft well an

arbitration clause…how to draft a valid arbitration clause to be enforced by the centre or whatever."

### 5.2.2. Preferable arbitration centre

Participants were asked about arbitration centres. Which one is preferable to be chosen as a seat of arbitration and why? What are parties looking for when they choose a seat of arbitration to settle disputes between them?
The preference was for foreign international arbitration centres, such as LCIA and ICC, as opposed to the local Qatari one. In addition, with regard to local lawyers, who are not familiar with the previously mentioned arbitration centres, the preference was for the Gulf Countries Council's Commercial Arbitration Centre (GCCAC) as opposed to the local centres. However, the reasons behind these opinions were different.
The representative from the Legal Department of Supreme Committee for Delivery & Legacy in his response said that:

"a preference is for looking for international seats. This is usually due to the fact that they have a lack of understanding about the Qatar arbitration procedures and the rules that we follow in-house. We as an organisation are looking to contractually engage these entities and typically do not impose our own domestic arbitration on them for the simple fact that there would be a cost element by just doing so and the fact that they feel somewhat unsure about what awards and decisions would be made."

His colleague referred to the preference of foreign centres for other reasons. He said:

"When there's a preference to go abroad, it isn't because of anything Qatar-specific it is system-specific. It's a lack of understanding about the civil system. So I think Qatar has tried to bridge that gap by introducing the QFC system. And over and above that there's been a great shift in the makeup of the population here, the makeup of the corporate culture here and also the level of business. So as all of these things happen, Qatar is very proactive in

ensuring that laws are updated, that systems are updated, the technology is updated. If you look at the technology at the arbitration centre, at the QFC, it's incredible. It's arguable that technologically, it's one of the strongest most advanced systems in the world. So I think the issue isn't of lack of confidence or any specific fear. I think it's simply just a product of the fact that it's a young system. People haven't experienced it. They haven't been exposed to it and let's face it, when you go to lawyers for advice on disputes the first thing that they will look at and bank on is the president."

However, Prof. Khawar referred to the preference of foreign international centres because they are well established. "Depends on issues. More established."

What is more, Mr. Sultan AL-Abdullah responded in detail on this point. He said:

"Clearly, the ICC and LCIA are tested and tried centres and have established themselves as credible and neutral international centres for excellence in the field of arbitration. Their track record speaks volumes about their international rapport. Professional, experienced and organisation of ICC and LCIA.I think there is a clear preference for international institutions the lCC the LCIA verses the local QICCA and the key issue there in my view is the perceived independence of those organisations.

Nobody can exercise any pressure on those organisations and the possibility to provide support to the arbitrators and the arbitration parties, the quality of decisions that are usually issued by those institutions verses the quality of decisions that are issued by QICCA or as a result of arbitrations that are administered by QICCA - this is another reason for the preference of LCIA and ICC compared to QICCA.

Independence is very important as well the perceived independence that those organisations are neutral and deal with all parties on equal footings. This is very important for the parties the arbitration parties to know, when they go into arbitration.

QICCA has its own list of arbitrators and going through that list I don't think will give a lot of comfort to international firms in terms of the quality and the experience of arbitrators that are listed there so I think we have to promote

the QICCA more through training through good organisational support and a good reputation that has to be built up over many years of practice.

QFC, I am not familiar with their rules and I am not aware of any cases that have been handled by the QFC arbitration. Till now there are no cases of arbitration."

H.E. the Minister of Justice agreed with them too. He referred the preference to the delay of the adjudication procedures in Qatar.

"Most the international companies, I don't know their percentage, put an arbitration clause to be in some international arbitration centres in Britain and in France and this is one of the considerations which made the Ministry put an integral law for arbitration, so when the foreign companies come here to work, they can find everything regarding arbitration affairs well-organised in the State.

Slow procedures of adjudication; the matter, which made the foreign companies to put the arbitration clause that it should be outside Qatar, as many of them put a clause that the arbitration has to be in Paris or London."

Representing local lawyers, who are not aware of foreign international centres, Mr. Ahmed Sabir prefers to choose GCAC instead of QICCA or QFC for several factors.

"I prefer arbitration before the Gulf Countries Council's Commercial Arbitration Centre. The professionalism of the centre in dealing with cases under arbitration. The clarity of the procedures of arbitration before the centre, and particularly, the dates related to the procedures commencement, and the progress of the arbitration process, and the clarity of the rules related to designation of the arbitral panel in case of the disagreement between parties.

The centre has the right to take the temporary procedures stated in article 28 of the procedures which stipulated that the committee has the right to take the temporary procedures when necessary upon request of either party with regard to the subject matter of the dispute.

The award of the centre is binding and final and is enforceable in the member States of the Gulf Cooperation Council after issuing the order of execution by the competent judicial authority.

This is different from the procedures of QICCA which did not specify a time to oblige the centre to notify the respondent on one hand, and on the other hand, article 8 of the procedures related to the number of arbitrators stated: "If the parties did not agree in advance on the number of arbitrators… , three arbitrators should be appointed (which is illogical and may not primarily serve the arbitration process, as the dispute itself may not require appointing three arbitrators, which leads to increasing the arbitration expenses without justification, and to avoiding arbitration before this centre, in addition to the lack of specifying times clearly as mentioned above."

### 5.2.3. Qatar Financial Centre (QFC)

The objective of this theme is to have an overview of QFC and its organs, especially QICDR. Therefore, the respondents were taken from the second section of the interviews held with QFC staff members.

Regarding the nature of QFC, as the widespread view about it is that it is an offshore centre, the current CEO of QICDR stressed that the QFC is a special economic zone in Qatar. He responded that:

"QFC is special economic zone or special financial and business zone in Qatar because it's not onshore purely or offshore purely, it can act in the State in Qatar as the normal affairs. Licensees can act in Qatar like Qatari companies to some extent but at the end there are some limitations. So I will call them a special zone."

The main objective behind establishing the QFC is to attract foreign investment to Qatar.

"The QFC, in general, has one objective that is to attract international names or players of the commercial and business world to come to Qatar not only to invest in Qatar but let me say we are a State that looks forward to modernise

itself to move forward to the next level to be a developed world, a part of the developed world and that's not coming one side with the local community but we also have to cooperate with the international community.

Qatar Financial Centre was one step towards preparing a legal platform to encourage those international names to come to Qatar and to get the benefit from their experience and for them also to give them that the space to practise their great practice here in Qatar with us." [Mr. Faisal Al-Sohuoti]

As it is a special zone, which has a special nature, participants were asked about the interaction of QFC with other State Laws. The former CEO, Mr. Robert, responded as follows:

"There's nobody within the QFC itself who has complete authority to pass legislation and regulations. They look, in terms of content, very different from the laws of the state. They go through a legislative process with the council, ultimately with the council of ministers and the Emir in order to be part in the first place. So, there's nobody within the QFC itself who has any legislative authority whatsoever.

It requires the seal of approval from the state before the laws can be passed at all. So, they are state law; I know we call them QFC law. They're gazetted, there's an Emiri decree and so on. It's just that they're written in English.

The legislative process is the same. It is the equivalent of state law because it goes through all the same processes. I mean,it writes its own law. It, obviously, doesn't involve criminal law. The criminal state law applies. It dis-applies elements of the civil law, specifically. And where the QFC law is silent, the state law applies. So, it is engaged and meshed with the civil law. I think...there's a sort of popular image that it's this bubble that operates separately. But it is genuine and integrated. It looks different because it is written in a different language. But it goes through precisely the same process, through ministers of state, through the council of ministers. It's gazetted; it has Emiri decree. So, it has an interaction. And it clearly states where it dis-applies elements of the civil law.

Primary QFC legislation explicitly dis-applies most of the civil code, the civil and commercial and procedural law. Most of it is dis-applied. The label of the

employment regulations, for example, take precedence over labour law. So, if you have employees of the QFC, and QFC registered companies, their contracts will invoke the QFC employment regulations. So, you won't have QFC employees going for the labour boards in the state because the local labour law won't apply. They will be dealt with internally by the employment regulations. And in most regards, the law is very clear about what applies and what doesn't."

Mr. Al-Suhouti added that:

"QFC has been exempted from application of many local laws here in Qatar. So we have quite a lot of exceptions but again it's just to create that special centre. For example, in normal conditions and situations disputes should go to the local court here in Qatar, whereas QFC law says it can be heard in special court designed for only QFC."

With regard to the QICDR, which is the most closely related part of QFC to this research, Mr. Faisal Al-Suhouti explained the nature of the court and the tribunal. The court has a limited jurisdiction, which allows it to hear cases of QFC affairs or QFC institutions.

"In QFC, we have two courts. We have civil and commercial courts. Its jurisdiction, when disputes happen between first and third parties or when any QFC institutions have any dispute between them and third party whether they are licensed by QFC or outside of QFC. This is the QFC civil and commercial court. We have another tribunal, which is called the regulatory tribunal, but it is only for appeals from firms against the authorities in the QFC. So for example, the QFC authority decision can be appealed before the QFC Tribunal, regulatory tribunal.

Each court and the tribunal has a separate procedural base. Basically, it's based on the common law system.

We chose the common law system because it's now become an international standard in any international business and commercial community, and again since we would like to promote Qatar and to attract those international names we would like also to prepare the base for them to come here and to find the

same standard that they find in their respective countries, whether New York, I mean US in general or Europe.

The court has limited jurisdiction, the court can only look at, or to hear cases which are related to the QFC affairs or QFC institutions, so this is only the area that we can cover or deal with.

In the civil and commercial court, we may have a situation, we haven't had that situation yet but we may have a situation when we hear a case that contains a third party outside of the QFC. We may have to deal with it and to enforce and we have actually made an arrangement only for that with SJC, Supreme Judicial Council. There is a link between them and us and there is a second Judge with us, Mr. Judge Rashid Al-Badr. He is the president of Appeal Court at local courts and he is enforcement judge here in the civil and commercial court here so in case we have a judgment in QFC court we can enforce it by arrangement with local courts."

Further, about his vision for QICDR, Mr. Al-Suhouti talked about their main objectives:

"It is our main objectives to provide an alternative seat of arbitration for the international community in Qatar. I think, the legal structure here in Qatar needs a while in order to update it, to update all the legal structures in Qatar to become in conjunction with international practice so I think, we should look only at QFC and try to play that role outside of QFC and to offer a new seat to arbitration, which will serve the parties with an international arbitration law, an international dispute resolution centre, and the most important part, which is an international commercial and civil court, which can apply the international practice … or to become the jurisdictional court and the arbitration and dispute resolution centre. I think this is the main reason to promote Qatar as an international arbitration at least in the region because I think if you can name Qatar alongside with London and Paris as arbitration or favorable arbitration centre that will become an achievement for us. And we are serious about it. In Sha Allah! Within this year you will hear, In Sha Allah!

Jassim, and the practitioner will hear about new changes which leads us to that role in Sha Allah!"

According to his response, this vision is supported by a new law for the QFC that will regulate the QFC regime and system. This law is already drafted and ready to be passed.

"It's supported by a legislation of course, and it's under discussion now and we all parties here in Qatar, have agreed under Principles, so I think, it's left now with the technical side. I hope to move forward to this term and can, we can issue the legislation before June.

The QFC law itself it will update the QFC -------- I mean, the whole QFC regime or QFC system."

As a part of their vision, an arbitration regulation will be adopted and used in the International Dispute Resolution Centre.

"Arbitration regulation, yes we will adopt as well an arbitration regulation inside QFC, which will be based on UNCITRAL.

The arbitration rules will be under the international dispute resolution centre, the procedural rules in it. This will become an essential part of the resolution centre. They will provide their users with procedural rules which will be again based on a best international practice. But I mean the law which will regulate that centre or any centre like to come to QFC as a seat of arbitration the arbitration regulation will be issued inside of QFC, which will be alternative, in other words alternative to the local law of arbitration."

### 5.2.4. Factors, which can improve arbitration practice in Qatar and attract international companies to arbitrate in Qatar

Participants were asked their opinion about, the elements which should be available to have a strong and well-established arbitration system in Qatar. In addition, what are the factors that can help in creating an international arbitration hub in Qatar?

Almost all the interviewees were agreed that a new well-drafted modern law is required to promote arbitration in Qatar. This law should be compliant with the UNCITRAL Model Law. However, some of the respondents have a significant view about this.

> "If the new law is able to familiarise people with the practice here and make them more open to having arbitration done here then it will put us in a better position." [The representative from the Legal Department of Supreme Committee for Delivery & Legacy].

While Dr. Yassin Elshazly responded as follows:

> "The current law needs to assure more freedom to the parties in carrying and managing the arbitration dispute. The intervention of state courts must be reduced. Also, more signs of transparency regarding procedures and also the publication of awards. Finally, a distinction must be made between national and international arbitration."

Dr. Minas assured the importance of clarifying the difference between arbitrators and judges:

> "A clear provision to be added under the new Act is that arbitrators are not considered part of the judiciary."

Mr. Robert suggested that it would be better to have a single state law for arbitration:

> "We have suggested that it would helpful to have a single state law. And a provision that says you can choose your oversight court. Because of course, unlike Egypt, Qatar has two courts that have civil jurisdiction, the international court, and the local courts under the Supreme Judiciary Council and the Judicial Authority Law. We have said that the provision would benefit Qatar if it said when you start arbitration, you decide whether or not you would like to go through the Qatar International Chamber of Commerce route, and have the local courts as the oversight court. And we could train specialists in arbitration. Or you could choose the supervisory court, which would be the Qatar International Court. And you would use the QFC regulations for

arbitration. So, at the beginning, you split. You decide, is this a local arbitration that should be conducted in Arabic under Qatari law and overseen by the local courts who are more specialist in what we call trade disputes? Or is this a large international contract in dispute? Is it a large international dispute with international players as well as Qatari players? And, therefore, it would benefit from supervision by the international court, probably conducted in English, and with a choice of law. So, that was the dilemma in the drafting of the state law."

The second factor, which was agreed on by the participants is to have efficient arbitration centres with qualified arbitrators. These centres should be supported by an arbitration-experienced court with open-minded judges with a good background in arbitration.

"Very efficient arbitration centres. Qualified arbitrators. Good case managers. Efficient arbitration rules for the institutions. Moderate a little the fees of the arbitrators in order to attract the people." [Dr. Minas].

The following response was given by Mr. Robert:

"Having a solid arbitration centre backed by the court system to increase confidence.

Have a well-informed, highly effective court overseeing the arbitration or being there when something goes wrong. That court must not be interventionist. That court must not be easily encouraged to take technical challenges that are really brought to delay the arbitral award or derail the arbitral award. A strong court of judges that know what they're doing."

Furthermore, Mr. Ahmed Sabir mentioned the importance of having a special court chamber for arbitration.

"The necessity to have authorised international arbitration centres and ensure that their governing rules are clearly specified. This means that its bylaws should not include any ambiguity or uncertainty and should also include specific times for the arbitration progress process, which will lead to gain the

trust of international companies and eliminate their fear of resorting to arbitration in Qatar.

The necessity of spreading the arbitration culture, which is a significant obstacle that hinders the arbitration process in any country, as the lack of spreading the arbitration culture leads to the reluctance and apprehension of many people about arbitration.

The necessity to have a chamber competent to the arbitration issues which are forwarded to the courts according to the law."

Mr. Hani Al-Naddaf agreed with Mr. Sabir. In addition, he suggested providing the judiciary system with a mechanism to assist the judges in their research.

"A special chamber in the court for commercial and constructions. A researcher team for the judges. The judiciary system should have experts in the arbitration whether it is local or international arbitration, who can provide the judges of the court with some advice. A researcher or some mechanism to help out these judges to find what's the latest development and this is very important."

Education, training courses and advertisements for arbitration are the third factor mentioned by the participants in this regard.

"We will be working on a programme of education for the Qatari judiciary and Qatari lawyers in terms of increasing the awareness of arbitration and what it means, that it is effectively a privatised dispute resolution system with a link to authority for enforcement.

There needs to be wider educational development, both in terms of legal practice and in terms of the judiciary. Ensuring there is a good educational programme." [Mr. Robert Musgrove].

Dr. Yassin Elshazly said:

"Qatar is very well situated to be an attractive arbitration seat. In order to reach such a goal, training and education are the right start.

Arbitration centres in Qatar must be supported in offering courses for lawyers and judges in the developments of arbitration."

Mr. Sultan Al-Abdullah, in his response, mentioned that continuing legal education should be mandatory for lawyers and judges. He detailed his opinion as follows:

"I am heading an effort to establish a presence for the CIAR, the chartered institute of arbitrators here in Qatar; a few colleagues and I are working on this and the key reason why we are doing is to promote education and training with regard to arbitration. Training is a must in this field.

In order for local lawyers to take that training we also have to make certain modifications to and amendments to our laws, the advocacy laws, to ensure that lawyers go to such training and seek such training. We do not have yet the concept of continued - continuing legal education it's not a requirement, it's not mandatory, once you get your license, you don't have to go to any training, which is a shame, because it means that your knowledge, you know the knowledge of licensed layers is never updated if you don't go to seminars and conferences, education groups, so training is a must."

The availability of a Qatari law review was the suggestion of Mr. Hani Al-Naddaf:

"All the countries in the world have to review issues on a monthly basis or quarterly basis, where wise lawyers will interrupt/draft some articles about all the legal points including the arbitration. I am not claiming that we want a special review for arbitration this is very difficult or it is early, at least a legal law review at least one."

H.E. the Minister of Justice, in his response, was aware about how to change the previous opinion of arbitration in Qatar.

"Making people aware of the existence of an alternative way to the judiciary is one of the biggest problems. The wide awareness and wide legal culture of arbitration make the people know what arbitration is."

The Minister's opinion matched that of Mr. Ahmed Sabir. He said:

> "The necessity of spreading the arbitration culture, which is a significant obstacle that hinders the arbitration process in any country, the lack of spreading the arbitration culture leads to the reluctance and apprehension of many people about arbitration."

The representative from the Legal Department of Supreme Committee for Delivery & Legacy linked education with advertising. To attract people to arbitrate in Qatar, people must be familiar with the practice of arbitration in Qatar. He said:

> "The main factor that we need to get over here is getting people in and getting people familiar. To educate people as to the process, educate people as to just what we'll be following on what it's about and just how this stands up with one of the other arbitrations around the world."

His colleague mentioned Singapore as an example.

> "Let's say IAC arbitration is very successful and Singapore, what, 30/40 years ago was a rock. Unknown. But today, it's probably the leading arbitration centre seat, venue in Asia. How did they go about it? Question mark. But I suspect it is built on the pillar of rule of law. And telling the world that we fundamentally believe that rule of law is important. Once you establish that pillar you educate the world and the people come to you. The best form of advertisement in this case is really to give examples of success."

Creating a suitable legal environment for arbitration is the fourth element.

The representative of Legal Department of the Ministry of Justice stated two factors: the first one concerned the environment:

> "Providing a suitable legal environment and integrated infrastructure.

Qualifying the Qatari staff and providing the necessary support for them."

However, Mr. Sultan Al-Abdullah talked in more detail about this factor. Then he summarised all the relative factors:

"The conducive legal environment, legal environment that deals positively with arbitration and any outcomes that may result therefrom. I believe that the new law, if itself, may not change or enhance the arbitration environment, you still need to have the global legal environment that approves of arbitration that supports arbitration practice and you also need to have experienced arbitrators and competent lawyers who can do that and it seems that those issues represent a challenge at this point in time. Practical rules, availability of experienced arbitrators, competent lawyers and the legal environment."

### 5.2.5. The Draft Law

This theme was created to know to what extent the stakeholders of arbitration in Qatar are satisfied about the draft of arbitration law. In addition, to examine to what extent is the Qatari Legislator successful in solving the current issues of arbitration in Qatar.

The first question was directed to all the interviewees regarding the draft of the law was about passing the draft to the specialist and the responses differed.

"I didn't read the official version of the new law." [Dr. Yassin Elshazly].

"Very limited review" [Prof. Khawar Quraishi].

"The committee did that on a very limited scale. For example, the law was not published on the Ministry of Justice website or any other websites to enable those concerned to set their notes and comments on the draft law." [Mr. Ahmed Sabir].

"I am not aware that the draft law was circulated to Qatari law firms to comment on. However, I have received a copy and have reviewed the draft." [Mr. Sultan Al-Adullah]

"I've seen the draft. I don't know if that draft will be the final one." [Mr. Faisal Al-Sohuoti].

The response of H.E the Minister of Justice was as follows:

"It hasn't been decided as a public policy in the State but some Ministries have adopted this procedure in some laws, which it feels that it has associates in the subject. The Companies Law has been passed for academics and others because it was originally intended for the private sector and accordingly they wanted a greater input. Some laws as the financial law of the State, so there is no great interest in putting it for public debate. In arbitration law, we have a period of between one and a half month to two months and it is not a period of expressing opinions or any other thing, but this means we have not adopted this style."

According to the participants' responses, the new law is drafted based on UNCITRAL Model Law and it should solve most of the current issues, though not all of them.

Mr. Robert Musgrove, in this regard, said:

"The current thinking in arbitration law is laid down by the United Nations in the UNCITRAL Protocol. And Qatar has recognised the need to update its law by drafting a new State Arbitration Law alongside the principles of the UNCITRAL law, and with a certain cultural flavour, which has been brought in whether some influences from Egypt in terms of oversight and arbitrations."

Dr. Minas added:

"The new Qatari Arbitration Act shall solve, clarify, regulate a large number of issues and add new provisions for questions never presented under the old provisions.

Under the new Act the parties may choose the language freely. In case of the absence of choice, it shall be decided according to the language of the contract or the correspondence between the parties.

Regarding public policy, nothing has changed or can change as long as the control exercised by the national courts on the arbitral awards and its

compatibility with public policy is a discretionary power. The notion of "public policy" as described by the doctrine remains the "unruly horse" which represents in the eyes of the judiciary the essence of the most fundamental social, economic and political values of the State."

Mr. Sultan Al-Abdullah agreed with the above views as he responded as follows:

"the draft law follows the UNCITRAL model law. It therefore represents the best practices in arbitration."

Mr. Ahmed Sabir mentioned many significant points on the draft law. However, these were based on the early version of the draft.

On the other hand, Mr. Faisal Al-Sohuoti, who had viewed the last version of the draft, mentioned that the draft proposed a special chamber within the Appeal Court to deal with arbitration disputes.

"I think it will be promoted highly between the parties. It has quite great changes because first of all, it's based on UNCITRAL rules and it has dealt with some issues regarding which court should or which court will be the jurisdiction of court here in Qatar. It has proposed a special court or a special division inside the appeal court here in Qatar to be responsible for all hearings related to the arbitration, which I consider itself is a great change."

Furthermore, the (GSR) category participants, when they responded to this regard, mentioned some details about the draft law.

H.E. Mr. Sultan Al-Suwaidi said:

"I think the new draft law will include a comprehensive organisation for arbitration that ensures the effectiveness of this system in resolving disputes which its parties agree to resort to. And the provisions of the draft-law are consistent with many of the UNCITRAL rules."

In addition, the representative of the Legal Department of the Ministry of Justice said:

> "The new law will be a turning point in the arbitration field. The State of Qatar's issued legislations are guided by the best international legal systems and practices. The competent authorities pay attention to the most recent amendments in the standard laws issued at international level. The regulation formulation goes through many stages. Most of the regulations issued in different countries have to be reviewed and seek guidance as to suitable ones."

What is more, H.E. the Minister of Justice responded in more detail than others, as he has considerable experience in legislation. He said:

> "When we issue the law, If ALLAH wills, it will be a quantum leap in the legal frame, which allows the people to work with. It is as per the latest model certified in arbitration, but we have dealt with this subject, as we didn't take the topic as it was. We know that the models are usually accredited as per the local translation and formulation and I am telling you that the result of accrediting the formula means we were obliged to improve the formula by leaving the model as it was, as I in many articles in my capacity as a good experienced man in legislation, I usually like adopting our national formula in legislation, which means we have to have our usual Qatari formula and this law means that it has an international characteristic and international companies are concerned, so we were obliged to make a combination between keeping the traditional formula, and keeping the model and we have added some rules not mentioned in the model.
>
> We have reviewed them and especially some countries, many of the Arab countries, whose laws were taken into consideration, followed the UNCITRAL as their references and some of them took it as a copy and accredited it and others made some amendments. We have also taken into consideration the legal coverage of arbitration, as the UNCITRAL is a group of rules, i.e. those are the rules of arbitration, but no organisational section, which means who is responsible for the arbitrators in the State, who will say that this person is a

certified arbitrator, there is nothing in the law stipulating that the arbitrator has to be accredited and if he is accredited, from where is he accredited? We do not have anything about it, if the arbitration centre of Singapore intends to open a branch in Qatar, which party will be regarded as the concerned party of giving it a permit or a license? Who is supposed to supervise him? If an arbitrator issues an award regarding an arbitration case and causes problems with the two parties, which entity will say right or wrong? If I am a citizen and I want an arbitrator, where should I go? We have made this section under the organisational section. We are creating a new law.

The existence of a court or a special department for contracts and we in the arbitration law, consider the appeal court is the base and also there is the competent judge who is the execution judge, so we have included two texts; the first one is that the Minister of Justice and the judiciary council may delegate or designate a special department to consider the arbitration cases, which are the challenges against the arbitration cases and we included another thing, and I know that this will cause a debate, and that is it is possible to make an agreement on the arbitration award execution mechanism, so if we go to an arbitrator and tell him that we have an arbitration case, there is a natural route to be taken, which is to resort to the court."

According to the (GSR) category participants' responses, as the question was only directed to them, the draft law does not regulate mediation. In other words, it regulates arbitration only.

"(The draft-law) does not include an organisation of the mediation law." [H.E. Mr. Sultan Al-Suwaidi].

"Arbitration only. It was also suggested to add the reconciliation and mediation chapter, but finally we have decided not to add it." [H.E. the Minister of Justice].

Again, this question about the estimated time that the draft will be passed in and be enforced was directed only to the participants of the (GSR).

H.E. the Minister of Justice said:

> "the Council of Ministers has approved and we expect that Advisory Council (Al Shura) will end it within one month. I imagine at the beginning of the new year, if ALLAH wills, during January or February, the law will be issued and it will be published in the Gazette and the concerned administration to put it in the correct position for application. We are speaking about this, if ALLAH wills, it will be during the 1st quarter of 2015."

In addition, the representative of the Legislation Department of the Ministries Council explained the procedures of issuing the law in Qatar as follows:

> "The laws are controlled by procedures and regulations, through which we have to pass in Qatar and the subject should be studied in the Legislation Department and the Permanent Committee of Legislations Affairs and when this has been done, then the matter is to be submitted to the Council of Ministers and then to Al Shura Council to take its opinion as per the stipulations of the constitution. At the end of all these procedures, the draft has to be submitted to His Highness the Emir for accreditation and issuance and all these procedures are almost finished, if ALLAH wills."

Regarding the Unified GCC Law of Arbitration, which is still a draft too, this question was directed, specifically to the (RSG) category participants: which law will be enforced, the Qatari one or the GCC Unified one?

The representative of the Legal Department of the Ministry of Justice said:

> "The unified rules issued by the Gulf Cooperation Council are submitted to the legislative authority in the state to take the required legislative procedures in this regard. The internal legislations of the state shall be taken into consideration and the proper action should be taken."

While H.E. the Minister of Justice said:

> "The unified laws in the countries of the GCC should be moved from the phase of the guidance law, this will take time, and then it should be submitted to the magistrate and take the obligatory form. After that it is supposed to take the obligatory form, it has to be submitted to the member countries and each of these countries has its own mechanism in accrediting the unified law. In some countries, the unified law is issued by a law, or by a decision, or by a decree or by an ordinance. This is a period of time which we cannot control; this may be one, two or three years. Some countries may apply it and others may not apply it, so we have taken the way of accrediting the local law till the issuance of the unified law. If its terms can be applied or by amending the local law, which is still early."

In addition, the representative of the Legislation Department of the Ministries Council detailed his response as follows:

> "Regarding the unified legislation, these are sovereignty matters, which are subject to the sovereignty of the six countries in the council of GCC. There are many unified laws issued and many national laws were also annulled, so there is no objection as long as it was agreed about them, as it is a decision of the GCC and not a sole decision of a sole country. There is only one source for the draft law as His Highness the Emir, as he is the only one who has the right to abrogate a law with another. These are matters I think do not cause any problems, as I will perceive the same rules and also it will undergo the same legislative stages in the state and then everything will be okay.
>
> We do not have anything regarding the unified law and nothing has been referred. If it is referred, it will undergo the same legislative procedures, and then the decision will be for His Highnesses.
>
> No, as far as I know, I did not see it, but if it was referred, there is no objection if this law is issued today that it will be annulled tomorrow and there is no objection as long as we use the same provisions and this is considered an agreement among Their Highnesses and the leaders, as these matters are

considered sovereignty matters, about which none is allowed to speak, as there is no breach of the rules and there is no legislative vacancy."

### 5.2.6. The role of the Ministry of Justice in enhancing arbitration in Qatar

The last theme was formed based on the interview with H.E. Dr. Hassan Al-Mohannadi, the Minister of Justice, to examine his vision in enhancing arbitration in Qatar. There are many reasons behind concentrating on the role of the Ministry of Justice, as it is responsible for issuing laws in Qatar. In addition, it is the body that issues the permission for the lawyers to be certified advocators, who can practise their job in the Qatari Courts. What is more, the Legal and Judicial Studies Centre is under its umbrella.

The Ministry plans to have many new arbitration Centres and individual arbitration in Qatar. However, the Ministry wants this to happen through more organised procedures under its supervision.

"We have planned for many arbitration centres, and we encourage arbitration centres, and also individual arbitration. Any attorney or any magistrate can be an individual arbitrator under the supervision of an accredited register.

We have also taken into consideration the legal coverage of arbitration, as the UNCITRAL is a group of rules, i.e. those are the rules of arbitration, but no organizational section, the matter which means who is responsible for the arbitrators in the State, who says that this person is a certified arbitrator. There is nothing in the law stipulating this, which states that the arbitrator has to be accredited and if he is accredited, from where is he accredited? We do not have anything about it. If the Arbitration Centre of Singapore intends to open a branch in Qatar. Which party will be regarded as the concerned party of giving it a permit or a license? Who is supposed to supervise it? If an arbitrator issues an award regarding an arbitration case and causes problems with the two parties, which entity will say right or wrong? If I am a citizen and

I want an arbitrator, where should I go? We have made these requirements under the organisational section.

We have to make a department called Arbitration Affairs Department in the Ministry of Justice. The Ministry of Justice will have some lists of accredited arbitrators, we do not mind having non-accredited arbitrator, but we have made an accreditation mechanism, so when the citizen has an arbitration case he can choose either to go to an un-accredited arbitrator or to contact the Ministry of Justice or visit its electronic website to find a suitable arbitrator for his case. As we are going to make precise classification, this means that Jassim Al Obaidli is a specialist in the arbitration cases of the banks and if you need more details, you will see that Jassim has worked on about five or six arbitrations, and this is my role as the Ministry of Justice.

These are the arbitrators. I can provide him with feedback or a review of the people named. I can tell you no, do not go to Jassim, as he requires high fees; I am giving the citizen the important information, and then he should decide to select Jassim or not, I am not telling you to select Jassim or not, this is merely a classification and is providing a vision." [H.E. the Minister of Justice].

The Ministry aims to make arbitration an easy reachable way for any person, who wants to solve disputes instead of litigation. This would be by creating an arbitration system for small and medium projects.

"We are advancing to make arbitration as a mechanism conveyed to each person. In some countries it is limited to commercial arbitration of large companies. If we adopt the arbitrator system for small, simple and medium projects for low fees or with a little modernised mechanism, I think, if ALLAH wills, this will cause a quantum leap.

How to find an easier mechanism, this means, for example, if you and I agreed about a certain amount of money whether this amount is for you or for me, so we resort to a third person, the mechanism which I imagine before we resort to a third person, we will prepare two cheques for the amount in question and these cheques have to be handed over to the third person, so if he says that this amount is for you or for me, he will hand over the cheque

directly. After finishing with saying that we have obliged Jassim to give it to Hassan, but Jassim refused, so he goes to challenge the award, and makes problems, no this mechanism will make it as an agreement as I wanted it to be obligatory, but there is a legal argument about the subject, so we said at least we had to open the door, if the two parties asked arbitration, we have to agree about a certain mechanism." [H.E. Dr. Hassan Al-Mohannadi].

In addition, the Legal and Judicial Studies Centre, being responsible for legal courses, is one of the main channels that will be used in enhancing arbitration in Qatar by the Ministry of Justice. It will provide courses for judges, lawyers and others. The other function of the centre is to qualify the arbitrators.

"The study centre is one of the important tools, which will help us in explaining the arbitration law and qualifying the Qatari arbitrators, if ALLAH wills." [H.E. the Minister of Justice].

With regard to legal translation, the Ministry of Justice aims to regulate the permission of legal translation centres to ensure that those centres qualify. In addition, an official translation centre might be established under the Ministry to work as a reference of legal translation and to qualify the translators.

"If you go to the market and ask a translator to translate a paper, he will translate it for you, but on which basis? Whether this translation is accredited or not? We do not have a mechanism for accrediting translation. When you establish a translation office, what will be required from you? No one asks you. I want to make an organisation so that when Jassim wants to establish a Translation Office, I have to tell him "no" these are the conditions which have to be available for your translators. And who will accredit them in the State? What are the consequences, in case of a wrong translation? And there is an entity for making inspections etc. Unfortunately, this mechanism does not exist yet and we are working on it and among our ideas, we are thinking of establishing a translation centre for qualifying the translators and to be a reference." [H.E. the Minister of Justice].

## 5.3. Conclusion

To sum up, several interviews have been held with participants from different sectors of arbitration stakeholders. The interviewees classified into specific categories: Arbitration's Centres Representatives (ACR), Education Sector Representative (ESR), Governmental Sector Representatives (GSR) and the Lawyers Sector Participants (LSP). The last category can be divided into: Local Law Firms (LLF), International Law Firms (ILF), Joint venture Law Firms (JLF) and Representatives of Legal Department of Supreme Committee for Delivery & Legacy (LSC).

The aim of holding these interviews was to ensure that the issues mentioned in chapter three, are not theoretical and are found in real life. What is more, the participants have been asked about the above-mentioned issues and the arbitration draft law. The outcome of these interviews was valuable.

The findings have been divided into six themes, some of which are divided into sub-themes. The main six themes are: the current issues of arbitration in Qatar, a preferred arbitration centre, Qatar Financial Centre (QFC), factors which can improve arbitration practice in Qatar and attract international companies to arbitrate in Qatar, the Draft Law and, finally, the role of the Ministry of Justice in enhancing arbitration in Qatar.

With regard to the theme of the current issues of arbitration in Qatar, all the participants agreed that it is time to have a new modern separate law for arbitration. In addition, they agreed that the law is not the only issue and the situation in Qatar is complicated.

Further, the preference for choosing an arbitration centre as a seat of arbitration is not a Qatari one for many reasons.

The questions related to the QFC theme were addressed to the QFC members staff only. They responded about the nature of the QFC, the QIDRC and the vision of the QFC as it is still in the first stage and is not working efficiently yet.

The interviewees mentioned several significant factors which might help in improving arbitration in Qatar.

According to the participants' responses, the draft law was not passed officially to researchers, academics and lawyers. It was only made available to a very limited number of people. The law drafting committee did not create a website for the draft to make it accessible for researchers and others to provide their feedback on it.

However, the draft solves many of current issues mentioned by the participant as well as the literature, but not all of them.

Finally, H.E. the Minister of Justice briefly talked about the vision of the Ministry and its role in enhancing arbitration practice in Qatar.

As this thesis will examine the draft law as well, the discussion chapter will be after the chapter on the black paper findings and the one on the comparative study one, which will be the next two chapters.

The black paper findings chapter will present the latest updated draft of arbitration law, and the significant points of the proposed Unified Arbitration Law for the GCC. In addition, it will examine the QFC Draft Law.

# Chapter six: The black paper findings

## 6.1. Introduction

The literature, which was reviewed in chapter three, confirmed that the practice of arbitration in Qatar raises three categories of issues; issues related to cultural attitude towards arbitration, legal and procedural issues and issues related to confidence in arbitration. With regard to the legal and procedural issues, many disadvantages have been attributed to the current law. Modern principles of arbitration, such as party autonomy, are ignored by the current law. The possibility of appeal against arbitral awards is another example. As a result, it can be concluded that the current law is outdated and needs to be updated (Sharar, 2011).

Indeed, the Qatari government has responded to the call to update the law and a committee for drafting a new arbitration law has been established and commenced this task. Currently, the draft is in its final stages and ready to be passed and become a law. At the same time, the commerce chambers of GCC States have submitted a draft of a unified arbitration law for the GCC to the General Secretariat of the GCC for adoption.

Furthermore, the QFC has drafted a new law as well. This draft comes 10 years after the first law, the Law No. (7) of 2005, which was amended by Laws Nos. (2 and 14) of 2009.

This chapter will consider the new bill of Qatari arbitration law, the unified arbitration law for the GCC and the draft of the new law of the QFC. It will outline the Draft Law of Arbitration in Qatar and the significant points of the proposed Unified Arbitration Law for the GCC. In addition, it will critically analyse the significant points of the QFC Draft Law.

## 6.2. The Draft of the Arbitration Law in Civil and Commercial Affairs

The early version of the Draft Law was issued in 2008. Although it was compliant with the UNCITRAL Model Law, it was almost copied from the Egyptian Arbitration Law (1994). The first draft consisted of sixty-three articles.

However, the latest version of the Draft, which is considered for the first time in a research study, combines international characteristics derived from the UNCITRAL Model Law, and a Qatari traditional formula. It consists of forty articles, which are classified into nine chapters.

The first chapter is intended for general provisions, while the second contains provisions, which regulate the arbitration agreement. The terms of the formation of the arbitral tribunal are included in chapter three. The fourth chapter determines the arbitral panel's jurisdiction. Chapter five sets out the rules governing the arbitral proceedings. The sixth chapter regulates the issuance of the arbitral judgment and the ending of proceedings. Issues dealing with challenging the arbitral award are covered in chapter seven, while the regulation of recognition and enforcement of arbitral judgment is included in the eighth chapter. Finally, the ninth chapter deals with arbitration centres and entities and the accreditation of arbitrators.

### 6.2.1. The First Chapter, General Provisions

Article No. (1): Definitions and Rules of Interpretation

1. In applying the provisions of this law, the following words and phrases shall have the following meanings, unless the context indicates otherwise:

a) The Minister: "The Minister of Justice"
b) The Ministry: "The Ministry of Justice"

c) "Arbitration": A legal conventional style for settling disputes rather than resorting to judiciary, whether the entity in charge of the arbitration, as per an agreement among the two parties, is a permanent centre for arbitration or not.

d) "Arbitration Agreement": the agreement defined as per the stipulation of the Article (7 Item No. 1) of this law.

e) "The Parties": the two parties or the parties of the dispute, who have agreed about resorting to arbitration.

f) "The Arbitral Tribunal": A single arbitrator or a number of arbitrators.

g) "The other authority:" the entity, chosen by the parties in their agreement as per what is allowed by virtue of this law to perform certain functions relating to assisting and supervising arbitration, whether it is a permanent centre or institution for arbitration.

h) "The Competent court": Circuit of the Commercial Arbitration Disputes Settlement of the Court of Appeal or any other entity determined by the Minister of Justice in coordination with the Supreme Judiciary Council.

i) "The Competent Judge": Execution Judge of the Entirety Court

j) "Plaintiff": the Plaintiff of the dispute resorted to arbitration

k) "Defendant": the Defendant of the dispute resorted to arbitration

l) "Arbitration Centres and Entities": each legal entity which deals with dispute resolution, according to this law.

2. In cases when this law allows the arbitration parties to choose the procedures to be followed up in certain disputes, this includes their right to give permission to others to select this procedure. The term' others' includes every institution or arbitration centre inside or outside the State.

Comments

The definitions of terms and the rules of interpretation which were not included in the current provisions of arbitration are included in this article. In addition, unlike the current provisions, as well as most modern arbitration laws, the article creates a new department in the Court of Appeal for commercial arbitration disputes and defines it as the competent court of the disputes which arise from arbitration. This will provide a more experienced court in the arbitration field, which will create a requisite friendly environment for arbitration.

Article No. (2): The Scope of Law Application

1- Taking into consideration the provisions of the applicable international treaties, the provisions of this law shall be applied to each arbitration among parties of the public law or private law persons, regardless of the nature of the legal relationship of the dispute subject, if the arbitration is applied in the State, or if it is a commercial arbitration applied abroad and its parties have agreed to subject it to the provisions of this law. The agreement to arbitrate in disputes involving administrative contracts shall be subject to the approval of the Minister of Justice. The persons of the public law are not allowed, in any way, to resort to arbitration to settle disputes arising among them.

2- The arbitration is commercial; the provisions of this law can be applied if a dispute arises about a legal relationship of economic, commercial, investment, financial, banking, insurance, industrial, touristic or any of the other commercial transactions, whether they are contractual or non-contractual.[6]

3- Except for the provisions of Articles (8), (9), (35) and (36), the provisions of this law apply where the legal place of the arbitration is located in the

[6] The term "commercial" has a wider meaning in the Qatari Commercial Law than its meaning in this draft law (Abou El Farag, 2014)

territory of the state of Qatar, unless it is an external commercial arbitration in which its parties have agreed on subjecting it to the provisions of this law.

4- The arbitration shall be regarded as international, in applying the provisions of this law, if it has the following international elements:

a) If the business headquarters of the work of the arbitration agreement parties, when this agreement was signed, are located in two different states.

b) If one of the following places is located outside the states, where the headquarters of the two parties are located:

(1) The arbitration place if it was mentioned in the arbitration agreement or it was mentioned how to determine it.
(2) Any place, where a substantial part of the obligations regarding the parties' relationship are implemented or the place closely relevant to the dispute subject.

If one of the parties has more than one headquarter, it has to be the headquarter, which is closely relevant to the arbitration agreement. If any of the parties does not have any headquarter, then his usual residence is considered.

c) If the parties have expressly agreed that the arbitration agreement is related to more than one state.

d) If the parties have agreed to resort to a permanent arbitration body or arbitration centre, whose headquarter is located inside or outside the state.

Comments

The scope of the application of the law has been determined in this article. What is more, unlike the current provisions of arbitration, the article specifies the differences between the international and domestic arbitration, as it determines

specific international factors, which if any of them applies to the arbitration, it shall be considered as international one. What is more, it considers any arbitration institution, even if the institution of the centre is located in Qatar, as an international arbitration. This will assure more independence for the institutional arbitration from the intervention of the court.

Article No. (3): Delivery of Written Notifications and Correspondences

1. Unless otherwise the parties have agreed, the written notifications and correspondences shall be delivered as follows:

a) Personally to the addressee, to his work headquarter, or to his usual residence, or to his postal address, which is known to the parties or defined in the arbitration agreement or the regulating document of the relationship that is deliberated by arbitration.

b) In case of failure to recognise any of the addresses set forth in the above mentioned paragraph after making the necessary search, the written notification or correspondence is considered received, if it was sent to the last working headquarter or to his usual residence or to his postal address or to his e-mail address or to a fax number known for the addressee as per a registered message or any of the other methods, which provides written evidence of delivery.

c) The written notification or correspondence sent by fax or e-mail shall be considered as delivered on the date, when it was sent, unless the sender receives an automatic message notifying the existence of an error in transmission.

d) In all cases, the message or the written notification are considered delivered, if it is received or sent before 6:00 p.m. according to the destination State timing, otherwise, it would be considered as received on the following day.

e) For the purpose of calculating the periods set forth in this Article, the period calculation starts from the following day of receiving the correspondence. If the last day of this period corresponds to an official holiday or an off day at the headquarter of the addressee's work place, this period shall be prolonged till the next working day, whereas the days of official holidays or the off days during this period shall be included in this calculation.

2. The provisions of this Article shall not be applied in the judicial notifications before the courts.

Comments

This article organises the delivery of written notification and correspondence and how to calculate the duration. In addition, it defines the delivery methods beginning with the delivery to the person himself, delivery to his work headquarter or address of usual residence and, finally to his e-mail address or fax number. What is more, it determines six pm at the destination State as the deadline for calculating the day, which has been transmitted or receipt in, as the official day of receipt of the notification. If the delivery or transmission are done after six in the evening, the next day will be counted as the day of receipt. Such details, which are not provided in the current provisions of arbitration, can make the delivery of written notification more certain and accurate.

Article No. (4): Waiving the Right of objection

If any of the parties is aware of a violation of provision of this law, which may be violated by the parties, or a condition of the arbitration agreement, and he continued the arbitration procedures without objecting about this violation at the agreed time or with unjustified delay, upon agreement, this shall be considered a waiver of the right to object.

Comments

This article counts the silence of the parties upon any violation of the legal provisions and arbitration agreement conditions as a waiver of the right to object.

In other words, the objection should be expressed if there is any violation of the provisions of the terms of arbitration agreement or the provisions of this law, otherwise, it will be considered as approval to this violation.

Article No. (5): A Competent Court and a Competent Judge

1. A competent court and a competent Judge shall apply the provisions of this law as per the extent which these provisions allow.

2. A special department for the disputes of commercial arbitration shall be established in the court of appeal by a decision of the Judicial Supreme Council in coordination with the Minister.

3. The Minister of Justice has the right, in coordination with the Judicial Supreme Council, to nominate another entity to be in charge of the jurisdictions set forth in the Item No. (1) of this Article.

Comments

This article restricts the authority of a competent court and a competent judge within the limits of the provisions of this law. Unlike the current provisions, which state that the competent court is the Court which originally has the jurisdiction to hear the dispute, this article stipulates that a new department in the Court of Appeal should be established for the purpose of viewing disputes arising from arbitration. This means that it is no longer possible to appeal the arbitral judgement although it is possible to challenge it on limited grounds (see article 34 below) In addition, it gives the right to the Minister of Justice in coordination with the Judicial Supreme Council to determine another entity; such as a department of arbitration affairs under the Ministry of Justice, to be responsible

for applying the provisions of this law. This will assist in relieving the burden on the court.

Article No. (6): The Interference of Other Authority or the Competent Court

Another authority or the competent court, as the case may be if the parties do not agree on that authority, shall be in charge of performing the functions set forth in the Articles (11 items 5,6), (13 items 2,3) and (14 item 1) of this law.

Comments

This article organises the duties of the competent court and the other authority in dealing with the arbitration procedures, such as assigning arbitrators and the procedures of arbitrators' refusal.

## 6.2.2. The Second Chapter, Arbitration Agreement

Article No. (7): Arbitration Agreement Definition and Form

1. The arbitration agreement is the agreement of the parties, whether they are natural or legal persons with the legal capacity to sign a contract, to resolve some or all of the determined disputes, which arose or may arise between them regarding a specific legal relationship, whether this relationship is contractual or non-contractual. The arbitration agreement may be separate or in the form of an arbitration clause mentioned in a contract.

2. Arbitration is not allowed in matters in which legal compromise is not allowed.

3. An arbitration agreement shall be in writing, or else it will be nullified. The Arbitration agreement is deemed in writing, if it is mentioned in a signed

document between the parties, or in the form of paper correspondences or an electronic one or any of the other communication means, where delivery is proved.

4. An arbitration agreement is considered to have fulfilled the clause of writing, if any of the parties claims the existence of the agreement in the memorandum of the claim or the memorandum of the reply and the other party did not deny this in his defence.

5. The indication, in any contract, to a document, which includes an arbitration clause, shall be deemed as an arbitration agreement, provided that the contract is written and this indication has to be mentioned by the way, which makes this clause an integral part of the contract.

6. Without prejudice to any legislative provision stipulating the termination of the objective rights or commitments due to death, unless the parties agree otherwise, the arbitration agreement shall not be terminated with the death of any of the parties and its execution shall be done by and against the persons, who represent this party, as the case may be.

Comments

An arbitration agreement, according to this article, might be a separated agreement or a part of the contract between parties, who are legally capable of signing a contract. It should be in writing. What is more, unlike the current provisions, this article determines the required forms in which the agreement of arbitration considers as written. The article stipulates the situation after the death of one of the arbitration agreement parties. However, as well as the current provisions of arbitration, this article does not specify matters those arbitration is not allowed in as it stipulates that arbitration is not allowed in matters in which legal compromise is not allowed and it does not determine what these matters are. Therefore, it would be useful if such matters are included in this article. The following matters are provided as examples: matters contrary to

public order or related to nationality or personal status, except where it concerns the financial effects resulting from such matters.

Article No. (8): Arbitration Agreement and the Subjective Case before the Court

1. The court in which the dispute arose, and had an arbitration agreement, should adjudicate not to accept the case, if the defendant submits this before submitting any defence memorandum regarding the subject of the case, unless the court decides that the agreement is invalid, or void, inoperative or cannot be implemented.
2. Filing the case, as mentioned in the previous item of this Article, never prevents starting or continuing the arbitration procedures or issuing a judgment regarding it.

Comments

Article 8 stipulates that the court should refuse to accept the case if there is a valid arbitration agreement about it, which upholds the principle of arbitration autonomy and the principle of competence – competence, which supports the fact that the arbitral tribunal has the competence to determine its own jurisdiction without involving the courts (Sklenyte, 2003). In addition, it states that the filing of the case to the court does not prevent the arbitration procedures from starting or continuing.

Article No. (9): Arbitration Agreement and interim measures by the Competent Judge

1. In a case when the arbitral tribunal, or any other person, who is authorised by the parties in this regard, is not competent or not able to act actively in timely manner, the competent judge may order, at the request of one of the parties, to adopt interim or precautionary measures, including the measures provided for in Article (No. 17 item No. 1) of this law either before commencement of the arbitration procedures or during the arbitration

procedures. This order shall not be considered as a waiver from the applicant to adhere to the arbitration agreement.

2. The competent judge shall not consider any application submitted by virtue of this Article, if the arbitral tribunal, or any other party authorised in this regard is competent and able to act effectively in a timely manner.

Comments

This article prevents the consideration by the competent judge of any submitted application if the arbitral tribunal or any other authorised party is competent and able to act effectively. This article also supports the principle of competence – competence.

### 6.2.3. The 3rd Chapter, Formation of the Arbitration Board

Article No. (10): Number of the Arbitrators

The arbitral tribunal shall be formed of a single arbitrator or more, as agreed between the parties, if they do not agree on the arbitrators, the number shall be three. If there are several arbitrators, their number shall be odd (uneven), otherwise the arbitration will be nullified.

Comments

This article shows that the parties should agree on the number of the arbitrators. They should agree on a single arbitrator or more than one. However, the number should be odd, which is similar to the current provisions. However, unlike the current provisions of arbitration, which do not require a specific number of arbitrators if the parties do not agree on the number of arbitrators, this article stipulates that the arbitral tribunal should consist of three arbitrators if the parties do not agree on the number of arbitrators. On one hand, this term will

improve the efficiency of the arbitral tribunal as the judgment issued by three arbitrators will be more mature than the one issued by a sole arbitrator. On the other hand, it would raise the cost of arbitration process as the fees of three arbitrators will be more than that of one.

Article No. (11): Arbitrators' appointment

1. The appointment of arbitrators should be from the accredited and registered arbitrators in the national register of the arbitrators of the Ministry. Any person may be appointed as an arbitrator, if he meets the following conditions:

a) He must be fully competent.

b) He should not have been convicted by a final judgment of a felony or misdemeanor involving moral turpitude or dishonesty, even if there is rehabilitation or restoration of good repute.

c) He should have good conduct and a good reputation.

2. It is not required that the arbitrator shall have a certain nationality, unless otherwise is agreed between the parties or stipulated by the law.

3. The arbitrator shall accept the appointment in writing or via following up any of the means stipulated in the (Article 7 item 4).

4. Without prejudice to the provisions of the items (4) and (5) of this Article, the parties shall agree on the procedures to be followed up in the appointment of the arbitrator or arbitrators.

5. In case of the lack of an agreement, the following procedures shall be followed:

a) If the arbitral tribunal consists of a single arbitrator, and the parties did not agree on the arbitrator within thirty days from the date of the written notification of the plaintiff to the other parties to do so, any of

the parties may request to appoint an arbitrator from the other authority or the competent court, as applicable.

b) If the arbitral tribunal consists of three arbitrators, each party shall appoint an arbitrator, then the two arbitrators shall agree on the appointment of the third arbitrator. If any of the parties does not appoint his arbitrator within thirty days from the date of receiving a request regarding this from the other party, or if the two appointed parties do not agree on appointing the third arbitrator within thirty days from the appointment date of the last one of them, the other authority or the competent court shall, as applicable, appoint one upon the request of one of the parties.

6. In case of the existence of appointment procedures agreed between the parties, any of the parties may request the other authority or the competent court, as applicable, to take the necessary procedures, unless the appointment procedures' agreement stipulates the other means of accomplishing these procedures in any of the following cases:

a) If no one takes a procedure, according to the requirement of these procedures.

b) If the parties or the arbitrators are unable to reach the agreement required from them in accordance with these procedures.

c) If the others, including the arbitration institution, fail to accomplish any task assigned to them according to these procedures.

7. Any decision issued by the other authority or the competent court, as applicable, regarding an affair stipulated in the items No. (3) and (4) of this Article is final and unchallengeable.

8. The other authority or the competent court, as applicable, upon appointment the arbitrators, shall consider the nature and the circumstances

of the dispute and the qualifications, which the arbitrators should have as per the agreement of the parties, and ensure the appointment of an independent and neutral arbitrator and in case of appointing a single arbitrator or a third arbitrator, they shall consider the nationality of the arbitrator in view of the nationalities of the other parties.

9. All parties including any arbitration institution or arbitrators' appointed board or any previously appointed arbitrator should be notified with any request to the other authorities or competent court as applicable to appoint an arbitrator. This request should include a brief summary of the nature of the dispute and the specified terms of the arbitration agreement and all the steps taken to appoint any remaining member of the arbitral tribunal.

10. Upon appointing an arbitrator according to the aforementioned, the other authority or the competent court, as applicable, upon appointing an arbitrator, shall choose him from the register of arbitrators of the Ministry or from the lists of arbitrators of the other arbitration centres or entities or from any other lists they deem appropriate and it shall perform the required audit for appointing the appropriate arbitrator for the dispute circumstances. Any expenses incurred from doing these procedures, including the appointment fees related to the arbitration institution, shall be considered as arbitration expenses.

11. The arbitrator shall not be held accountable for practising his arbitration tasks, except if his practice results in bad faith, conspiracy or gross negligence.

Comments

The priority in appointing arbitrators, according to this article, is for arbitrators from the National Register of the Arbitrators of the Ministry of Justice. However, the parties are free to appoint any arbitrator from the lists of the other arbitration centres or institutions according to certain conditions. The Article determines the procedures to be followed when appointing the arbitral tribunal

members, and the time limit of these procedures. However, it does not contain provisions for regulating the appointment of the chairman or the president of the arbitral authority and does not contain provisions regulating the appointment of arbitrators in case of multi-parties' arbitration. Unlike the current provisions this article stipulates the liability of an arbitrator who practises arbitration in bad faith or commits gross negligence or complicity. However, the provision is seriously flawed because it does not determine any penalties and since an arbitrator is not a public employee the rules relating to penalties which can be imposed on public employees do not apply.

Article No. (12): Reasons for Refusal of an Arbitrator

1. Anyone requested to be an arbitrator shall disclose in writing to the arbitration parties or the concerned, any matters or circumstances, which may cause justified doubts about his independence and neutralism. The arbitrator, after his appointment, should disclose immediately, on his own initiative, any such matters or circumstances mentioned before, which may occur at any time during the arbitration procedures.

2. Any arbitrator shall not be refused, except if existing circumstances show that there are some justified doubts about his independence and neutrality; or if the arbitrator's qualifications do not match those agreed by the parties. However, the disputing party shall not have the right to refuse the arbitrator appointed by himself or by his representative, unless for reasons which appear after this appointment.

Comments

In another significant adoption of the current provisions, Article 12 specifies the reasons why the arbitrator might be refused, namely if there are any justified doubts about the arbitrator's independence and neutrality. As the current provisions stipulate that the refusal of arbitrator is bound by the same terms of the judge refusal.

Article No. (13): Refusal Procedures

1. Taking into account the provisions of the Item No. (2) of this Article, the parties shall agree about the procedures for refusing an arbitrator.

2. If there is no such agreement, the refusal request shall be submitted in writing to the arbitral tribunal, showing the reasons for refusing the arbitrator, within fifteen days from the date of the refusing party knowing about the formation of this tribunal or the circumstances justifying this refusal. If the arbitrator to be refused does not step aside, or if the other party does not approve the request of refusal, the request of refusal shall be referred to the other authority or the competent court, as applicable. The decision issued by it shall be unchallengeable by any way. The arbitral tribunal shall suspend arbitration procedures till the settlement of the refusal request.

3. The other authority or the competent court, as applicable, upon the judgment of the refusal of the arbitrator, shall decide the dues of fees and expenses for this arbitrator, or reimburse expenses or fees paid to him.

4. The request of refusal shall not be accepted from a party who has submitted a request of refusal of the same arbitrator in the same arbitration, except if a new reason for refusing him again has come out, which differs from the first reason, or which he became aware of after submitting the first request of refusal.

Comments

Following Article 12, Article 13 stipulates the procedures which regulate the refusal of an arbitrator. The parties can agree on the procedures and if they are silent about the refusal procedures, these should be done according to the provisions of Item 2 of this Article. The arbitration procedures should be suspended till the refusal request is settled. The request for refusing an

arbitrator should not be submitted twice by the same party for the same reasons.

Article No. (14): Abstention or Impossibility

1. If the arbitrator fails to meet his obligations or he does not commence or he discontinues the mission and this leads to an unjustified delay in the arbitration procedures and he decides to step aside, and if the parties do not agree to his refusal, then the other authority or the competent court, as applicable, shall terminate his mission according to a request of one of the parties, and its decision in this regard shall be final and unchallengeable by any means.
2. The stepping aside of the arbitrator or the termination of his mission by the parties shall not be deemed as acknowledgment of the authenticity of any of the reasons set forth in Article (No. 12 item No. 2) of this law.

Comments

Article 14 gives the other authority and the competent court the right to terminate the mission of the arbitrator in terms of failing to meet his obligations, not commence his mission or discontinue performing it and causing unreasonable delay in arbitration procedures. This right should be valid by a request of any party if the arbitrator did not step aside by himself and the parties did not agree to refuse him. This right, in the current provisions, is granted for the competent court only.

Article No. (15): Appointment of a Substitute Arbitrator

1. A substitute arbitrator shall be appointed instead of the arbitrator whose mission was ended due to refusal, stepping aside, segregation or any other reason and upon appointing him, the applicable procedures should be applied in appointing the substitute arbitrator.

2. The parties, after the appointment of the substitute arbitrator, shall agree about the validity of the previous replacement procedures, otherwise the reformed arbitral tribunal shall decide what is appropriate in this regard.

Comments

The current provisions state that' unless otherwise agreed by the parties, the competent court, according to the request of one of the parties to the dispute, appoints the substitute arbitrator. The court decision is not subject of an appeal. The draft law, according to Article 15, states that the appointment of the substitute arbitrator should be done using the same procedures of appointing the arbitrator, who is being appointed instead of the original one.

### 6.2.4. The 4th Chapter, the Jurisdiction of the Arbitral Tribunal

Article No. (16): The authority of the Arbitral Tribunal regarding adjudicating in its jurisdiction

1. The arbitral tribunal shall decide on the defences related to its incompetence including the defences based on the lack of an arbitration agreement, or its authentication, or its abatement, or its annulment or its non-inclusion of the dispute subject. The arbitration clause is considered a separate agreement of the other contract clauses and the expiry, or nullification or termination of the contract shall not affect the arbitration clause, included in it, as this clause, in itself, is valid.

2. The defences set forth in the above mentioned item shall be adhered to, within a period not exceeding the period of submitting the defence statement of the defendant stipulated in Article No. (23) of this law and this right shall not be abated, if one of the parties appointed or participated in the appointment of an arbitrator. The defence statement claiming that the arbitral tribunal has exceeded its jurisdiction scope while reviewing the dispute should be expressed immediately at the time of its occurrence during the arbitration

procedures. In all cases, the arbitral tribunal may accept a defence statement after the defined date, if it considers that the delay was justifiable.

3. The arbitral tribunal may adjudicate in any of the defences set forth in this Article before adjudicating in this subject or within the arbitration judgment issued regarding the disputed subject. If it ruled to reject the defence, then the one whose defense was rejected, and within thirty days from the judgment notification date, has the right to challenge it before the other authority or the competent court, as applicable, and the judgment issued by the other authority or the competent court, shall be deemed unchallengeable by any means. Not expressing the mentioned demand shall not prevent the arbitration board from carrying out the arbitration procedures and issuing its judgment.

Comments

This article is further evidence that the draft law adopts modern principles of arbitration which are the principles of competence -competence and the separability or autonomy of the arbitration clause. These principles are not considered in the current provisions.

Article No. (17): The authority of Arbitral Tribunal in ordering interim measures or Provisional Judgments

1. Unless otherwise agreed between the parties, the arbitral tribunal has the right, as per a request of any one of the parties, to issue interim measures or provisional judgments required as per the dispute nature or with the purpose of avoiding an irreparable damage including any of the following:

a) Keeping the situation as it is or restoring it to its previous status till adjudication in the dispute.

b) Taking any procedure that prevents the occurrence of any current or forthcoming damage or any prejudice to the arbitration process itself

or that prevents taking any procedure, which may cause damage or prejudice.

c) Providing a means to protect the assets, by which we can carry out any subsequent decision.

d) Maintaining of the evidence, which may be considered important or essential in settling this dispute.

The arbitral tribunal shall request from the party, who requests taking these procedures, to submit a sufficient warranty to cover the expenses of the procedures or the judgment, which he orders.

2. The arbitral tribunal shall modify, suspend or annul any interim measure or provisional judgment ordered by it by a virtue of a request submitted by any one of the parties or on its own, if necessary after notifying the other parties.

3. The party, in favor of whom a procedure or a judgment was issued, after getting written permission from the arbitral tribunal, shall request from the competent judge to issue an order to execute the order issued by the arbitral tribunal or any part of it. A copy of any request for permission or for execution by virtue of this Article shall be sent to the other parties. The competent judge shall order the execution of the mentioned order, if it does not violate the law or public order.

4. The party requesting these procedures shall bear the costs and compensations for any damages caused by these procedures or the judgment to any party, if the arbitral tribunal decides, at a subsequent time, that it was not required to issue this procedure or this order in these circumstances. The arbitral tribunal shall obligate this party to pay the costs and the compensations at any time during these procedures.

Comments

The ordering of interim measures and provisional judgments, which should be ordered by the arbitral tribunal according to a request of any party, are regulated by this article. In addition, it guarantees that the costs and compensations for any damages, which might be caused by these procedures or judgments, should be covered by the party who requested to do so. Such provisions are not included in the current provisions of arbitration. This is an important development since it allows the rights of the parties to be preserved pending the outcome of the arbitration.

## 6.2.5. The 5th Chapter, Arbitration Procedures

Article No. (18): Equality among Parties

The Arbitral tribunal shall abide by the principles of equality and neutrality among the parties with giving each of them a full and equal opportunity to present his claim, defence and arguments.

The arbitral tribunal shall, also, avoid any delay or unnecessary expenses with the purpose of achieving an urgent and a fair method for settling the dispute.

Comments

This article ensures the equality and neutrality among the parties by dealing equally with them. It also encourages the arbitral tribunal to avoid delay and unnecessary expenses. These provisions are part of the public policy, which are granted by the current provisions; however, the draft law allocates a special article to stipulate them expressly.

Article No. (19): Determination of Procedures

1. Subject to the provisions of this law, the parties shall agree on the procedures including the proofing rules, which the arbitral tribunal has to follow up, and they also have the right to subdue these procedures to the applicable rules in any institution or arbitration centre inside or outside the State
2. The arbitral tribunal, subject to the provisions of this law, may apply the procedures, which it deems appropriate including the authority of accepting the submitted evidences and estimating the extent of the relation to the dispute subject besides its feasibility and its significance, unless there is an agreement among the parties regarding determining the arbitration procedures.

Comments

The current provisions of arbitration state that the arbitral tribunal should arbitrate according to the rules of law but does not specify which rules of law are applicable. This article gives the parties the opportunity to agree on the procedures and if they do not agree to such procedures, the arbitral tribunal, subject to the provisions of law, may apply the procedures as it deems appropriate. This allows more flexibility and supports the principle of party autonomy.

Article No. (20): Arbitration Place

1. The parties shall agree on the arbitration place inside or outside the State and if there is no agreement, the arbitral tribunal shall determine this place taking into consideration the circumstances of the case and the appropriateness of the place to the parties.
2. This never breaches the authority of arbitral tribunal regarding meeting in any place, which it deems appropriate for taking any of the arbitration procedures such as listening to the depositions of the dispute parties, the witnesses, the experts, reviewing the documents, examining things or funds

or organising a deliberation among the members, unless otherwise agreed between the parties.

Comments

Article 20 gives the parties the right to agree on the place of arbitration and if they do not agree, the arbitral tribunal will do so taking into account whether the place suits the parties and the circumstances of the case.

Article No. (21): Commencement of Arbitration Procedures

The arbitration procedures commence on the day when the defendant receives the request to refer the dispute to arbitration, unless otherwise is agreed by the parties.

Comments

According to Article 21, if the parties do not agree on a specific day for starting arbitration procedures, the day of receiving the defendant's request to refer the dispute to arbitration, will be the day of starting the arbitration procedures. These appointments are not specified in the current provisions. The new provisions provide certainty and speed up the arbitration process.

Article No. (22): Language

1. The parties shall agree on the language or the languages to be used in arbitration procedures, and if they do not agree on this, the arbitral tribunal shall determine the language or languages to be used. This agreement or determination shall be applied on the data, the written memorandums and the verbal pleadings submitted by any one of the parties and also in any decision, correspondence, notification or judgment issued by the arbitral tribunal, unless otherwise stipulated in the agreement of the parties or the decision of language determination.

2. The arbitral tribunal shall order a translation into the language or the languages used in arbitration to be attached for all or some of the documents submitted in the case. If there are several languages, the translation may be limited to only some of them.

Comments

Article 22 of this draft law does not determine a specific language to be used in arbitration procedures. It gives the parties the right to choose the language or languages to be used. However, in case of a failure to agree on the language, the arbitral tribunal should determine the language or languages. In addition, a translation of all or some documents should be submitted if the arbitral tribunal orders to do so. As the current provisions silent about the language supposes to be used in arbitration procedures, this article is considered as a significant development which will attract international parties who wish to arbitrate in their own language. Some jurisdictions have a default language in the event that the parties have not specified a language. This provision allows the arbitrator more flexibility to choose a suitable language or languages.

Article No. (23): Defence and Claiming Memorandums

1. The plaintiff shall submit, within the appointment agreed between the parties or determined by the arbitral tribunal, a written memorandum of his claim including his name, address, explanation of the facts of the case in addition to defining the issues' subject of the dispute and his demands.

2. The defendant shall submit, within the appointment agreed between the parties or determined by the arbitral tribunal, a written memorandum of his defence in response to what was submitted in the plaintiff memorandum and he has the right to enclose with this memorandum any casual demands related to the dispute subject adhering to any arising right for the purpose of a set-off.

3. The parties shall agree on the data contained in the memorandums set forth in the items (1) and (2) of this Article.

4. Without any prejudice to the right of the arbitral tribunal to request the parties to submit documents at any of the arbitration stages, the parties shall attach to their memorandums all the documents related to the subject and they may also refer to the documents and other evidences they intend to submit.

5. Unless otherwise agreed by the parties, any party shall modify his requests, defences or complete them within the course of the arbitration procedures, unless the arbitral tribunal decides not to accept this to prevent the interruption of settling the dispute.

Comments

Article 23 does not specify a time limit for submission of any of the memorandums by the plaintiff of the defendant. It leaves the determination of the time limit for the parties themselves or the arbitral tribunal. In addition, it determines the information, which should be included in the memorandum of the plaintiff and gives the defendant the right to add any casual requests to his memorandum. The requests and defences can be modified or completed at any time during the arbitration stages unless the arbitral tribunal refuses to accept amendments for the purpose of avoiding a delay in the resolution of the dispute. What is more, it allows the parties to agree on the data to be included in their memorandums and the right to attach to their memorandums, or refer to any documents or other evidences. This is a very flexible process although there is a danger that it may be abused by a party who lodges amendments at a stage where the other party will not have sufficient time to answer them. The article would have been more effective if it had specified a default time limit to apply where the parties did not agree or were silent on this matter.

Article No. (24): Oral and Written Procedures

1. The arbitral tribunal shall hold pleading sessions to enable the parties to demonstrate the subject of the case, present their evidences and proofs in addition to listening to their depositions, unless the arbitral tribunal is satisfied with the submission of the written documents and memorandums or unless otherwise agreed by the parties.

2. The arbitral tribunal shall hear the witnesses and experts without taking an oath.

3. The arbitral tribunal shall notify the parties of the appointments of the pleading sessions, hearings of depositions, previews or checks of the documents, which it decides to convene, in a long enough period of time estimated by the arbitral tribunal prior to its sessions, unless another appointment for this notification is agreed by the parties.

4. Unless otherwise agreed by the parties, the facts of the sessions, meetings and previews held by the arbitral tribunal shall be written in the minutes of meeting and a copy should be delivered to each of the parties. In addition to writing, these facts may be recorded using other appropriate means as per the procedures determined by the arbitral tribunal or agreed by the parties.

5. A copy of the memos, documents and other papers, which are submitted by any party to the arbitral tribunal, should be sent to the other party, also a copy of all experts' reports, documents and other evidences, which are submitted to the arbitral tribunal on which it depends in taking its decisions, should be copied to all parties.

6. Each of the dispute parties may assign one or more attorneys to represent him; also he has the right to request the assistance of experts or translators. The arbitral tribunal, at any time, may request from any of the parties to submit proof of the authentication of the capacity assigned to his representative in accordance with the required form by the law or what is determined by the arbitral tribunal.

Comments

Article 24 contains the provisions which regulate holding the hearing sessions, notifications and assigning lawyers, experts and translators. Such details are not included in the current provisions. This article provides a degree of consistency.

Article No. (25): Non-Appearance of the Parties before the Arbitral Tribunal

Unless otherwise agreed by the parties:

(a) The arbitral tribunal ends the arbitration procedures, if the plaintiff does not submit the claim memorandum according to item No. 1 of the Article No. 23 of this law, and does not submit an acceptable excuse.

(b) The arbitral tribunal shall continue the arbitration procedures, if the defendant does not submit his defence memorandum according to item No. 1 of Article No. 23 of this law, without regarding this a recognition from the defendant of the plaintiff’s requests.

(c) The arbitral tribunal shall continue the arbitration procedures and adjudicate in the dispute based on the available evidences and proof elements if any one of the parties fails to attend any of the sessions or submit what is required from him in terms of evidences, documents or information.

Comments

According to Article 25, if the plaintiff does not submit the memorandum of the claim on time without a reasonable excuse, the arbitral tribunal terminates the arbitration procedures. The arbitration procedures should be continued, even if the defendant has not submitted his defence memorandum as required (the draft refers to Item No. 1 of Article No. 23 while it means Item No. 2 of Article no. 23). This avoids any delay.

Article No. (26): Appointing Experts by the Arbitral Tribunal

1. The arbitral tribunal shall unless otherwise agreed by the parties:

   a) Appoint one or more experts to submit written or verbal reports concerning certain issues determined by the tribunal. It then should notify each party with a copy of its decision about determining the mission assigned to the expert and the time determined for depositing the report.

   b) Request from any one of the parties to submit, to the expert, any information related to the dispute and enabling him to look at any documents related to the subject or examine them or to view the materials or the funds.

2. The arbitral tribunal shall send a copy of the expert's report to all the parties giving them the opportunity to express their opinions about it; and each party has the right to preview the documents and the papers, which the expert checked and on which he depended when writing his report.

3. The arbitral tribunal may, after submitting the expert's report on its own or according to a request of any one of the parties, hold a pleading session to listen to the deposition of the expert, in which the parties shall get an opportunity to listen to him and discuss with him what is mentioned in his report. Each party, in this session, shall request the assistance of one or more experts from his side to express their opinions on the matters deliberated in the expert's report, unless otherwise agreed by the parties.

4. The fees and the expenses of the expert, who was appointed by the arbitral tribunal, shall be paid by the parties according to what is decided by the arbitral tribunal.

5. The arbitral tribunal shall adjudicate in any dispute arising between the expert and any of the parties in this regard.

Comments

Article 26 regulates the appointment of experts by the arbitral tribunal, if the parties did not agree otherwise. It also regulates the payment of the expert's fees and expenses. According to provisions provided in this article, disputes, which may arise between the expert and any party, should be adjudicated by the arbitral tribunal. This fills a gap in the existing provisions.

Article No. (27): Assistance provided by the Court for getting the Evidences

1. The arbitral tribunal or any of the parties shall, after the approval of the arbitral tribunal, ask for the assistance of the competent court for obtaining the evidences related to the dispute subject, including the technical experience works and evidences examination. If the arbitral tribunal deems that the required assistance is necessary for the adjudication in the dispute subject, it shall suspend the arbitration procedures until it has the assistance and this leads to the suspension of the validity of the appointment determined for the issuance of the arbitral judgment.

2. The competent court shall carry out the assistance request within the limits of its authority, as per the rules applicable for getting evidences including the judicial delegation or the judgment on the witnesses, who fail to come or refuse to answer with the sanctions set forth in the Articles 278 and 279 of the Code of Civil and Commercial procedures.

Comments

Requesting the assistance of the competent court for getting the evidences related to the disputes is granted by Article 27. In addition, if this assistance is necessary for the dispute settlement, the arbitration procedures should be suspended by the arbitral tribunal and as a result, the determined date for issuing the arbitral judgment would be invalid. The provided assistance from the court is restricted by the limitation of its authority to do so, which is provided in Articles (278) and (279) of the Civil and Commercial Procedure Code.

## 6.2.6. The 6th Chapter, Arbitral judgment Issuance and Ending the Procedures

Article No. (28): The Rules Applicable to the dispute Subject

1. The arbitral tribunal shall adjudicate in the dispute according to the legal rules agreed by the parties. If they agreed on applying a law or a legal system of a certain state, the substantive rules shall be followed and not the rules of the conflict of laws, unless otherwise explicitly agreed by the parties.

2. Unless the parties agree on the applicable legal rules, the arbitral tribunal shall apply the law decided by the applicable rules of the conflict of laws.
3. The arbitral tribunal shall not adjudicate in the dispute on the basis of the principles of justice and fairness, without compliance with the provisions of the law, unless the parties have explicitly allowed.

4. In all cases, the arbitral tribunal shall adjudicate in the dispute, in accordance with the contract terms, and take the commercial habits and traditions, which are applicable in this type of transaction, into account.

Comments

Article 28 stipulates that the dispute shall be adjudicated by the arbitral tribunal in accordance to the legal rules, which were agreed on by the parties. However, only the substantive rules of the law or the legal system, which were agreed on by the parties, should apply and not its jurisdiction rules. If the parties did not agree on the applicable rules, the arbitral tribunal should apply the law, which is decided by applicable jurisdiction rules. In all cases, the adjudication is bound by the terms of contract and the commercial habits and traditions. The current provisions state that the arbitral tribunal shall issue its judgment according to the rules of law and it does not specify which law. This article is an important development as it regulates the legal rules which should be used by the arbitral

tribunal. It also provides flexibility and freedom for the parties in choosing these rules.

Article No. (29): Making Decisions and Judgments by the Arbitral tribunal

The decisions and judgments of the arbitral tribunal, which is formed of more than one arbitrator, shall be issued with the majority of the opinions after a deliberation done in the manner determined by the arbitral tribunal, unless otherwise agreed by the parties. The decisions may be issued in the procedural matters by the arbitrator, who heads the tribunal, if the parties or all the arbitral tribunal members authorise him to do so.

Comments

According to Article 29 of this draft, unless otherwise agreed by the parties, if the arbitral tribunal consists of more than one arbitrator, the decisions and judgment should be issued, after a deliberation, based on the opinion of the majority. However, if the head of the arbitral tribunal has got permission from the parties or all members of the arbitral tribunal, he may issue the decisions in the matters of procedure. This allows for more flexibility.

Article No. (30): Dispute Settlement

1. If the parties agree, during the arbitration procedures, on settling the dispute between them, the arbitral tribunal shall end the procedures. If the parties ask to prove the settlement and its terms without any opposition from the arbitral tribunal, the tribunal proves the settlement in the form of a conciliation arbitral judgment.
2. The conciliation arbitral judgment shall be issued according to the provisions of Article No. 31 of this law as an arbitral judgment and this judgment shall have the capacity, effect and executional force equal to other arbitral judgments.

Comments

Article 30 stipulates that if the parties reach an agreement of settlement during the procedures of arbitration, the arbitral tribunal shall terminate the procedures. Unless the arbitral tribunal refuses to do so, it should, upon on receiving the parties' request, prove this settlement in the form of a conciliation arbitral judgment. The provisions of Article (31) of this draft shall regulate the conciliation arbitral judgment. The conciliation arbitral judgment, which is determined in this article, is not stipulated in the current provisions.

Article No. (31): Arbitral Judgment Form and Contents

1. The arbitral judgment shall be issued in writing and shall be signed by the arbitrator or the arbitrators; if the arbitral tribunal consists of more than one arbitrator, the signature of the majority of them shall be sufficient, provided that the judgment should prove the reason for the lack of signatures of the other arbitrators.

2. The arbitral judgment shall be causative, unless otherwise agreed by the parties, or if the legal applicable rules to the arbitration procedures do not require mentioning the reasons, or if the arbitral judgment is conciliation in accordance with Article No. 30 of this law.

3. The arbitral judgment shall include the parties' names and addresses, arbitrators' names, addresses, nationalities and titles, a copy of the arbitration agreement, the issuance date of the judgment and the arbitration place in accordance to what is provided in item No. 1 of the Article No. 20 of this law; the arbitral judgment is deemed to be issued in this place. The judgment shall include a brief summary of the parties' requests, depositions and documents in addition to the pronouncement and the reasons of the judgment, if obligatory.

4. The judgment shall include the amount of arbitration fees and expense costs, the party, who is obliged to pay, and payment procedures, unless otherwise agreed by the parties.

5. After the issuance of the arbitral judgment, a copy signed by the arbitrators shall be submitted to each party in accordance with item No. 1 of this Article within fifteen days from its issuance date. The parties may agree about non-publishing the arbitral judgment or parts of it.

Comments

Article 31 stipulates the form of the arbitral judgment, its contents and the procedures of submitting it to the parties. The article gives the parties the right to agree on the confidentiality of the arbitral judgment or parts of it, but it does not grant the confidentiality of the arbitral proceedings. Confidentiality is one of the main factors which influences parties in their choice to arbitrate instead of litigate (Drahozal 2010). Although this Article is an improvement compared to the current provisions, it should have gone further and provided for the confidentiality of the proceedings (including the mere existence of the proceedings) as well as the judgment.

Article No. (32): Termination of Arbitration Procedures

1. The arbitration procedures shall be terminated by the issuance of the arbitral judgment, which ends the dispute completely, or by a decision of the arbitral tribunal in the following circumstances:

a) If the parties agree on termination of the procedures

b) If the plaintiff leaves the dispute of arbitration, unless the tribunal decides, in accordance with the defendant's request, that he has a serious and legitimate interest in proceeding with the procedures till the adjudication of the dispute.

c) If the tribunal finds that the continuance of procedures becomes unfruitful or impossible for any other reason.

2. The arbitral tribunal may, on its own or in accordance with a request of any of the parties, reopen the pleading prior to the issuance of the arbitral judgment, if there is a reason for this.

3. The arbitral tribunal shall issue the judgment ending the dispute within the period agreed by the parties, and if there is no agreement, the judgment shall be issued within one month from the date of closing the pleading. In all circumstances, the arbitral tribunal may decide to extend the period for not more than one month, unless otherwise agreed or approved by the parties.

4. The jurisdiction of the arbitral tribunal shall end by the end of arbitration procedures with prejudice to the provisions of Articles 33 and 34 Item No. 5.

Comments

Article 32 states that there are two ways to terminate the arbitration procedures: by issuing the arbitral judgment, which ends the dispute completely or, in specific circumstances, by the arbitral tribunal decision. The pleading may be reopened, if there is a reasonable requirement, by the arbitral tribunal itself or according to a request of one of the parties. Unless otherwise agreed by the parties, the dispute should be ended by the arbitral tribunal judgment within a month of closing the pleading date and the jurisdiction of the arbitral tribunal should be terminated accordingly and bound by provisions of Article 33 and Item No. 5 of Article 34 of this draft. However, the arbitral tribunal may extend the period of termination for one more month unless otherwise agreed by the parties. This ensures a swift disposal of cases and is an improvement on the earlier version of the draft law which provided for a year which could be extended for another period. The existing law resulted in delays which could be as much as several years (QICCA, 2010).

Article No. (33): The Correction of the Arbitral Judgment and its Interpretation and the Supplementary Arbitration

1. Unless otherwise is agreed by the parties, any one of the parties, within 7 days from the date of receiving the arbitral judgment or the period agreed by the parties, provided the other parties notification, may request from the arbitral tribunal to:

a) Correct the arithmetical, writing or typing mistakes or any other similar materialistic mistakes that may have occurred in the arbitral judgment.

b) Explain a certain point in the arbitral judgment or any of its certain parts, if the parties agreed on this.

And if the arbitral tribunal finds the request is reasonable, it shall decide in writing the correction or rule of the interpretation within 7 days from the date of receiving the request and this interpretation or correction shall be deemed an integral part of the final arbitral judgment.

2. The arbitral tribunal, provided notification is given to the parties, may correct on its own any of the mistakes mentioned in the item 1/A of this Article within seven days from the date of issuance of the arbitral judgment.
3. Unless otherwise agreed by the parties, any of the parties may, provided notification is given to the other parties, request from the arbitral tribunal within seven days from receiving the arbitral judgment to issue a supplementary arbitral judgment regarding the requests submitted during the arbitration procedures neglected by the arbitral judgment and if the arbitral tribunal finds justifications for this request, it should issue a supplementary arbitral judgment within seven days from the date of submitting the request.
4. The arbitral tribunal may, if required, extend the period of the arbitral judgment correction or issue an interpretation of it or a supplementary arbitral judgment, for a period similar to the original one.

5. The corrections should be noted down on the original copy of the judgment and be signed by the arbitral tribunal; the provisions of Article No. 31 of this law shall be applied to the interpretation of the arbitral judgment and the supplementary arbitral judgment and the other parties should be notified.

6. If the impossibility of convening the arbitral tribunal which issued the judgment in order to discuss the correction or the interpretation or a judgment regarding neglected demands, was proven, then the issue may be referred to the competent court for settlement, unless otherwise agreed by the parties.

Comments

The existing law has no provision for correction of an arbitral judgment and this is a serious omission resulting in injustice. Article 33 stipulates that the arbitral tribunal may correct and interpret the arbitral judgment, on its own, within seven days of the judgment issuance date, provided the parties are notified or by a request of any party within seven days of the date of receiving the judgment or the period, which the party agreed on, provided the other parties are notified. In addition, if the parties do not agree otherwise, within seven days of the date of receiving the judgment, any party, provided notification is given to the other parties, may request from the arbitral tribunal to issue a supplementary arbitral judgment regarding the requests submitted during the arbitration procedures and ignored by the arbitral judgment. If the arbitral tribunal deems this request a reasonable one, it should issue a supplementary arbitral judgment within 7 days of the date of submission of the request. The tribunal, if required, may extend this period to a similar period.
The correction should be noted down on the original copy of the judgment and signed by the arbitral tribunal. The provisions of Article 31 of this draft binds the interpretation of the arbitral judgment and the supplementary arbitral judgment, and the other parties should be notified.

In case of the event that the arbitral tribunal which issues the arbitral judgment cannot be held to discuss any of above-mentioned issues, if not agreed otherwise by the parties, the issue may be submitted to the competent court for resolution.

## 6.2.7. The 7th Chapter, Challenging the Arbitral Judgment

Article No. (34): Requesting the Nullification of the Arbitral Judgment

1. The arbitral judgment shall not be challenged by any challenging methods except by the challenge of the nullification methods according to the provisions of this law and in front of the competent court.

2. The claim of nullification of arbitral judgment shall not be accepted, except if the applicant of the nullification submits evidence proving any of the following cases:

a) If any of the parties of the arbitration agreement was incapacitated or his capacity was impaired at the time of its conclusion, or if the arbitration agreement was incorrect in accordance with the applicable law, which the parties agreed on as being applicable on the arbitration agreement or according to this law, if they did not agree to that.

b) If the nullification applicant has not been announced properly about the appointing of any of the arbitrators or the arbitration procedures, or if the nullification applicant is unable to submit his defence for any other reasons beyond his control.

c) If the arbitral judgment adjudicates in matters not included in the arbitration agreement, or if it exceeds the limits of this agreement. However, if it is possible to separate the parts related to the affairs subject to arbitration from its parts regarding the affairs not subject to it, the nullification shall be in force solely on the last parts.

d) If the formation of the arbitral tribunal, or appointing of arbitrators or the arbitration procedures are done in violation with what is agreed on by the parties, unless the parties' agreement contradicts the provisions of this law, which the parties are not allowed to violate, or if there is no existing agreement, these procedures are done in violation of this law.

3. The competent court shall, on its own, rule in the nullification of the arbitral judgment, if the dispute subject does not agree to settle it by arbitration according to the state law, or if the arbitral judgment violates the state public order.

4. A claim of nullifying the arbitral judgment shall be filed before the competent court within a month from the date of delivering a copy of the judgment to the parties or from the date of the notification, of the applicant requesting the nullification, of the arbitration award, or the issuance of the correction decision, or the interpretation judgment or the supplementary arbitration provided in Article No. (33) of this law, unless the parties have agreed in writing on extending the period of filing the nullification claim.

5. Unless otherwise agreed by the parties, the competent court shall suspend the procedures for considering the claim, upon the request of one of the parties, if it finds that appropriate, and this for the period which it determines in order to give the arbitral tribunal the chance to complete the arbitration procedures or take any other action that the arbitral tribunal deems is appropriate for removing the reasons for nullification.

Comments

Unlike the current provisions which allow appeal, review and challenge the judgment for nullification, Article 34 states that the arbitral judgment shall not be challenged except by the challenge regarding to nullification, according to the provisions of this law and before the competent court.
It also stipulates that the nullification claim shall only be accepted if the applicant provides evidence that proves one of four limited cases; incapacity of one of the

arbitral agreement parties, when the agreement was concluded, or invalidity of the arbitral agreement, according to applicable law; the notification of the nullification applicant regarding appointing one of the arbitrators or arbitration procedures was incorrect or the applicant to nullify failed to submit his defence due to reasons beyond his control. According to Article 34 of this draft, the arbitral judgment adjudicates in matters, which are not included in arbitral agreement or violated this agreement; However, if these matters can be separated from other subjected matters, the nullification shall only enforce the out of agreement parts; if any of the arbitral tribunal formation, appointing of arbitration or arbitration procedures was done in violation of what the parties agreed on or in conflict with the provisions of this law.

If the dispute subject was not a subject, which can be agreed on to be settled by arbitration, according to the state law or if the arbitral judgment violated the public order of the state, the competent court shall decide to nullify the arbitral judgment on its own.

Unless the parties agreed, in writing, on extending the time limit for filing the nullification claim, the nullification claim shall be filed to the competent court within a period of a month from the delivering date of the judgment's copy to the parties, the date of notifying the applicant of nullification by the arbitral judgment or the issuance of the correction decision or the judgment of interpretation or the supplementary arbitration as provided in Article 33 of this draft.

Finally, for the purpose of giving the arbitral tribunal the opportunity to continue the arbitration procedures or make any other action, which can terminate the reason for nullification, from the arbitral tribunal's viewpoint; if it finds that appropriate, the competent court, according to any party request, may suspend the claim consideration procedures for a period which it determines.

This article provides the certainty of arbitral judgment and the stability of the legal status, which in turn ensure confidence in the Qatari legal system and arbitration practice in Qatar and, therefore, attract parties to arbitrate in Qatar.

## 6.2.8. The 8th Chapter, Recognition and Enforcement of Arbitral Judgments

Article No. (35): Recognition and Enforcement of Arbitral Judgments

1. The arbitrators' judgments shall have the *authentic res judicata*, and shall be enforced by virtue of the provisions of this law regardless of the state where it was issued.
2. Unless otherwise agreed by the parties, a written application for enforcement of the judgment shall be submitted to the competent judge, attached to it a copy of the arbitration agreement and the original copy of the judgment or a signed copy of it in the language, in which it was issued, in addition to a translation of the award in Arabic from an accredited entity, if the judgment was issued in a foreign language.

3. With the exception of Item No. 2 of this Article, the parties may agree on alternative and suitable means or procedures for the recognition and enforcement of the arbitral judgment; they also may submit or deposit suitable guarantees for the enforcement of the arbitral judgment to the competent entity or to whom they find suitable.

4. The request to enforce the arbitral judgment shall not be accepted except after the deadline of filing the nullification claim of this judgment.

Comments

The current provisions adopted the principle of reciprocity regarding the enforcement of foreign arbitral awards in Qatar. However, in 2003 Qatar ratified the New York Convention 1958 without any reservation. This means that paragraph 1 of Article 379 of the 1990 Law, which sets out the principle of reciprocity is void. According to the provisions of the draft law, Article 35 grants the recognition and enforcement of the arbitrators' judgments, irrespective of which state the judgment was issued in. A written request for the judgment's

enforcement should be submitted to the competent judge. A copy of the arbitration agreement and the original judgment should be attached with the request and if the judgment has been issued in a foreign language, a signed copy of it with a certified Arabic translation should be attached. However, the request of the enforcement of the arbitral judgment shall not be accepted before the deadline of filing the nullification claim against it.

As an exception, the parties may agree on other procedures or ways for the recognition and enforcement of arbitral judgment. They may, in addition, deposit suitable guarantees to the competent authority for the purpose of enforcing the arbitral judgment. This may relieve the burden on the courts. However, if the exception was not under the supervision of the competent court or the other authority, which are specified by the draft law, the parties may agree to recognise and enforce a judgment which violates the public policy, in another way.

Article No. (36): Grounds for Refusal of recognition or enforcement

It shall not refuse the recognition of any arbitral judgment or refuse to enforce it regardless of the state where it was issued, except in the two following cases:

1. Upon the request of the party, against whom the judgment should be enforced; if this party submits to the competent judge, to whom the recognition or enforcement request has been submitted, evidence proving any of the following cases:

    a) If any of the parties of the arbitration agreement at the time of its conclusion was incapacitated or his capacity is impaired, or if the arbitration agreement was incorrect, as in accordance with the law, which the parties agreed on as being applicable in the agreement or in accordance with the law of the state where it was issued, if they did not agree on that.

    b) If the nullification applicant has not been informed properly about the appointing of any of the arbitrators or the arbitration procedures,

or if the nullification applicant was unable to submit his defence for any other reasons beyond his control.

c) If the arbitral judgment adjudicated in matters not included in the arbitration agreement, or if it exceeded the limits of this agreement. However, if it is possible to separate the parts related to the affairs subject to arbitration from its parts regarding the affairs not subject to it, and acknowledging or executing the parts of arbitral judgment, which adjudicated in the issues are included in the arbitration agreement or did not exceed this agreement may be recognised or enforced.

d) If the formation of the arbitral tribunal, or appointing of arbitrators or the arbitration procedures were done in violation with what was agreed on by the parties, or in the case of the nonexistence of an agreement, this was done in violation of the law of the state, where the arbitration was held.

e) If the arbitral judgment is no longer binding on the parties, or it was nullified or its enforcement was suspended by any of the state courts, where the judgment was issued or as per its laws.

2. If the competent judge refuses the recognition or enforcement of the arbitral judgment on his own in the following two cases:

a) If the dispute subject was not permissible to be adjudicated via arbitration according to the state law.

b) If the recognition or enforcement of the judgment contradicts the public order of the state.

If the competent judge finds out that the arbitral judgment, which is required to be recognised or enforced, is challenged by nullification before the court of the state, where it was issued, he may postpone the order of enforcement according to what he deems appropriate, and he may, upon the request of the party requesting the recognition or enforcement, order the other party to provide a guarantee which he deems appropriate.

3. The complaint against the issued order to refuse the enforcement of the arbitral judgment should be submitted to the competent court during thirty days from the date of the issuance of the order. The issuance order of enforcing the arbitral judgment shall not be appealed.

Comments

The current provisions stipulate that the arbitral award cannot be enforced if Qatari Courts have exclusive jurisdiction over such dispute or that the court that made it does not have jurisdiction according to the international rules of jurisdiction provisions under Qatari law. A procedural failure of a party is the second ground of refusing enforcement of arbitral judgment. The third ground is that this judgment is not yet binding or has been set aside in the state where it was issued. The four ground for refusal is that the arbitral judgment is conflict with public policy and good morals.

Article 36 of the draft law stipulates that the recognition and enforcement of any arbitral judgment shall only be refused in two cases; firstly, if the party against whom the judgment is enforced submits to the competent judge to whom the request of recognition or enforcement was submitted, this can prove any of the following cases:

Incapacity of one of the arbitral agreement parties, when the agreement was concluded, or invalidity of the arbitral agreement according to applicable law or the law of the state, where the judgment was issued; the notification of the nullification applicant regarding appointing one of the arbitrators or arbitration procedures was incorrect or the applicant to nullify failed to submit his defence due to reasons beyond him; the arbitral judgment adjudicated in matters which are not included in arbitral agreement or violated this agreement; if the related matters can be separated from non-related one, however, the judgment's part, which adjudicated in those matters included in the arbitral agreement, may be recognised and enforced; if any of the arbitral tribunal formation, appointing of arbitration or arbitration procedures was done in violation of what the parties agreed on or in the event of the nonexistence of an agreement, the violation of the law of the state where the agreement was held should be considered; if the parties were no more bound by the arbitral judgment, or the enforcement of the

arbitral judgment has been nullified or suspended by any of the courts of the state where it was issued or according to law of this state.
The second ground for refusal of the recognition or enforcement of the arbitral judgment would be the refusal of the competent judge to recognise or enforce the arbitral judgment, on his own, in only two cases:
If the dispute subject was not a subject, which can be agreed on to be settled by arbitration, according to the state law or if the recognition or enforcement of the arbitral judgment was incompatible with the public order of the state.
According to Article 36, the issued order to enforce the arbitral judgment cannot be a subject of complaint. In addition, the grievance against the issuance order to refuse the enforcement of an arbitral judgment should be submitted to the competent court within 30 days of its issuance. The draft law provides more details in this regards.

### 6.2.9. The 9th Chapter, Arbitration Centres and Entities and the Accreditation of the Arbitrators

Article No. (37): Establishing Arbitration Centres and Entities

The license of establishing arbitration centres and entities and branches of foreign arbitration centres in the state shall be issued by a decree of the Minister. The executive regulation determines the rules and the terms of granting the license and canceling it and the prescribed fees in this regard.

Comments

For the first time, the licenses for establishing arbitration centres, entities or branches of foreign arbitration centres are regulated. However, it does not regulate for an electronic arbitration centre. Article 37 provides that a decree of the Minister of Justice is required to give a license for establishing an arbitration centre and entity or any foreign arbitration centre branches in the State. This

means that the Ministry of Justice of Qatar is the authority which has the right to license arbitration centres, entities and branches of foreign arbitration centres in Qatar. There is no similar provision in the current provisions. Such regulation shall raise the quality of arbitration centres and entities in Qatar and accordingly the services provided by them.

Article No. (38): Register of Arbitrators

The register for listing the arbitrators accredited by the Minister's decree, shall be established in the Ministry. The executive regulation shall determine the rules and terms of registering and writing off the arbitrators in the above-mentioned register and the prescribed fees in this regard.

Comments

In terms of having an official reference for arbitrators, Article 38 stipulates that a register should be established in the Ministry of Justice to register the arbitrators already accredited by the Minister of Justice. This will ensure the quality of arbitrators in Qatar and ease the process of appointing the arbitrators as the register will provide required information about each arbitrator.

Article No. (39): Arbitration Affairs Department

There are two proposals for this article and a decision has not yet been made.

The First Option: A Department of arbitration affairs should be established in the Ministry of Justice to supervise the arbitration works, and the executive regulations shall determine its jurisdictions.

The Second Option: The Department of arbitration affairs should be established in the Ministry of Justice to supervise the arbitration works, and the executive regulations shall determine its jurisdictions including the following:

1. Receiving and examining the applications for issuing licenses for establishing arbitration centres and entities and branches of the foreign arbitration centres in the state, and to express its opinions regarding them.
2. Receiving and examining the applications for accrediting and registering the arbitrators in the national register for arbitrators, and to express its opinions regarding them.
3. Issuing the certificates of the arbitrators' registration in the national register.

4. Proposing the required standards and terms for accrediting and registering the arbitrators in coordination with arbitration centres and entities.

5. Proposing the required rules and the terms for licensing of establishing arbitration centres and entities in the state.

6. Receiving and examining the complaints related to arbitration and arbitration centres and entities, and working on solving them and taking appropriate decisions regarding them.

7. Preparing guidance modules for the arbitration agreements.
8. Encouraging resorting to arbitration and enhancing its role in dispute settlement.

9. Working on the development of the legislation tools in the field of arbitration.

10. Cooperating and forming partnerships with the organisations and the institutions concerned with arbitration internally and externally.

11. Preparing studies and research and proposing recommendations in the field of developing arbitration and the performance of arbitrators.

12. Following up the national and international conferences and seminars in the arbitration field.

Comments

The Legislator proposed two options for Article 39 regarding the establishment of a department for arbitration affairs in the Ministry of Justice. The first option stipulates the establishment of this department under the Ministry of Justice to oversee the arbitration works and it preserves the right to determine the jurisdiction of this department for the executive regulation. This option gives the Ministry more freedom to draft regulations setting out the department's jurisdiction. The other option, which is preferable from the researcher's view, specifies some of the department's jurisdictions as guidance thereby restricting the power of the Ministry to increase the jurisdiction of the department.

Article No. (40): Reconciliation of The Current Situations

The existing arbitration centres and entities, at the time of enforcing this law, shall modify its situations in accordance with the provisions of this law and the decisions issued in this regard, within six months from its enforcement date. This deadline may, by a decree of the Ministers' Counsel based on the Minister's proposal, be extended for another similar period or periods.

Comments

The last Article, Article 40 is directed to the existing arbitration centres and entities. It determines a deadline for them to organise their situations in accordance with this law and issue decisions in this regard within six months of the enforcement of this law. However, if the Minister of Justice suggests extending this period, this deadline can be extended by a decree of the Council of the Ministries for a similar period or periods.

### 6.2.9. Overall Comments

The Draft of the Arbitration Law in Civil and Commercial Affairs has passed through several stages before reaching its present form. As mentioned above, the early version of this draft law was copied from the Egyptian Arbitration Law, while the latest one has its own character, derived from the UNCITRAL Model Law with a Qatari influence. The draft law solves many issues, which are caused by the current provisions; for example, the problem that the current law deals with the arbitration in the same way as a commercial litigation, the definition of the term "writing" and the absence of modern arbitration principles. In addition, it states that a special circuit of arbitration in the court of appeal shall be established, which will form a specialist court of arbitration with more experienced judges in the arbitration field. The draft law regulates the licenses of arbitration centres, entities and branches of foreign arbitration centres, which were not regulated in the current provisions. It will establish a department for arbitration affairs, which will supervise the arbitration affairs, including arbitrators' affairs and arbitration centres. However, some disadvantages may be observed in this draft law, such as the fact that the draft does not solve the issues of misinterpretation of the term "*Hukum*", which is used in the current provisions. In addition, the appointment of arbitrators in matter of multi-party arbitration and the appointment of the chairman or resident of the arbitral authority are missing in this draft law. The draft states that the arbitrator is liable if he practises arbitration in bad faith or commits gross negligence or complicity. However, it does not stipulate any penalties for these violations.

Further, like the current provisions, the draft law does not deal with electronic arbitration centres which have spread on the Internet and might be the future of arbitration all over the world as they are part of global international trade.

## 6.3. The GCC Unified Draft Law for Commercial Arbitration

The importance of drafting a unified law of arbitration for the GCC States was first highlighted in the first meeting of the GCC Commerce Chambers on 27th November 2007. Accordingly, the task of preparing the draft law was assigned to Dr. Ahmed Shetta, the General Secretary of Qatar Commerce and Industry Chamber at that time, and the draft law was presented in the headquarters of Kuwait Chamber of Commerce and Industry on 24th April 2008. In addition, a working team to discuss the draft was formed of the following:

1. Dr. Ahmed Mohammed Shetta – Qatar Commerce and Industry Chamber
2. Mr. Mohammed Yassin – Abu-Dhabi Commerce and Industry Chamber.
3. Mr. Mohammed Essam Kammour – Bahrain Commerce and Indusrty Chamber.
4. Dr. Sauod Al-Mushari – Saudi Commerce and Industry Chambers Council.
5. Mr. Ali Haidar Al-Buloushi – Oman Commerce and Industry Chamber.
6. Dr. Sabah Abdulsalam – Kuwait Commerce and Industry Chamber.

This working team examined the draft and they added the comments of all the GCC Chambers. They filed it then to the General Secretariat of the GCC Council to issue it as a law, which should by applied in GCC States (Sheta, 2009).

The GCC Unified Draft Law consists of seven sections and contains fifty-seven Articles. The first section is for general provisions. The second one is about arbitration agreements. The arbitral tribunal is the subject of the third section. The fourth section regulates the arbitration procedures. The fifth one organises the arbitral judgment and ending of the procedures. The invalidity of the arbitral judgment is regulated in section six. The last section is about the recognition and enforcement of arbitrators' judgments (GCC, 2009). As previously mentioned,

this section will only describe the significant provisions of the GCC Unified draft law. This is because the draft has been previously examined in other researches on one hand. On the other hand, because, as mentioned in chapter five by the Minister of Justice, that the Qatari draft law is to be enforced more closely than the GCC one as the later one needs more time to be passed and ratified.

### 6.3.1. The 1st Chapter, General Provisions

Article (1)

Without prejudice to the International Conventions Provisions, which are applicable in the (GCC) States, Provisions of the Draft Law apply to any arbitration between parties of public law or private law persons, whatever the nature of the legal relation of the dispute is, if the arbitration is being held in a Member State of the GCC, or any international arbitration agreement executed outside the region with the parties agreeing to subject it to provisions of this law.

With regard to administrative contract disputes or civil and commercial matters arising from the issuance of administrative decisions of the public legal person, the agreement to arbitrate should be approved by the competent minister or his authorised representative, except those exempted by a special provision.

Comments

Article (1) of this draft law determines the scope of the law and where and when it shall be applied. It applies to any arbitration in GCC States including Qatar and international arbitration where the parties choose this law as governing law for their agreement.

Article (2)

Arbitration is considered international, according to this law:

1. If the place of business of one of the parties of the arbitration agreement at the time of concluding the agreement, is in one of the GCC

States and the place of business of the other party is located in any State other than the GCC States; if a party has several places of business, then the most closely associated place with the subject of the arbitration agreement will be considered; if one of the parties of the arbitration does not have a business centre, his habitual residence will be considered.

2. If the subject of the dispute covered by the arbitration agreement is linked to one of the GCC States and another outside State.

3. If any of these places are situated outside the GCC States:

(a) The place of arbitration, if it was determined in the arbitration agreement or if the way to determine it has been mentioned.

(b) Any place where an essential part of the contractual obligations has been carried out or the place, which is linked to the dispute subject more than others.

Comments

Unlike the current provisions of arbitration in Qatar, Article (2) of this draft law determines when arbitration, according to this draft law, is considered international and when domestic. However, it stipulates that arbitration will be considered as "domestic" if it is held within the GCC States and "international" if any of mentioned places falls out with these States. Also, unlike the Qatari draft law, it does not differentiate between the institutional arbitration and the ad-hoc one.

Article (7)

Jurisdiction to arbitration matters referred to by this law is vested in the judicial authority originally competent to hear the dispute in accordance with the judicial system in force in each State of the Council.

Comments

Article (7) states that jurisdiction in matters of arbitration is for the court which originally has the jurisdiction to hear the dispute. This means that it follows the

current provisions of arbitration in Qatar and unlike the Qatari draft law that it does not specify a special court or circuit for arbitration.

### 6.3.2. The 2nd Chapter, Arbitration Agreement

Article (9)

There shall be no agreement on arbitration unless for a natural or legal person, who has disposed of his rights, also arbitration shall not be in matters where reconciliation is not allowed.

Comments

According to this article, an arbitration agreement is only valid if the parties are legally capable of agreeing to it and only in matters, where compromise is applied. Like the Qatari draft law, this draft does not determine the matters where arbitration is not applied.

Article (10)

An arbitration agreement must be in writing. An arbitration agreement is considered written, if it is contained in a written document, which is signed by the parties or if it is included in letters, telegrams, telexes faxes, emails or other means of written communication exchanged by the parties.

Comments

Unlike the current Qatari provisions of arbitration, this article determines the required forms of writing in which the agreement is considered as a written agreement and valid as arbitration agreement.

## 6.3.3. The 3rd Chapter, Arbitral Tribunal

Article (13)

1. An arbitral tribunal shall be formed by the parties' agreement on one arbitrator or more; if the parties do not agree on the number of arbitrators, the number should be three.
2. If there are several arbitrators, their number should be odd; otherwise, the arbitration is null and void.

Comments

This article regulates the formation of the arbitral authority. The parties shall agree on the number of the arbitrators and this number shall be odd. If they do not agree on the number of arbitrators, then there shall be three arbitrators. The GCC draft law, in this regard, is similar to the Qatari draft one and unlike the current Qatari provision of arbitration.

Article (14)

1. An arbitrator shall not be a minor, or interdicted, or deprived of his civil rights because of his sentence in a criminal penalty, or doomed to bankruptcy, unless he has been rehabilitated, or is still working with one of the arbitration parties.

An arbitrator shall not be related, by proportions of affinity to the fourth degree, to any one of the dispute parties unless the parties know about this relationship and agree.

An arbitrator shall accept his mission in writing, and must disclose, upon acceptance, of any circumstances, which would raise doubts about his independency or impartiality.

Comments

This article determines the terms and conditions to be met by the chosen arbitrator which are almost same as those terms and conditions provided by the current provisions of arbitration in Qatar. However, this draft states that arbitrator shall not be related to any one of the disputes parties by proportions of affinity to the fourth degree unless agreed by the parties. This term does not exist in the current provisions of arbitration in Qatar or the Qatari draft law.

Article (21)

The arbitration clause is considered an independent agreement of the other contract's terms. The invalidity of the contract or its annulment or termination shall not result in any impact of the arbitration clause that is included in this contract, if the clause was valid.

Comments

This article determines the autonomy of arbitration clause of the contracts and clarifies the validity of the arbitration clause in case of annulment, termination or invalidity of the contract. This principle is not supported by the current provisions of arbitration in Qatar.

Article (22)

1. Parties to the arbitration may agree that upon the request of either party, the arbitral tribunal may take temporary or precautionary measures it deems necessary and required in relation to the nature of the dispute and it may request to provide adequate security to cover the expenses of ordered measure.
2. If the party, to whom the matter was issued, fails in its implementation, the arbitral tribunal or any parties may ask from the President of the Court referred to in Article (7) of this law, to issue the

execution order.

Comments

This article regulates the ordering of interim measures which might be ordered by any parties. It also allows the arbitral tribunal to ask for provision of adequate funds to cover the expenses of ordered measure. This article ensures the speed of arbitration process.

## 6.3.4. The 4th Chapter, Arbitration Proceedings

Article (23)

Arbitration agreement parties may agree on the procedures, which should be followed by the arbitral tribunal, including their right in subjecting these procedures to the enforced rules of any organisation or arbitration centre in the GCC States or outside. If there is no such agreement, the arbitral tribunal, considering the provisions of this law, shall choose the arbitration procedures which it deems appropriate.

Comments

The opportunity to agree on the procedures is guaranteed by this article. However, if they do not agree, the arbitral tribunal shall apply the appropriate procedures to the dispute.

Article (25)

The arbitration procedures shall begin from the day on which the arbitral tribunal is formed, unless the arbitration parties agreed otherwise.

Comments

According to this article, unless otherwise agreed by the parties, the day on which the arbitral tribunal is formed is considered as the starting day of arbitration procedures. This article assists in counting the period of arbitration process.

Article (27)

1. Arbitration shall be conducted in Arabic unless otherwise agreed by the parties or the arbitral tribunal determines other language or languages. Agreement or decision applies to the language of data and written memos and the oral arguments, as well as to every decision taken by this tribunal, or directed letters from it or awards issued unless the parties' agreement or the tribunal's decision states otherwise.
2. An arbitral tribunal may decide to enclose with all or some written documents, which are presented in the dispute, a translation into the official language or languages used in the arbitration. In case of multiple languages, the translation may be limited to some of them.

Comments

The current provisions of arbitration in Qatar are silent about the arbitration language. This article chooses Arabic as the default language of arbitration in the event of that the parties remain silent about the arbitration language. It also gives the arbitral tribunal the right to request a translation of all or some written documents into the official language(s) used in the arbitration. However, the Qatari draft does not name a default language of arbitration. It grants the right to the parties to choose the language and if they are silent about it, the right reverts to the arbitral tribunal to choose the suitable language or languages.

## 6.3.5. The 5th Chapter, Arbitral Judgment and Ending of Procedures

Article (37)

1. An arbitral tribunal applies, to the subject of the disputes, the rules agreed by the parties. If the parties agree to apply the law of a particular state, its substantive rules should apply without the rules of conflict of laws, unless otherwise agreed.
2. If the parties do not agree on the applicable rules to the dispute subject, the arbitral tribunal shall apply the substantive rules of the law, which it sees as most relevant or most appropriate to the dispute.
3. An arbitral tribunal shall consider, when adjudicating the dispute, the terms of the dispute contract and the mores and customs of such.
4. An arbitral tribunal may, if the arbitration parties expressly agreed on authorising the tribunal for conciliation, adjudicate on the dispute subject according to the rules of justice equity, considering the provisions of Article (24) without being bound by the provisions of the laws.

Comments

The current provisions of arbitration in Qatar state that arbitral tribunal should issue its judgment according to the law rules, but it does not determine which law is. This article states that the arbitral tribunal shall adjudicate the dispute in accordance with the legal rules agreed on by the parties. However, only the substantive rules of the law or the legal system agreed on by the parties, should apply and not its jurisdiction rules. If the parties did not agree on the applicable rules, the arbitral tribunal should apply the law, which shall be decided by the applicable jurisdiction rules. In all cases, the adjudication is bound by the terms of contract and the commercial habits and traditions.

Article (40)

An arbitral tribunal may issue a temporary judgment or in a part of requests before the issuance of the decision, which ends the entire dispute.

Comments

This article allows the issuance of a temporary or partial judgment, by the arbitral tribunal, prior to issuing the final judgment. This article allows urgent matters to be dealt with efficiently and protects the parties' position pending final judgement.

Article (43)

1. An arbitral tribunal shall issue the judgment, which ends the entire dispute, within the period agreed by the parties. If there is no agreement, the judgment shall be issued within a year from the date of commencement of the arbitration proceedings.
2. If the arbitral judgment was not issued within the period referred to in the preceding paragraph, any of the arbitration parties may request from the President of the court referred to in Article (7) of the Law to issue an order to determine an extra date or to end the arbitration proceedings.

Comments

This article determines the period in which an arbitral tribunal shall issue the final judgment, which is a year from the starting date of arbitration proceeding unless the parties agreed on otherwise. It gives for the president of the competent court the authority to amend this period at the request of any of the parties of arbitration. However, this period is too long compared to the period provided by the Qatari draft law which is a month.

## 6.3.6. The 6th Chapter, The Invalidity of the Arbitral Judgment

Article (50)

1. An arbitral judgment, which is issued in accordance with the provisions of this law, shall not be challenged by any method of appeal provided in the laws of the GCC States.
2. A lawsuit may be filed to nullify an arbitral judgment in accordance with the provisions set forth in the following articles.

Comments

Paragraph (1) of Article (50) prevents an arbitral judgment issued in accordance to this draft law provisions from being challenged by any method of appeal in the GCC States laws, while Paragraph (2) states that an arbitral judgment may be challenged only regarding to the nullification on the grounds mentioned above. This article can be considered an improvement on the current provisions which stipulate that the arbitral judgment is subject to appeal, review and challenge for nullification and therefore undermine the judgment and lead to uncertainty.

Article (51)

1. The lawsuit of nullification of the arbitral judgment shall not be accepted except in the following circumstances:

a) If there is no arbitration agreement or the agreement is void.
b) If one of the parties to the arbitration agreement is concluded as incompetent according to the law governing eligibility.
c) If one of the parties is unable to present a defence because of incomplete procedures that affected the verdict.
d) If the formation of the arbitral tribunal or the appointment of arbitrators was contrary to the law or rules of the agreement by the parties.

e) If the arbitral tribunal ruled out the application of the law that the parties agreed to apply on the subject matter of the dispute.
f) If the arbitration ruling was in matters not covered by the arbitration agreement or exceeded the limits of this agreement; however, whenever possible partial judgment could be applicable on other matters subject to arbitration.
g) If the arbitral judgment or proceedings were nullified after the ruling.
   2. The Court hearing the case of nullity shall decide to nullify the arbitral judgment if its contents violate public order, public morals and Islamic Sharia.

Comments

Article (51) determines the terms in which the arbitral judgment can be challenged regarding to nullification. These terms are almost the same as those which are included in the current provisions of arbitration in Qatar except the term, which is referred to the violation of Islamic Sharia.

## 6.3.7. The 7th Chapter, The Recognition and Enforcement of Arbitrators' Judgments

Article (53)

Arbitral judgment, which is issued in accordance to this law, has the authentic matter res judicata and is enforceable, considering the provisions stipulated in this law.

Comments

This article stipulates that arbitral judgment, which is issued in accordance to the provisions of this draft law, shall be recognised and enforced.

Article (57)

The GCC Unified Law of Arbitration shall replace the rules and laws of arbitration in force in all the Member States, within the limits of the constitutional rules and basic systems in force in each state and not be inconsistent with them.

Comments

If the member state of the GCC ratifies this law, it shall replace the arbitration rules and law in force in this member state in a way, which does not conflict with its constitutional law.

## 6.4. The QFC Draft Law

In the 9th of March 2005, H.H. Shaikh Hamad Bin Khalifa Al-Thani – the Father Emir -, Emir of the State of Qatar, at that time, issued the Law No. (7) of Year 2005 on the promulgation of Law for the Qatar Financial Centre. The Law for the Qatar Financial Centre consists of 19 Articles and 5 Schedules (QFC, 2005). However, Law No. (2) of 2009 amended some significant rules to the QFC Law. For example, it added the definition of the Civil and Commercial Court to the definitions in Article (1) of the QFC Law. What is more, the provisions of Article (8), which were called: "The Regulatory Authority and the Appeals Body", were replaced by new provisions and the title changed into: "The Regulatory Authority, The Regulatory Tribunal and The Civil and Commercial Court". Also, Schedule No. 5 of the Law, which was regulated by the Appeals Body, was replaced by a new schedule, which regulates the Regulatory Tribunal. Schedule No. (6) was added by the Law No. (2) of 2009 too (QFC, 2009b).

Furthermore, the most significant amendment by the Law No. (14) of 2009 was the replacement of Article (2/Clause 2) of the QFC Law by the following provision: "Article (2/Clause 2): (The Council of Ministers shall specify The Location of the Centre, and may amend it from time to time, and may authorise the Minister to do that.) (QFC, 2009a).

Furthermore, in February 2015, a new QFC Law was drafted. The draft law, which came 10 years after the first law, consists of 19 articles and 6 schedules. Article (1) of the Draft Law contains definitions. Article (2) specifies the location of the QFC. Article (3) regulates the QFC Authority, while Article (4) determines the QFC Authority Board and its objectives. The powers of the QFC Authority are listed in Article (5). Article (6) regulates the QFC Companies registration Office. Article (7) provides the establishment of Qatar International Courts and regulates their jurisdictions. Article (8) regulates the Regulatory Authority, while Article (9) provides the establishment of Disputes Resolution and its objectives. Article (10) determines the power to make regulations. The permitted activities within QFC are listed in Article (11). Article (12) regulates the licensing operations. Article (13) mentions the statutory guarantees for entities that are approved, authorised or licensed to carry on their activities in and from the QFC. The revenue of the QFC Authority is organised by Article (14). Article (15) determines the accounting requirements. Article (16) determines the liability of the QFC Authority, Regulatory Authority, Disputes Resolution Authority and QFC Institutions. Taxation is regulated by Article (17). Article (18) governs the interaction with other laws. Article (19) contains general provisions.

Schedule (1) is specified for the Board, its constitution and powers, Chairman and General Director. Schedule (2) contains the regulations. The permitted activities are listed in Schedule (3). Schedule (4) regulates the Regulatory Authority. Provisions that regulate Qatar International Courts, Regulatory Courts and the Civil and Commercial Courts are included in Schedule (5). Finally, Schedule (6) contains the provisions of the Dispute Resolution Authority (QFC, 2015).

This part of the chapter will critically examine the provisions of the new QFC Draft Law which add terms, definitions, establish new authorities or change legal status. It is worth to be mentioned that this is the first time that this draft law has been examined in research study.

## 6.4.1. Definitions

Article (1) of the Draft Law, which concerns definitions, contains many significant changes, compared to the current law. With regard to the term of (the Minister), the current law defines it as the Minister of Economy and Commerce, while the Draft Law defines it as the Minister of Finance. Further, several definitions have been added to Article (1) in accordance with the establishment of new bodies and authorities by this draft law, in addition to some new tasks or missions. These definitions are: Governor, Qatar International Courts, Disputes Resolution Authority, Administrative Region Activities and Decision of Determining Administrative Region.

Article (1): Definitions

…

The Minister: The Minister of Finance.

Governor: Governor of the Central Bank of Qatar.

…

Qatar International Courts: Qatar International Courts, established under Article (7) of this Law.

…

Disputes Resolution Authority: Disputes Resolution Authority, established under Article (9) of this Law.

…

Administrative Region Activities: Any of the activities contained in the second part of Schedule No. (3) or any other activities determined by the Council of Ministers under Clause (2) of Article (11) or any activities specified by a decision of determining Administrative Region as permitted activities in the Administrative Region.

Decision of Determining Administrative Region: the Decision issued in accordance with Clause (4) of Article (2) of this Law determining Administrative Region and its amendments.

### 6.4.2. Regulatory Authority

The Board of the Regulatory Authority, according to the current law of the QFC, shall consist of six board members appointed by the Council of Ministers, as maximum. However, the Draft Law determines that the Board of Directors shall be headed by the Governor. This provision is included in Schedule No. (4) as follows:

Schedule No. (4): Regulatory Authority

1. The Regulatory Authority shall be managed by a Board of Directors headed by the Governor and a membership of five members, including the Chief Executive Officer of the Authority, and shall be appointed by a decision of the Council of Ministers.

### 6.4.3. Qatar International Courts

According to the current law, the Chairman and the members of the Courts shall be appointed by a decision of the Council of Ministers, upon the proposal of the Minister, which is contrary to the principle of separation of powers and independence of the judiciary.

The Draft Law states that courts called Qatar International Courts shall be established. The Courts shall be autonomous and neutral. These courts consist of the Regulatory Tribunal and the Civil and Commercial Court. In addition, for the first time, the judges of these Courts shall be appointed by an Emiri Decree upon a proposal of the Judicial Supreme Council.

These provisions and others, which regulate the establishment of these courts and procedures of litigation, are included in Article (7) and Schedule No. (5) as follows:

Article (7): Qatar International Courts

1. Pursuant to this Law, Courts called "Qatar International Courts" are hereby established, and their Headquarters shall be in the QFC or any other place chosen by the Court in Doha and shall have a Chairman, who should be appointed and his rewarded should be determined by Emiri Decree on the proposal of the Judicial Supreme Council. It consists of two courts as follows:
   a) The Regulatory Tribunal.
   b) The Civil and Commercial Court.

Each of them shall have jurisdiction in matters submitted to it in accordance with this law.

2. The Regulatory Tribunal shall be composed of one or more first instance circuits and one or more appellate circuits.

2.1 The First Instance Circuit of the Regulatory Tribunal, consisting of a sole judge, shall have the jurisdiction to rule at first instance in applications, which are submitted by concerned parties, to repeal, amend or interpret the final decisions issued by the QFC Authority, or Regulatory Authority or other QFC institutions, and compensation requests for those decisions, whether they are filed originally or dependency.

2.2. The Appellate Circuit of the Regulatory Tribunal, consisting of three judges, shall have the jurisdiction to hear appeals raised by concerned parties against decisions issued by the First Instance Circuit of the Regulatory Tribunal.

3. The Civil and Commercial Court shall be composed of one or more first instance circuits and one or more appellate circuits.

3.1. The First Instance Circuit of the Civil and Commercial Court, consisting of a sole judge, shall have the jurisdiction to rule, first instance, in:

a) All civil and commercial disputes arising from transactions, contracts, arrangements or incidences taking place in or from the QFC between the entities established therein.
b) All Civil and commercial disputes arising between the QFC authorities or institutions and the entities established therein.
c) All civil and commercial disputes arising between entities established in the QFC and contractors therewith and employees thereof, unless the parties agreed otherwise.
d) All civil and commercial disputes arising from transactions, contracts or arrangements taking place between entities established within the QFC and residents of the State, or entities established in the State but outside the QFC, unless the parties agree otherwise.
e) Civil or commercial requests or suits, which fall within the jurisdiction of another court and their parties agreed, in writing, that the Civil and Commercial Court has the jurisdiction to hear them, whether the parties are residents of the State or outside of it, established in the QFC or outside it.
f) Matters relating to arbitration or Dispute Resolution Council, the Court shall have the authority to hear them pursuant to the QFC Regulations or parties; agreement, or by any other law or system, whether the parties are residents of the State or outside of it, established in the QFC or outside it. And in all cases, the Court may not intervene, except to the extent permitted by the law or system, which regulates the arbitration.

3.2. Notwithstanding provisions of Clause (5) of the previous Article, the First Instance Circuit may not hear and rule in civil and commercial requests and suits, which have been the subject of a final judgment of another court.

4. The Appellate Circuit of the Civil and Commercial Court, consisting of three judges, shall have jurisdiction to:

a) Hear appeals against decisions of the First Instance Circuit of the Civil and Commercial Court.
b) Interpret any article of QFC Law or QFC Regulations, at the request of the Chief of the Courts according to a request from the QFC Authority, Regulatory Authority or any other QFC institutions.

5. The Civil and Commercial Court and the Regulatory Tribunal have the full power to enforce judgments, orders and decision, which are issued by them, in accordance with their applicable rules and procedures, and for this purpose, an implementation judge shall be appointed for both of them, in accordance with the provisions of this Law. In all cases, the implementation and its hearings and requests shall be in the Headquarter of them. All relevant entities and authorities in the State shall implement the judgments, orders and decisions, which are appended by implementation format from the Implementation Judge, and have to assist in preceding them even by using coercive force, when so requested, in accordance with the law.
6. The Judicial Supreme Council shall have the general supervision over the performance of the Regulatory Tribunal and the Civil and Commercial Court, and the Chairman of Qatar International Courts shall submit annual report on the performance of the functional tasks of each of them to the Judicial Supreme Council.

Schedule No. (5): Qatar International Courts, Regulatory Tribunal and Civil and Commercial Court

Qatar International Courts

1. Qatar International Courts shall be autonomous and neutral, and shall not compromise its independence and impartiality, or interfere in their affairs or decisions from the Council of Ministers, or the QFC Authority, or Regulatory Authority, or Disputes Resolution Authority, or any other person or other entities.
2. The Courts shall have a Chairman, who shall be appointed for a period of five years, renewable, and must take an oath as determined by the Judicial Supreme Council before practising his works, and an Emiri Decree, at the proposal of the Judicial Supreme Council, shall be issued to appoint him and determine his reward.
3. The Chairman of Qatar International Courts shall follow up the proper functioning and discipline of judges of the Regulatory Tribunal, the Civil and Commercial Court in consultation with the Judicial Supreme Council.

Regulatory Tribunal

1. The Regulatory tribunal shall consist of a chairman and sufficient number of chiefs and judges.
2. One or more first instance circuits and one or more appellate circuits shall be established in the Regulatory Tribunal.
3. The First Instance Circuit of the Regulatory Tribunal shall have the jurisdiction to rule at first instance in applications, which are submitted by concerned parties, to repeal the final decisions issued by the QFC Authority, or Regulatory Authority or other QFC institutions.
4. The time limit for filing the repeal suit is (60) days from the date of notifying the concerned party as per a registered written notice, and the time limit shall be suspended if a petition is submitted to the concerned body that issued the relevant decision, and the petition shall be responded to within (60) days of lodging it. If this period passes without response, the petition shall be deemed as though rejected. The period for the legal claim shall be counted from the date of the explicit or implicit rejection as is the case.
5. The application of repeal does not withhold the enforceability of the decision, unless the First Instance Circuit, upon a request of concerned party, and for serious reasons provided by him, decides to withhold the enforceability until the subject matter of the dispute is decided.
6. Without prejudice to the rights of defence, adversarial and equality between parties, the First Instance Circuit shall decide in the filed case within (60) days from the date the defendant received official notice of the claim.
7. Appeals against decisions made by the First Instance Circuit of Regulatory Tribunal may be filed within (60) days from the date of its issuance.
8. Without prejudice to the rights of defence, adversarial and equality between parties, the Appellate Circuit shall decide on the filed appeal within (60) days of the hearing’s closing date.
9. The judgments of the Appellate Circuit are final and cannot be challenged by any way of appeal.

10. The Regulatory Tribunal, with its First Instance and Appellate Circuits, shall apply the provisions of the QFC Law, the amendments thereof and the regulations issued by virtue of that Law, to the cases, which are filed by individuals and bodies against decisions of the QFC Authority, the Regulatory Authority and any other QFC institutions.

11. The Laws of rules and procedures of the Regulatory Tribunal shall apply to the claims submitted before the Regulatory Tribunal, decisions issued in it, ways to challenge these decisions.

12. The provisions of the Civil and Commercial Procedure Code as issued by Law No. (13) of the year 1990 and the amendments thereof or any replaced law, shall apply to the claims submitted before the Regulatory Tribunal, where the Laws of rules and procedures of the Regulatory Tribunal are silent on the concerned matter.

The Civil and Commercial Court

1. The Civil and Commercial Court shall consist of a chairman and sufficient number of chiefs and judges, and the Chairman of Qatar International Courts shall be a Chief of one Appellate Circuit.

2. One or more first instance circuits and one or more appellate circuits shall be established in the Civil and Commercial Court.

3. Without prejudice to the rights of defence, adversarial and equality between parties, the First Instance Circuit shall decide in the filed case within (60) days from the date the defendant received official notice of the claim.

4. The decision of the First Instance Circuit is enforceable unless the Appellate Circuit Decides withholds it upon the request of the concerned parties, if it considers that the decision is likely to be nulled, or its enforcement will cause a significant irreparable damage.

5. Appeals against decisions issued by the First Instance Circuit within (60) days from the issuance date.

6. Without prejudice to the rights of defence, adversarial and equality between parties, the Appellate Circuit shall decide on the filed appeal within (60) days of the date the respondent received official notice of the claim.

7. The judgments of the Appellate Circuit are final and cannot be challenged by any way of appeal.
8. The Civil and Commercial Court, with its First Instance and Appellate Circuits, shall apply the provisions of the QFC Law, the amendments thereof and the regulations issued by virtue of that Law, to the dispute subject, unless the parties clearly agree on applying other law, provided that it does not conflict with public order and rules of manner in the State.
9. The Laws of rules and procedures of the Civil and Commercial Court shall apply to the claims submitted before the Civil and Commercial Court, decisions issued in it, ways to challenge these decisions.
10. The provisions of the Civil and Commercial Procedure Code as issued by Law No. (13) of the year 1990 and the amendments thereof or any replaced law, shall apply to the claims submitted before the Civil and Commercial Court, where the Laws of rules and procedures are silent on the concerned matter.

General Provisions

Court Judges

1. Judges shall be of good conduct and reputation and not less than 30 years of age at the time of their appointment, except the Chairman of Qatar International Courts, who shall not be less than 40 years of age, and shall have legal knowledge and experience.
2. A Judge shall not be a member of the Board, or the Board of Directors of the Regulatory Authority, or Board of any a QFC institution, or an employee of any of them, whether it is paid or unpaid, and if he becomes such a member or employee in any of these institutions, his term shall be ended.
3. The Circuit Chief and judges shall be appointed for a five-year renewable term, an Emiri Decree upon the proposal of the Judicial Supreme Council, shall appoint them and determine their rewards.
4. The judiciary shall have full independence and neutrality.

5. The judge may be removed by an Emiri Decree, upon the proposal of the Judicial Supreme Council, in any of the following matters:

a) He becomes incapable of effectively performing the duties of his office.

b) He is convicted by a final judgment of a felony or misdemeanor involving moral turpitude and honesty, even if rehabilitated, or the Judicial Supreme Council is satisfied that he committed a serious misconduct, and the Judicial Supreme Council considers in either case to be a nature which warrants his removal from office.

6. Judges shall not have any direct or indirect personal interest or any kind of relationship with dispute parties.

### 6.4.4. Disputes Resolution Authority & Regulations

The provisions of Article (9) and Schedule No. (6) regulate the establishment of the Disputes Resolution Authority. This independent authority will be the first arbitration institution within the QFC. In addition, it will offer other dispute resolutions such as mediation and reconciliation for local, regional and international disputing parties, who wish to solve their disputes via this authority. What is more, it will be a centre, which holds conferences and seminars in arbitration and other alternative dispute resolution means. Further, a list of regulations has been provided in Schedule (2) of the Draft Law, as examples, to be included issued in accordance with Article (9) of this Draft Law.

The above-mentioned provisions are included in Article (9), Schedule No. (2) and Schedule No. (6) as follows:

Article (9): Disputes Resolution Authority

1. Pursuant to this Law, an Authority called "Disputes Resolution Authority" is hereby established, and shall have a legal personality and financial and administrative autonomy, and shall have an independent

budget that the laws of the State regarding the general budget of the State and its Ministries shall not apply thereto. The Headquarter of the Authority shall be in the QFC or any other place chosen by the Authority within Doha.

2. Disputes Resolution Authority aims to activate the field of arbitration as an alternative method of dispute resolution in accordance with the best international standards and practices, and provide all the alternative ways of settling disputes and providing administrative, financial and technical support for the Qatar International Court. In order to achieve this, in particular, it shall do the following:

a) Establish a centre for disputes resolution; Which shall have a legal personality and its budget should be attached to the budget of the Disputes Resolution Authority.

b) Establish sub-committees or institutions to settle local, regional and international disputes by arbitration or any other alternative disputes resolution method.

c) Adopts its strategies, policies and objectives.

d) Promote for the Disputes Resolution Centre as a centre for the resolution of local, regional and international disputes by arbitration or any other alternative disputes resolution methods.

e) Hold conferences, seminars, lectures and other means on arbitration and other alternative methods of disputes resolution.

f) Publish books, journals, articles and research in arbitration and alternative methods of disputes settlement and resolution.

g) Hold training and habilitation courses for arbitrators and mediators.

h) Sign co-operation and partnership agreements with local, regional and international centres and institutions, which are specialised in the area of arbitration and other alternative disputes resolution methods.

i) Provide administrative, financial and technical support to Qatar International Court.

3. The Disputes Resolution Authority shall have a president, who shall be appointed by a Prime Minister Decree in consultation with the Chairman

of Qatar International Court, and shall have the powers set forth in Schedule No. (6) of this Law.

4. The Chairman of the Disputes Resolution Authority shall represent the Authority in front of the judiciary, and in its relationship with others.

5. The Disputes Resolution Authority shall submit its annual budget prepared in accordance with the provisions of this Law and regulations, and the State shall provide the required funding for it, independently of the budget of the QFC Authority and Regulatory Authority.

Schedule No. (2): Regulations

Regulations, which are issued in accordance with Article (9) of this Law, may, without limitation, include the following matters:

…

11. Arbitration in civil and commercial disputes, which parties agree, in writing, on resolving their disputes in the QFC as a seat of arbitration, whether they are entities established in the QFC, or any persons in the State, or outside it.

12. Reconciliation, mediation and other alternative means of dispute resolution, which parties agree, in writing, on resolving their disputes in the QFC in accordance with the QFC regulations and procedures of reconciliation, mediation or any other alternative means of dispute resolution, whether they are entities established in the QFC, or any persons in the State, or outside it.

13. Matters relating to administrative regions, including activities of Administrative Region, formation of Administrative Region Entities, recording them, their mode of operation and their rights and obligations.

Schedule No. (6): Disputes Resolution Authority

1. The Chairman of the Disputes Resolution Authority shall have all the required authorities and powers, which are necessary to manage the Authorities administrative, financial and technical affairs and achieve its objectives, and in particular, shall have to do the following:

a) Establish of a centre for disputes resolution, which shall have a legal personality and an attached budget to the budget of the Authority, and determine its functions, prerogatives, procedures and work system.

b) Establish of sub-committees and institutions to settle local, regional and international disputes by mediation or any other alternative disputes resolution methods, and determine their functions, prerogatives, procedures and work system.

c) Issue the Authorities' strategies and policies.

d) Issue the procedures for personnel.

e) Issue any further procedures to conduct the Authority's administrative and financial affairs.

f) Appoint natural and legal persons deemed appropriate, according to the appropriate terms, which enable the Authority to practise its functions and prerogatives.

g) Sign on behalf the Authority, within the limits of his powers and prerogatives, and he may delegate any of the Authorities' employees to sign, individually or collectively, in any matters specified by him.

2. The Chairman of the Disputes Resolution Authority shall submit to the Minister of Justice a detailed annual report about the Authority's activities, projects, functions and its workflow, no later than three months from the end of the fiscal year of the Authority. The Minister of Justice may propose what it deems appropriate in order to achieve the Authorities' objectives.

## 6.4.5. Interaction with other laws

Significant changes and additions have been added to this part under Article (18) of the new Draft. The current QFC Law states that the Civil Laws, rules and regulations of the State shall apply in the QFC if the Regulations exclude or conflict or are inconsistent with them. However, the Draft Law states that the QFC Laws and regulations shall apply in contracts, transactions and

arrangements carried out by the QFC established entities or conducting operations from the QFC. In addition, the Draft Law provides that the QFC Laws and regulations shall regulate the operations of the QFC authorities and institutions. What is more, the Draft Law states that arbitration which parties agree on considering the QFC as its seat is not bound by the Provisions of Articles (190-210) of the Civil and Commercial Procedure Code of the State and any alternative law; disputes, which parties agree on resolving in QFC according to QFC regulations and procedures of reconciliation, mediation and other alternative means of dispute resolution are not bound by any laws and regulations of the State or any laws, rules or regulations of mediation, reconciliation or any other alternative means of dispute resolution of the State. Also, it provides that the Attorney Law of the State shall not apply in the QFC.

These provisions are found in Article (18) of the Draft Law as follows:

Article (18): Interaction with other laws

…

2. Without prejudice to clause (1) of this Article, (as opposed to what was adopted for criminal matters) QFC Authorities and institutions shall conduct their works in accordance with the Laws of the QFC and regulations issued according to these laws.

3. Contracts, transactions and arrangements carried out by entities established in the QFC or conducting operations from the QFC with parties or entities established in the QFC or in the State outside the QFC are bound by the QFC Laws and regulations issued according to these laws, unless the parties agreed otherwise.

…

6. Notwithstanding any provision to the contrary in any other law or regulation of the State, the provisions of Articles (190-210) of the Civil and Commercial Procedure Code or any replaced arbitration law shall not apply to arbitration, whose parties agree on resolving it in QFC as a seat of arbitration. And QFC applicable arbitration regulation shall apply, whether the arbitration parties are entities established in the

QFC, or any persons in the State, or outside it, and the QFC Authority shall set regulations relating to arbitration in the QFC.

7. Notwithstanding any provision to the contrary in any other law or regulation of the State, any laws and regulation rules of reconciliation, mediation and other alternative means of dispute resolution in the State shall not apply to disputes, whose parties agree on resolving it in QFC according to the QFC regulations and procedures of reconciliation, mediation and other alternative means of dispute resolution, whether the parties are entities established in the QFC, or any persons in the State, or outside it, and the QFC Authority shall set regulations relating to reconciliation and mediation in the QFC.

…

9. Notwithstanding any provision to the contrary in any other law or regulation of the State, provisions of Law No. (23) of 2006 (Law of issuing the Attorney Law or any replaced law) shall not apply in the QFC.

## 6.5. Conclusion

As a result of continuously calling for updating the law of arbitration, several laws have been examined and new bills have been drafted with this regard.

This chapter presents the drafts of these laws. The findings of this chapter are from the Draft of the Arbitration Law in Civil and Commercial Affairs, which contains nine chapters including forty articles, the GCC Unified Draft Law for Commercial Arbitration, which consists of fifty-seven articles included in seven sections, and, finally, the QFC Draft Law, which contains nineteen articles and six schedules. It describes the full final version of the Qatari Arbitration Law in Civil and Commercial Affairs as well as some of the significant articles of the GCC Unified Draft Law for Commercial Arbitration. In addition, it critically examines the significant provisions of the Draft of the QFC Law.

The following chapter will be dedicated to dealing with the drafts of the Qatari Arbitration Law in Civil and Commercial Affairs and the GCC Unified Draft Law for Commercial Arbitration based on the comparative analysis approach.

# Chapter seven: Comparative Study

## 7.1. Introduction

As it is well known and mentioned above, there is no special law of arbitration in Qatar. There are only certain provisions stipulated by the Civil and Commercial Procedure code (Law No. 13/1990) (CCP) code, which govern the arbitration process. This law is based on the Egyptian Civil and Commercial Procedure Code No.13/1968. Four years after passing the CCP Code, the Egyptian Arbitration Law No.27/1994 was issued signalling that the law, on which the Qatari Regulations of Arbitration is based, had become outdated. Therefore, and in response to calls to issue a modern law of arbitration in Qatar, able to keep pace with the modern developments of the global economy, a bill of a new arbitration law has been drafted and is in the process of being passed in Qatar. This draft bill and the draft of the unified arbitration law for the GCC were examined in the previous chapter and a critical analysis, based on comparative study, will be included in this chapter.

The current Arbitration Provisions, which are included in Part 1 Chapter 13 of the CCP Code, consist of 20 Articles (190-210). In addition, Part 3 Chapter 3 of the same Code, which contains 5 Articles, regulates the enforcement of foreign judgments and awards. However, on one hand, the Draft of the Arbitration Law in Civil and Commercial Affairs (QALCCA) consists of nine chapters, which include forty Articles. On the other hand, the Unified Arbitration Law for the GCC (UAL-GCC) consists of fifty-seven Articles, which are included in seven sections.

The comparative analytical study in this chapter will be based on presenting the topic as a comparison of the provisions of the current Qatari arbitration regulation, and the two previously mentioned proposed drafts in light of the provisions of Egyptian Arbitration Law and the UNCITRAL Model Law. In matters that fail to be resolved by both of these two draft laws, Egyptian Law and the UNCITRAL Model Law, the researcher will seek to find solutions from other Arab and Western States' legislation as well as the arbitration rules which are used in famous international arbitration institutions. The Divisions of the Qatari draft law

are more organised than the GCC Unified Law. Therefore, the comparison will be presented in seven sections, which are based on the divisions of the Qatari draft law, namely; the scope of law, the competent court and the competent judge, arbitration agreement, arbitration authority, arbitration procedures, arbitral award and ending of procedures and, finally, arbitration centres and entities and the accreditation of the arbitrators.

## 7.2. The 1st section: The Scope of Law

The term scope means: " the extent of the area or subject matter that something deals with or to which it is relevant" (Oxford, 2015). Accordingly, the scope of law means where the law shall apply and what it shall regulate and organise.

### 7.2.1. The Provisions of Arbitration of the CCP Code

The CCP Code contains general provisions, which regulate arbitration and the enforcement of foreign arbitral awards in Qatar (Almeezan, 2015b). It does not determine the scope of the application of the law. In other words, it does not determine where and when the provisions of this law shall be applied.

### 7.2.2. The Qatari Arbitration Law of Civil and Commercial Affairs (QALCCA) Draft

Regarding the scope of application of law, Article (2) of the QALCCA Draft states that the provisions of this law shall apply to any arbitration between parties of public law or private law persons, whatever the nature of the legal relationship of the dispute subject, whether it takes place in the State, or is a commercial arbitration abroad, if its parties agreed to subject it to the provisions of this law.

The agreement on arbitration for the disputes of the administrative contracts is subject to the consent of the Minister of Justice.

Public law persons may not resolve disputes which arise between them via arbitration. In applying the provisions of this law, arbitration is considered commercial if the dispute arises on issues of a legal nature related to any kind of commercial transactions, whether contractual or not. Arbitration is international if the arbitration agreement parties' headquarters are based in different states, when the agreement is signed; if the place of arbitration or any place which performs an essential part of the obligations on the relationship of the parties, or the place most closely related to the dispute is situated outside the State in which the parties are located; if the parties expressly agree that the subject matter of the arbitration agreement relates to more than one state; if the parties agree to resort to a permanent arbitration institution in a centre having its headquarters in or out of the State (See Appendix B).

### 7.2.3. GCC Unified Arbitration Law (UAL-GCC) Draft

According to Article (1) of the UAL-GCC, the provisions of the Unified GCC Draft shall apply to any arbitration between parties of public law or private law persons, whatever the nature of the legal relationship of the dispute subject, taking place in the GCC States, or any international arbitration held abroad, and its parties agree to subject it to the provisions of this law. The agreement on arbitration for disputes of the administrative contracts and civil and commercial matters, which arise according to the issuance of administrative decisions, is subject to the consent of the competent minister or his authorised representative, except an exempted one.

Article (2) states that arbitration is international if, at the time of concluding the agreement, the headquarters of one of the arbitration parties is based in one of the GCC States and the other is not; if the subject of the dispute of the arbitration agreement is linked to two states and one of them is not a GCC State; if the place of arbitration, or the place where an essential part of contractual

obligations or the more related place to the dispute subject is situated outside the GCC States (GCC, 2009).

### 7.2.4. Comments

From the above, the current provisions of the arbitration are general provisions, which govern arbitration in Qatar and the enforcement of foreign arbitral awards. The current provisions do not even define arbitration itself other than differentiating between domestic and the international arbitration. This leads to confusion about which arbitration agreements are covered under this law and which are not. However, with regard to the new Qatari draft law, the influence of the UNCITRAL Model Law and the Egyptian Arbitration Law on the Qatari legislator can be noticed from the provisions of what kind of arbitration is considered to be an international arbitration (UNCITRAL, 2006)(Law, 1994)(Aboul-Enein, 1999). What is more, the Egyptian Law and the Qatari Draft consider any institutional arbitration, even if the arbitration institution or centre is based in the State, as an international arbitration (Law, 1994)(El-Sharqawi, 2009), whereas the Unified GCC Draft Law is not (GCC, 2009). By considering institutional arbitration as an international one, an ad-hoc arbitration is only considered as domestic, while institutional one is not. Accordingly, the intervention of the national court will be limited regarding the arbitration process. This will give parties who refer to institutional arbitration more freedom to avoid intervention of the national court and support the parties' autonomy principle (Born, 2001). Further, with regard to arbitration based abroad, to which the law may apply, the Qatari Draft limits the scope of the law to any kind of commercial transactions, while the GCC one shall apply for any kind of arbitration (GCC, 2009)(See Appendix B).

With regard to considering arbitration as domestic or international, it is worth mentioning that the GCC Draft should follow the Scottish Arbitration Act 2010 in its classification of the arbitration to consider that the arbitration relating to a single member State of the GCC is domestic, arbitration between parties residing or carrying on business in two different GCC member States is either internal

arbitration or a GCC arbitration and international arbitration relates to two States if one of them is a member State of the GCC while the other is not (Rules, 2010)(Dundas & Bartos, 2014). For instance, if the parties of the dispute are both Qataris and their business based in Qatar, the competent court should be the Qatari court. However, if one party is from Qatar and the other one from Saudi Arabia, which considers Shari'a Law, and the parties of dispute are silent about which state's court has jurisdiction then according to the GCC draft law the competent court could be either the Qatari court or Saudi one as the arbitration agreement in this case is considered as domestic. This results in a problem of jurisdiction if the parties cannot reach an agreement because the law is silent about how this should be resolved (See 7.3.4 for further details). A similar situation is encountered in the UK where Scots law differs from the law of the rest of the UK. The problem is resolved by using a three stage classification which is included in Clause No. 1 of Section 2 of the Scottish Arbitration Act 2010 as follows:

"(1) In this Act, unless the contrary intention appears—

"arbitration" includes—

(a) domestic arbitration,

(b) arbitration between parties residing, or carrying on business, anywhere in the United Kingdom, and

(c) international arbitration," (Rules, 2010)

From the above, the Scottish Arbitration Act classifies arbitration into domestic, which is within Scotland, UK arbitration, which is within the United Kingdom, and International arbitration.

This avoids the jurisdictional problem described above. Accordingly, the GCC draft law would be improved if it has three categories of arbitration namely domestic, GCC and international and determines the competent court in each category.

## 7.3. The 2nd section: The Competent Court and The Competent Judge

The competent court means the court, which has jurisdiction of dispute subject matter, while the competent judge is the judge of the competent court or the judge, who has the right, by the law, to decide in the case.

### 7.3.1. The Provisions of Arbitration of the CCP Code

Article (195) of the current valid provisions of arbitration states that the Competent Court is the Court originally competent to hear the dispute. However, these provisions do not include the term of the competent Judge (Almeezan, 2015b).

### 7.3.2. The Qatari Arbitration Law of Civil and Commercial Affairs (QALCCA) Draft

Article (1) of this draft law, in clause (h), determines the term of the Competent Court as the Circuit of the Commercial Arbitration Disputes Settlement of the Court of Appeal or any other entity determined by the Minister of Justice in coordination with the Judiciary Supreme Council.

Clause (i) of the same Article defines the Competent Judge as the Execution Judge of the Entire Court (See Appendix B).

The Bill provides for the establishment of a circuit in the Court of Appeal, which should be competent to hear disputes of commercial arbitration. The establishment of this circuit shall be in accordance with a decision of the Judiciary Supreme Council in coordination with the Minister. The competent Court and Competent Judge shall apply the provisions of this draft Law to the extent permitted by its provisions. The Minister of Justice, in collaboration with

the Judiciary Supreme Council, may determine another body to hold these authorities (See Appendix B).

### 7.3.3. GCC Unified Arbitration Law (UAL-GCC) Draft

Clause (3) of Article (3) of the Unified Draft Law stipulates that the term (Court) means the Court under the Judicial System of each State of the GCC while no mention is made of the term (competent judge) (GCC, 2009).

### 7.3.4. Comments

Article (6) of the UNCITRAL Model Law provides that the competent court, courts or other authority shall be determined by the State, enacting the Model Law (UNCITRAL, 2006). As will be shown in detail, each of the CCP Code, the Qatari Draft and the Unified GCC draft is compatible with the UNCITRAL Model Law. The Current Provisions determine the competent court as the court originally having jurisdiction to hear the disputes, which is mostly the First Instance Court (Almeezan, 2015b). The Unified Draft Law follows the Egyptian Arbitration Law in this regard, which considers the Court of the State Judicial System as the one referred to (Law, 1994)(El-Sharqawi, 2009). However, the GCC draft law may lead to conflict of jurisdiction as Article (3) states that the court means the court of each GCC member State and Article (7) states that the jurisdiction over arbitration matters those this draft law refers them to litigation, is the court which originally has the jurisdiction according to the judicial system of each GCC member State (GCC, 2009). Accordingly, two different GCC member States' courts may have jurisdiction on one case. For instance, if Qatar is determined, by the parties, as a seat of arbitration and the business is based in Saudi Arabia and the parties are silent about which State court has jurisdiction over the dispute. On the other hand, the Qatari Draft Law sets out to establish a new circuit under the Court of Appeal, which shall have jurisdiction over disputes of commercial

arbitration. This Circuit, according to the Qatari Draft Law, shall be the Competent Court while the Competent Judge is the Judge of Execution of the Entirety Court (See Appendix B). As the circuit will consider only disputes of commercial arbitration, it will be more specialist, have more experience in arbitration and deal with a small number of cases, unlike the First Instance Court. Further, the judges of this Circuit should be familiar with commercial and arbitration affairs. This will lead to quicker, more efficient and accurate decisions, which can gain the satisfaction of parties to the dispute.

## 7.4. The 3rd section: Arbitration Agreement

### 7.4.1. The Provisions of Arbitration of the CCP Code

According to Article (190) of the CCP Code, agreement on arbitration may apply to a particular dispute by a special document of arbitration, or all arising disputes from the implementation of a specific contract. The agreement of arbitration shall be only in writing. However, the way to prove writing has not been determined. The dispute subject shall be determined in the agreement or during the hearing of dispute; otherwise the arbitration will be set aside. Arbitration shall not apply in matters where compromise is not allowed. If any of the agreement parties does not have full legal capacity, the arbitration agreement becomes invalid. Agreement to arbitrate is considered as a waiver of liability for the parties' rights to resort to the court to hear the dispute (Almeezan, 2015b).

### 7.4.2. The Qatari Arbitration Law of Civil and Commercial Affairs (QALCCA) Draft

Article (7) of this Draft Law defines the arbitration agreement as agreement of the parties, who have the legal capacity to contract, whether they are moral or natural persons, to refer to arbitration all or some certain disputes, which have

arisen or may arise from a specific legal, relationship, whether contractual or not, this agreement may be separated from or contained or referred to in the contract. Arbitration is disallowed in matters which cannot legally be settled amicably. An arbitration agreement is set aside if it is not in writing. In this regard, agreement is considered in writing if it is included in a signed document between the parties, letters or electronic conversation or any other proven means of communication. If any party, in lawsuit memorandum or reply memorandum, claims that there is an arbitration agreement and the other party does not deny it, the terms of writing are considered valid. Arbitration shall not expire with the death of one party and the agreement may be continued by or against the persons who represent this party, unless the parties agree otherwise and unless this is contrary to any legislative provision (See Appendix B). If the defendant claims that there is an existing arbitration agreement on the raised dispute to the court, the court shall not accept the lawsuit, unless it decides that the agreement is invalid, or void, or ineffective or cannot be implemented. However, such a lawsuit does not prevent arbitration proceedings starting or continuing and the judgment being issued (See Appendix B).

At the request of one of the parties, the Competent Judge may order to adopt interim or precautionary measures either before commencement of the arbitration procedures or during the arbitration procedures and this order shall not be considered as a waiver of the applicant's right to adhere to the arbitration agreement. However, this order and consideration of any application to do so by the competent judge, are subject to the arbitral tribunal or any other person authorised by the parties, not being competent or unable to act actively in a timely manner (See Appendix B).

### 7.4.3. GCC Unified Arbitration Law (UAL-GCC) Draft

The GCC Unified Draft Law deals with the arbitration agreement in almost the same way as the Qatari Draft Law, except with regard to the authority of the adoption of interim or precautionary measures by a request of one of the parties.

Article (12) of the GCC Draft gives this authority to the chairman of the court without any consideration to the arbitral tribunal (GCC, 2009).

### 7.4.4. Comments

Both drafts cover most of the missing points in the current provisions as they define the arbitration agreement and determine the term of writing. They state that arbitration agreement is invalid in matters where compromise is not allowed; however, neither of them identify these matters. Therefore, it would be useful if such matters are included in this article. The following matters are provided as examples: matters contrary to public order or related to nationality or personal status, except where it concerns the financial effects resulting from such matters. Further, the consideration of the arbitration agreement when there is a lawsuit or dispute subject before the court is determined in detail in both of them. Both of them follow the UNCITRAL Model Law (UNCITRAL, 2006) and avoid following the Egyptian Arbitration Law, as the Egyptian one defines the arbitration agreement as: "An agreement by which the two parties agree to submit to arbitration in order to resolve all or certain disputes which have arisen or which may arise between them in connection with a defined legal relationship, whether contractual or not." (Law, 1994). The Egyptian definition of the arbitration agreement is confined to the agreement between only two parties and excludes multi-parties' agreements (El-Sharqawi, 2009).

Unlike the Unified GCC Draft, UNCITRAL Model Law and the Egyptian Law, the Qatari Draft limits the authority of the competent judge to the consideration of parties' applications, which are submitted to him in order to adopt interim or precautionary measures. This will solve issues regarding to urgent matters, which require fast solution and might cause extra issues if they are delayed until the whole dispute been solved.

## 7.5. The 4th Section: Arbitration Authority

Provisions of arbitration included in the CCP Code, do not give any definition of the arbitration authority, while the Qatari Draft follows the UNCITRAL Model Law and gives a brief definition of the arbitration authority as a sole arbitrator or a number of arbitrators (UNCITRAL, 2006)(See Appendix B). The GCC Draft follows the Egyptian Arbitration Law, both of which define the arbitration authority as a body which is formed of a sole arbitrator or more arbitrators to resolve the dispute referred to arbitration (Law, 1994)(El-Sharqawi, 2009)(GCC, 2009).

This section will be divided into two subsections: formation of the authority and jurisdiction of the authority.

### 7.5.1. Formation of the Authority

In this section, the researcher found that there are some issues, which are not included in the current law, the Qatari draft and the GCC draft. In addition, both the Egyptian Arbitration Law and the UNCITRAL Model Law are silent about them. Therefore, the researcher sought for solution in another jurisdiction, which is the English Arbitration Act and the famous arbitration rules, which are ICC Rules and LCIA Rules.

#### 7.5.1.1. The Provisions of Arbitration of the CCP Code

Articles (193-195) provide the conditions which should be available in the arbitrator, the acceptance of the arbitrator to his mission and the procedures for the appointment of the arbitrator by the court. The provisions did not set out the procedures for appointing the arbitrators by the parties.

It states that as required by law, arbitrators shall be appointed in personal, in an arbitration agreement or in a separate agreement. An arbitrator shall not be a minor or interdicted or deprived of his civil rights because of a criminal penalty,

or be bankrupt, unless he has been rehabilitated. In all cases, if there are several arbitrators, the number of them should be odd, otherwise the arbitration is null and void (Almeezan, 2015b). Unless appointed by the court, an arbitrator should accept his mission in writing and shall not step down, after acceptance, without a serious reason, otherwise he may be adjudged liable for compensation. Dismissing an arbitrator can only be done by mutual consent of all the opponents or by virtue of the court. An arbitrator shall not be dismissed except for reasons which appear or happen after the conclusion of the arbitration agreement and for the same reasons for which a judge may be dismissed or invalidated. According to these provisions, the request for dismissing an arbitrator should be filed to the original competent court to consider the case within five days of the day of announcing appointment of the arbitrator by the opponent. The decision of the court in the dismissing the request is subject to appeal (Almeezan, 2015b).

Any parties may request the competent court to appoint the required arbitrators if the dispute arises and the parties do not agree on the arbitrators or one or more of the agreed arbitrators refuses to work or retires or is dismissed or is prevented from doing the work. The request shall be filed according to the usual procedures of filing a lawsuit. The court considers the request in the presence of other opponents or in their absence after assigning them to attend. The court decision in appointing arbitrators is not subject to appeal, while its decision to refuse appointing arbitrators is subject to appeal (Almeezan, 2015b).

#### 7.5.1.2. The Qatari Arbitration Law of Civil and Commercial Affairs (QALCCA) Draft

Chapter (3) of the Draft Law considers the formation of the arbitration authority. It states that the arbitration authority shall be, according to the parties' agreement, formed of one arbitrator or more. If they do not agree on the arbitrators, the number shall be three. If the arbitrators are more than one, the number shall be odd otherwise the arbitration is null.

The Qatari legislator in a new precedent states that the arbitrators shall be appointed from those accredited and enrolled in the National Registry of

Arbitrators under the Ministry. Anyone with a full capacity, good biography and reputation and who has not been convicted by a final judgment of a felony or misdemeanor involving moral turpitude or dishonesty, even if there is rehabilitation or restoration of good repute, may be appointed as an arbitrator. Unless otherwise agreed by the parties or stipulated by the law, an arbitrator can be of any nationality. Acceptance of the task by the arbitrator shall be in writing. The parties shall agree on the procedures of appointing arbitrators. However, if the arbitration authority consists of one arbitrator and the parties do not agree within thirty days from the written notification of the plaintiff to the other parties, another authority of the competent court may appoint an arbitrator according to a request from any party. If the arbitration authority consists of three arbitrators, each party shall appoint an arbitrator, then the appointed arbitrators shall agree on the appointment of the third one. If any party does not appoint his arbitrator within thirty days of receiving a request to do so, or if the two arbitrators do not agree on appointing the third one within thirty days from the appointment of the previous one, the other authority or the competent court shall appoint an arbitrator upon the request of one party. If agreed procedures to appoint arbitrators are available but the agreement is silent about who should take action, any party may request from the other authority or the competent court to take the necessary procedures if no one takes a requirement procedure, or if the parties or the arbitrators are unable to reach the required agreement, or if the others fail to accomplish any task assigned to them. The decision of the other authority or the competent court with this regard is final and not subject to challenge.

According to this Draft Law, an arbitrator shall not be held accountable for practising his arbitration mission, except if the practice results from bad faith, conspiracy or gross negligence (See Appendix B).

*The provisions of the Qatari Draft Law do not consider the case of appointing the arbitrators if there is more than one arbitrator and there are more than two parties. Also, it does not allow appointing a person, who has been rehabilitated after being convicted by a final judgment of a felony or misdemeanor involving moral turpitude or trust, which is a tough condition on the appointment of arbitrator.

Anyone asked to be an arbitrator shall disclose in writing about any matters which may cause doubts about his independence and neutrality and after his appointment, if any of above mentioned matters occur, a declaration should be provided immediately. An arbitrator shall not be dismissed except if there are doubts about his independence and neutrality or his qualifications are not those agreed upon. However, the party shall not dismiss an arbitrator appointed by him, except for reasons which appear after the appointment (See Appendix B).

The parties shall agree on the procedures for dismissing the arbitrator and if no such agreement is available within fifteen days from the date of the refusing party knowing about the formation of the arbitration authority or the reasons for dismissing, application in writing shall be submitted to the arbitration authority showing the reasons. If the arbitrator does not step aside, or if the other party refuses the request, the request shall be filed to the other authority or the competent court, and the decision issued by either the other authority or the competent court cannot be challenged in any way. The arbitration procedure shall be suspended until the settlement of the dismissed request. Any request for dismissing an arbitrator for the same reasons shall not be submitted twice by the same party (See Appendix B).

Any failure by an arbitrator to meet obligations, failure to commence the mission or perform it in a way that causes unreasonable delay in the proceedings, gives the other authority and the competent court, at the request of any party, the right to terminate the mission of the arbitrator and the decision in this regard is final and unchallengeable. This shall apply only if the arbitrator does not step aside by himself and the parties do not agree on the refusal (See Appendix B).

The procedures for appointing a substitute arbitrator shall be the same as appointing his predecessor (See Appendix B).

### 7.5.1.3. GCC Unified Arbitration Law (UAL-GCC) Draft

With regard to the formation of the arbitration authority, the GCC Unified Draft Law provides that the authority shall be formed of one arbitrator or more, by an agreement of parties, and if they do not agree on the number, there shall be

three. In any case, the number of arbitrators shall be odd, otherwise the arbitration is null (GCC, 2009). These provisions are the same as those of the Qatari Draft Law.

An arbitrator shall not be a minor or interdicted or deprived of his civil rights because of a criminal penalty, or bankrupt, unless he has been rehabilitated, or is still working with one of the arbitration parties. Also the arbitrator shall not be a relative by proportions or affinity to the forth degree of a party of the dispute unless, knowing that relationship, the parties agree otherwise.

The acceptance of the task by the arbitrator shall be in writing, and shall disclose any matters which may cause doubts about his independence and neutrality (GCC, 2009).

The conditions of appointing an arbitrator, which are provided by this draft, are more reasonable than those included in the Qatari Draft. However, the GCC Draft Law does not require the declaration of matters which may appear after appointing the arbitrator, and may cause doubts about the arbitrator's independence and neutrality.

The parties shall agree on choosing the arbitrators, the procedures to choose them and the time for choosing. If they do not agree and the arbitration authority consists of one arbitrator, the competent court shall choose the arbitrator upon the request of one party. If the arbitration authority consists of three arbitrators, each party shall choose one, then the two chosen arbitrators shall agree on choosing the third one. If any party does not appoint his arbitrator within fifteen days from the day of receiving a request from the other party to do so, or if the two arbitrators do agree to choose the third arbitrator within fifteen days of the date of appointing the final one, the court shall choose the arbitrator upon the request of one party in a form of a lawsuit, unless otherwise agreed by the parties (GCC, 2009).

An arbitrator may not be dismissed unless for the reasons set forth dismissing the judges in each state of the GCC, separately, unless this conflicts with the provisions of this law (GCC, 2009).

The request for dismissal shall be filed to the competent court in writing, including the reasons for dismissal. The competent court shall then issue an

unchallengeable decision. The dismissed request of the same arbitrator will not be accepted from the party, who already applied a previous request in the same arbitration, unless there is a new reason.

The dismissal request does not lead to suspension of the arbitration proceedings. If the court decides to dismiss the arbitrator, the arbitration proceedings, including the arbitral award, will be void (GCC, 2009).

If the arbitrator becomes unable by law or by fact to practise the tasks, or if the arbitrator fails to carry out this mission or task, the mission shall be ended if he steps aside or if the parties agree to end it. If they do not agree, the court, upon a request from one party and after announcing to the other parties and the arbitration authority, issues an unchallengeable decision whether to exchange the arbitrator or arbitrators or not (GCC, 2009).

If the mission of the arbitrator ends in dismissal or removal or for any other reason, a substitute arbitrator shall be appointed in accordance with the procedures of selecting the arbitrator who is to be replaced (GCC, 2009).

#### 7.5.1.4. Formation of the Arbitration Authority in the English Arbitration Act 1996

Article (15) of the English Arbitration Act states that, the parties are free to determine the number of arbitrators when forming the arbitral tribunal. This agreement includes appointing the chairman of the tribunal or the umpire (Act, 1996)(Andrews, 2013). If the parties agreed on appointing two arbitrators or any other plural number, an extra arbitrator, as a tribunal chairman, shall be appointed, unless otherwise agreed (Act, 1996). If there is no agreement on the number of the arbitrators, the arbitral tribunal shall consist of a sole arbitrator (Act, 1996)(Andrews, 2013).

in addition, Article (16) states that, the parties are free to agree on the procedures for appointing the arbitrators, including appointing the tribunal chairman or the umpire. If there is no agreement on the procedures, provisions of Article 16 of the English Arbitration Act of 1996 shall be followed:

If the tribunal shall consist of a sole arbitrator, the parties shall appoint one within twenty-eight days of the written notice day from one party to the other.

If the tribunal shall consist of two arbitrators, each party shall appoint an arbitrator within fourteen days of the writing notice from one party to the other to end this appointment.

If the tribunal shall consist of three arbitrators, each party shall appoint one within fourteen days of the writing notice of one party to the other to end this appointment. The two appointed arbitrators should appoint the third arbitrator as a chairman of the tribunal.

If the tribunal shall consist of two arbitrators and an umpire arbitrator, each party shall appoint one within fourteen days of the writing notice of one party to the other to end this appointment. The two appointed arbitrators should appoint the umpire arbitrator at any time after being appointed and before any session for consideration of the subject matter of the dispute or if they do not reach any agreement with regard to any matter of the arbitration (Act, 1996).

However, the English Arbitration Act provides solutions for the matter if any party fails to appoint his arbitrator. Article (17) provides that unless otherwise agreed, if the parties agree that each one shall appoint an arbitrator and one party fails or refuses to do so within the time limit, then the other party, who appointed his arbitrator, may propose to appoint his arbitrator to act as a sole arbitrator after giving written notice to the other party. If the other party does not appoint his arbitrator within seven days of the written notice and informing the other party, the other party may appoint his arbitrator as a sole arbitrator and the award which will be issued shall be binding on both parties as if he had been appointed by the agreement of both parties. The failing party may request the court to set aside the appointment, after informing the other party. Any appeal from the court decision requires a leave of the court (Act, 1996)(Andrews, 2013).

If the procedures of the tribunal fail and there is no agreement between the parties on the further procedures, any party may apply to the court to practise its powers, which are listed in Article (18):

The court may issue orders to proceed with any required appointments.

It may agree that the formation of the tribunal shall be in accordance with the appointments already made by one or more arbitrators.

It may revoke any appointments already made.

It may, itself, make any appointments required.

Any appointments made by this court shall have the same effect as if made by the agreement of the parties and any appeal requires a leave of the court (Act, 1996)(Andrews, 2013).

If the parties agree that there is to be a chairman, they are free to determine the tasks of the chairman, including issuing decisions, orders and awards. If such agreement is not available, decisions, orders and awards shall be made by all or the majority of the arbitrators, including the chairman. If there is neither a majority nor unanimity, the view of the chairman shall prevail.

If the parties agree that there is to be an umpire, they are free to agree on the umpire's tasks, whether to attend the proceedings, and whether to replace the other arbitrators as the tribunal with the power to make decisions, orders and awards. If there is no such agreement, provisions from subsection 3 to 6 of Article 21 of the Act shall apply:

The umpire shall attend the proceedings and be provided with all documents and other materials provided to other arbitrators.

The other arbitrators shall issue decisions, orders and awards, unless they fail to agree on a matter related to arbitration. In this case, the arbitrators shall give written notice to the parties and the umpire, and the umpire shall replace them as a sole arbitrator with the power to issue decisions, orders and awards.

If the arbitrators cannot agree and fail to inform that, or if any of them fails to join in the noticing, any party may, after noticing the other party and the tribunal, apply to the court, which may order that the umpire shall replace the other arbitrators as above.

Any appeal from a decision of the court requires a leave of the court (Act, 1996)(Andrews, 2013).

### 7.5.1.5. Formation of the Arbitration Authority according to the rules of some institutions

#### 7.5.1.5.1. ICC Rules

Article (12) of the ICC Arbitration Rules states the following:

- Arbitral tribunal shall consist of a sole arbitrator or three arbitrators.

- If the parties do not agree on the arbitrators' number, the Court shall appoint a sole arbitrator, unless it appears to the Court that the dispute requires three arbitrators. In this case, the claimant shall appoint an arbitrator within fifteen days from receiving notification of the Court's decision, and the respondent shall appoint an arbitrator within fifteen days from receiving the notification of the appointment made by the claimant. If one party fails to appoint an arbitrator, the Court shall make this appointment.

- If the parties have agreed to resolve the dispute by a sole arbitrator, they may appoint the sole arbitrator by agreement for confirmation. If they fail to appoint a sole arbitrator within thirty days from date that the other party received the request of the claimant for arbitration, or within the additional time that may be given by the Secretariat, the Court shall appoint the sole arbitrator.

- If the parties have agreed to resolve the dispute by three arbitrators, each party shall appoint one arbitrator, in the Request and the Answer, for confirmation. If one of them fails to appoint an arbitrator, the Court shall make the appointment.

- The Court shall appoint the third arbitrator, who will be the president of the arbitral tribunal, unless otherwise agreed by the parties; in this case, the appointment will be subject to confirmation. If the agreed procedure does not result in the appointment within 30 days from the confirmation or appointment of the other arbitrators or any other time limit, which is agreed on by the parties or determined by the Court, the Court shall appoint the third arbitrator.

- If there are multiple claimants or multiple respondents, and the dispute is to be resolved by three arbitrators, the multiple claimants, together, and the multiple respondents, together, shall appoint an arbitrator for confirmation.

- If an additional party has joined, where the dispute is to be resolved by three arbitrators, the additional party may join the claimant(s) or the respondent(s) in appointing an arbitrator for confirmation.

- In the absence of a joint appointment and where all parties fail to agree on the method for the formation of the arbitral tribunal, the Court may appoint all the arbitral tribunal members and choose one of them to act as president. In such a case, the Court shall be free to choose any person it regards as suitable to act as arbitrator (ICC, 2013).

#### 7.5.1.5.2. LCIA Rules

Article (5) of the LCIA Arbitration Rules states the following:

- The LCIA Court shall form the arbitral tribunal and it may proceed with the arbitration notwithstanding that the Request is incomplete or the response is missing, late or incomplete. The arbitral tribunal may consist of a sole arbitrator or more than one arbitrators.

- All arbitrators shall be at all times impartial and independent of the parties.

- A brief written summary of arbitrator’s qualifications and professional positions shall be furnished by the arbitral candidate to the Registrar before appointment by the LCIA Court. The arbitral candidate shall also agree in writing fee-rates conforming to the Schedule of Costs. Also a declaration regarding any justifiable doubts towards him or her and if any of them rise after the appointment and during the arbitration proceedings is required.

- The LCIA Court shall appoint the Arbitral tribunal, after receipt by the registrar of the response or, if no response is received, after thirty-five days from the commencement date.

- The LCIA Court is empowered to appoint arbitrators, taking into its consideration any written agreement or joint nomination by the parties.

- Unless the Parties have agreed otherwise in writing by the LCIA Court determines that a three-member or more than three tribunal is required, a sole arbitrator shall be appointed (Arbitration, 2014).

#### 7.5.1.6. Comments

The UNCITRAL Model Law, unlike the CCP Code, Egyptian Arbitration Law, the GCC Unified Draft and the Qatari Draft Law, does not require the number of arbitrators to be odd. However, in the case of failing to agree on the number of arbitrators, there should be three arbitrators (UNCITRAL, 2006). With regard to the disputes related to small businesses, three arbitrators are expensive. Therefore, the researcher suggests that these terms should be modified. In addition, unlike the GCC Unified Draft Law, the Qatari Draft Law prohibits the appointment of an arbitrator who is a rehabilitated person after being convicted by a final judgment of a felony or misdemeanor involving moral turpitude or trust, which is according to the researcher considered as unfair. On the other hand, the Egyptian one and the UNCITRAL Model Law are silent about this (Law, 1994)(UNCITRAL, 2006). The provisions that regulate the appointment of the chairman or president of the arbitral authority are missing or ignored in both of the GCC Unified Draft Law and the Qatari Law, as well as the provisions that regulate the appointment of arbitrators in the matters of multi parties. The chairman or president of the arbitral authority is required to manage the proceedings. In addition, the arbitration agreement may include more than two parties. The appointment of arbitrators in this case needs to be regulated as they might be more than one claimant or more than one defendant. Then the law should determine the number of arbitrators in this case and the procedures to be followed to choose them. Therefore, the researcher suggests that the English Arbitration Act 1996, the ICC Rules of Arbitration and the LCIA Rules of Arbitration are a good guidance to be followed by the Qatari Legislator, if possible, to have a more mature arbitration law.

## 7.5.2. Jurisdiction of the Arbitration Authority

This sub-section will examine the power of the arbitration authority to adjudicate in its jurisdiction and the power of the arbitration authority to order interim measures or provisional judgments.

### 7.5.2.1 The Provisions of Arbitration of the CCP Code

The current provisions of arbitration do not contain any provisions to determine the power of the arbitration authority to adjudicate in its jurisdiction, as well as the power to order interim measures or provisional judgments. As a result, the original competent court shall have the jurisdiction to decide whether the arbitration authority has the jurisdiction to consider the dispute or not (Almeezan, 2015b).

### 7.5.2.2. The Qatari Arbitration Law of Civil and Commercial Affairs (QALCCA) Draft

The power of the arbitration authority to adjudicate in its jurisdiction

- Based on the principles of *"competence de la competence"* and the separability or autonomy of the arbitration clause, the provisions of Article (16) of this Draft Law give the arbitration authority the power to adjudicate in its jurisdiction, including the lack of the arbitration agreement, or its validity, or invalidity, or annulment or non-inclusion of the dispute subject. It also provides that the arbitration clause is considered as a separate agreement. Therefore, as the arbitration clause itself is valid, it shall not be affected by the nullification, or termination or ending the contract.

- These defences shall be upheld no later than the date of the respondent's memorandum submission. The right to defence concerning the jurisdiction of the arbitration authority does not fail if the party appoints or jointly appoints an arbitrator. The defence of exceeding the scope of jurisdiction of the arbitration authority, during the consideration of the dispute, shall be expressed when the issue of exceeding the scope of jurisdiction is raised. In all cases, if the arbitration authority considers that the delay is justified, it may accept the defence after the deadline.
- Such defence shall not prevent the arbitration authority from continuing the arbitration proceedings and issuing its judgment.

If the arbitration authority rejects the defence, an appeal to its decision may be raised to the other authority or the competent court within thirty days or notifying him or her of the decision and the decision of the other authority or the competent court in unchallengeable (See Appendix B).

The power of the arbitration authority to order interim measures or provisional judgments

- The arbitration authority may, upon a request of one party, issue interim measures or provisional judgments if the nature of the dispute requires doing so or in order to avoid irreparable damage.

The party who requests these procedures may be asked to provide a sufficient warranty to cover the expenses.

- After announcing the other parties, the arbitration authority, upon request of any party or on its own, may modify, or suspend or annul any interim measure or provisional judgment, which it ordered earlier.
- Unless it violates the law and the public order, the competent judge shall issue an order to enforce the order of the arbitration authority or any part of it upon a request of the party, in whose favor the procedure or the judgment was issued, after receiving written permission from the

arbitration authority. A copy of any request for implementation or permission shall be sent to the other parties.

- If the arbitration authority subsequently decides that the procedures or judgments should not have been issued, the costs and compensations for any damages caused by these procedures or judgments to any party shall be paid by the party who requested these procedures. The arbitration authority may obligate this party to pay the costs and compensations at any time during the proceedings (See Appendix B).

#### 7.5.2.3. GCC Unified Arbitration Law (UAL-GCC) Draft

The power of the arbitration authority to adjudicate in its jurisdiction

- The arbitration authority shall adjudicate in its jurisdiction, including the lack of the arbitration agreement, or its validity, or invalidity, or annulment or non-inclusion of the dispute subject.
- This right does not fail by appointing or joint in appointing an arbitrator by one of the parties.
- The arbitration authority shall adjudicate in these defenses before the adjudicating in the dispute subject or include it with the dispute subject to adjudicate them together. If the arbitration authority rejects the defense, this defense may not be upheld unless by raising the lawsuit of invalidity of the arbitration judgment that terminates the entire dispute (GCC, 2009).
- The arbitration clause is considered as a separate agreement. Therefore, it shall not be affected by the nullification, or termination or ending the contract as the arbitration clause itself is valid (GCC, 2009).

The power of the arbitration authority to order interim measures or provisional judgments

- The arbitration parties may agree on that the arbitration authority, upon request of any of them, shall order to any of them to adopt any interim measures or provisional judgments those required by the nature of the dispute. It shall, also, order to provide the sufficient warranty to cover the costs of this interim measure or provisional judgment.
- If the one, who supposes to implement this order, fails to do so, the arbitration authority or the other party may apply to the chairman of the court to issue an order of implementation (GCC, 2009).

#### 7.5.2.4. Comments

The current provisions, as they are included in the CCP Code, which is an old Code, lacks new principles on one hand (Almeezan, 2015b). On the other hand, both drafts take in their consideration the new principles such as *"competence de la competence"* and the separability or autonomy of the arbitration clause, which are considered in most modern Arbitration Acts all over the world, including the UNCITRAL Model Law and the Egyptian Arbitration Law (UNCITRAL, 2006)(Law, 1994)(Aboul-Enein, 1999). Such principles ensure more protection for the arbitral tribunal from the courts' interference in the arbitration process. However, with regard to the powers of the arbitration authority, the Qatari Draft Law is better drafted than the GCC Unified one. It determines the time limit for applying the defenses of the arbitration jurisdictions, while the GCC Unified one silent about it. It allows the appeal to the arbitration authority decision regarding to such defenses, while the only way to appeal against such defenses, according to the GCC Unified one, is by raising a lawsuit of invalidating the judgment, which terminates the entire dispute. The power of the arbitration authority to order interim measures and provisional judgment is granted under the Qatari Draft unless agreed otherwise by the parties, while, according to the GCC Unified Draft it is only available if the parties agreed on it. The Qatari Draft provides four examples of the interim measures and provisional judgments. The modification,

suspension and annulment, by the arbitration authority, of any ordered interim measure or provisional judgment is permitted according to the provisions of the Qatari Draft Law, while it is not according to the GCC Unified one. The compensation of any damages caused by ordered interim measures or provisional judgment is considered in the Qatari Draft Law, while the GCC Unified Law lacks in this regard (See Appendix B)(GCC, 2009). Such provisions allow the rights of the parties to be preserved pending the outcome of the arbitration on one hand. On the other hand, they ensure that the party, who requests such an order, will not exceed his right as he will be liable for any damage might be caused accordingly.

## 7.6. The 5th Section: Arbitration Procedures

### 7.6.1. The Provisions of Arbitration of the CCP Code

The current provisions of arbitrators regulate the arbitration proceedings as follows:

- Arbitrators shall adjudicate in the time provided in the arbitration document, unless the parties agree to extend it. If the parties do not provide a time to arbitrate in the agreement document, the arbitrators shall adjudicate within three months of acceptation to arbitrate.

- If the arbitrators do not issue their judgment in the above-mentioned time, or if they fail to do so for a compelling reason, any party may raise the matter to the original dispute competent court to add a new period, or to adjudicate in the dispute or to appoint other arbitrators. In case of the death of one party, or dismissing the arbitrator or applying for dismissing the arbitrator, the determined time limit for issuing the arbitral judgment shall be extended to the period after this impediment (Almeezan, 2015b).

- Arbitrators shall issue their judgment not bound by the provisions of this Code, except those included in the Arbitration Chapter. Their judgment shall be

according to the rules of law, unless they were authorised to do reconciliation, and not to violate the public order and morals rules. The Laws of the State of Qatar shall be applied if Qatar is agreed as a seat of arbitration, unless otherwise agreed by the parties (Almeezan, 2015b).

- The period of issuing the arbitral judgment shall be suspended if any matter concerning the jurisdiction of the arbitration authority arises until a final decision in this matter been issued (Almeezan, 2015b).

- Arbitrators shall adjudicate in the dispute according to the arbitration document and other documents and information provided by the parties. The arbitration authority may apply to the original competent court of the dispute to issue an order to present any documents held by others which are necessary for the arbitration or to call a witness to testify before the authority.

- The provisions of arbitration give the arbitration authority the right of oath of witnesses and considers any person who provides a false testimony before it as guilty of an offence of perjury before the court (Almeezan, 2015b).

- The Arbitrators shall refer to the original competent court of the dispute to adjudicate on the witnesses, who are absent or refuse to answer and to order the required letters rogatory (Almeezan, 2015b).

### 7.6.2. The Qatari Arbitration Law of Civil and Commercial Affairs (QALCCA) Draft

Chapter Five of the Qatari Draft Law deals with the arbitration proceedings. It consists of ten Articles, which are (18-27).

Equality among parties

In terms of a fair and fast method to settle the dispute, the principles of equality and neutrality among the parties are guaranteed by Article (18), as well as the avoidance of any delay and unnecessary expenses (See Appendix B).

Determination of procedures

The provisions of Article (19) allow the parties to agree on the procedures to be applied by the arbitration authority, even if they choose to apply the rules of any arbitration centre or institution inside or outside the State. If they do not agree, the arbitration authority may apply the appropriate procedures (See Appendix B).

Seat of arbitration

The parties are free to agree on the place of arbitration and if they do not agree on it, the arbitration authority shall determine the place of arbitration considering the circumstances of the lawsuit and its parties (See Appendix B).

Commencement of arbitral proceedings

Unless otherwise agreed by the parties, the arbitral proceedings shall start from the day of receiving the defendant’s request to refer the dispute to arbitration (See Appendix B).

Language of Arbitration

The parties are free to agree on the language(s) to be used in arbitration proceedings. The arbitration authority shall determine the language(s) if such an agreement is not available and it may ask to attach a translation, of some documents, to all used languages or one of them (See Appendix B).

Defence and claiming memorandums

- The plaintiff shall provide, within the time agreed by the parties or determined by the arbitration authority, a written memorandum of his/her lawsuit including the plaintiff's name and address, an explanation of the lawsuit facts, a determination of dispute matters and his/her claims.
- The defendant shall provide, within the time agreed by parties or determined by the arbitration authority, a written memorandum of his/her defence against the plaintiff's memorandum. The defendant may include in this memorandum any incidental claims relating to the dispute subject matter or uphold a right arising from the dispute.
- The parties may agree on the data contained in the defence and claiming memorandums.
- Parties may attach all related documents with their memorandums and they may also indicate any documents or evidence to be provided. This shall not conflict with the right of the arbitration authority to request that documents should be presented by the parties at any stage of arbitration.
- The parties may modify their requests or defences or complete them at any time during the arbitration proceedings, unless agreed otherwise or the arbitration authority decides not to accept them to avoid a delay (See Appendix B).

Oral and written proceedings

- Unless the parties agree otherwise, if the written memorandums and documents are not sufficient, in the view of the arbitration authority, the arbitration authority shall hold pleading sessions to allow parties to provide their evidences and explain the dispute subject.
- Each party may appoint attorney(s) and/or request the assistance of experts and/or translators.
- Unless the parties agree on a specified the time for notification of pleading sessions, the arbitration authority shall notify the parties in enough time estimated by the authority.
- The witnesses and experts shall be heard without oath.
- The facts, meetings and previews of the facts shall be written and a copy shall be submitted to each party. They may also be recorded by other suitable methods, according to the procedures the parties agree on or as determined by the authority agreed procedures, unless otherwise agreed by the parties.
- Each party shall receive a copy of all memos, documents and other papers submitted by the other party to the authority and the experts' reports, documents and other evidences, which are submitted to the authority and on which the authority bases its decision (See Appendix B).

Non-appearance of the parties before the arbitration authority

- Unless otherwise agreed by the parties, the arbitration authority shall terminate the arbitration proceedings if the plaintiff does not provide the claim memorandum on time without a reasonable excuse.
- Failure by the defendant to provide a defence memorandum in a required form, is not considered as recognition of the plaintiff's requests and the authority shall continue with the arbitration proceedings.
- If one of the parties fails to attend or present the required evidences, documents or information, the authority may continue with the arbitration

proceedings and adjudicate in the dispute according to the available evidences and proof (See Appendix B).

Appointment of experts by the arbitration authority

- Unless parties agree otherwise, the arbitration authority may appoint expert(s) to provide a written or verbal report on certain issues. A copy of such a decision shall be provided to each party.
- It may also request any party to provide required information or documents for the expert.
- A copy of the expert's report shall be provided to each party by the authority and the right of comments over the report shall be provided too.
- Unless agreed otherwise by the parties, the arbitration authority, after presenting the expert's report, may, on its own or upon request of one party, hold a pleading session to hear the expert and to allow the parties to discuss the report with the expert.
- The arbitration authority shall adjudicate in any dispute arising between the expert and any party in this regard.
- The expert's fees and expenses shall be paid by the parties according to the decision of the arbitration authority (See Appendix B).

Assistance provided by the Court for getting the evidence

The arbitration authority or any party who has the approval of the authority may request the assistance of the competent court to get the evidence related to the subject of the dispute. If the authority deems that this assistance is necessary to adjudicate of the subject of the dispute, it may suspend the arbitration proceedings until obtaining this assistance. As a result, the specified time to issue the arbitration judgment shall be suspended.

The competent court may execute the assistance request, within the limits of its authority and in accordance with applicable rules, for getting evidences, including command letters rogatory or the sentence on witnesses, who fail to attend or refrain from answering the sanctions, by the sanctions provided in Articles (278,279) of the Civil and Commercial Procedures Code (See Appendix B).

### 7.6.3. GCC Unified Arbitration Law (UAL-GCC) Draft

Articles (23-36), which are included in Chapter Four of the GCC Unified Draft Law, deal with the arbitration proceedings. However, they are not classified. In this comparison they will be classified according to the classification of the Qatari Draft Law.

Determination of procedures

The parties are free to agree on the procedures, which shall be applied by the arbitration authority, including their right to apply the rules of any arbitration centre or institution inside or outside the GCC States. If they do not agree, the arbitration authority may apply the appropriate procedures (GCC, 2009).

Equality among parties

Arbitration parties shall be treated equally. The arbitration authority shall offer a full chance for each party to present his/her claim (GCC, 2009).

Commencement of arbitral proceedings

Arbitral proceedings shall start from the date of completion of the formation of arbitration authority, unless otherwise agreed by the parties (GCC, 2009).

Seat of arbitration

The parties are free to agree on the place of arbitration and if they do not agreed on it, the arbitration authority shall determine the place of arbitration considering the circumstances of the lawsuit and its parties (GCC, 2009).

Language of Arbitration

Arabic is the default language of arbitration, unless otherwise agreed by the parties or arbitration authority determines other language(s). The arbitration authority may decide to attach a translation, of some documents, to all the languages used or one of them (GCC, 2009).

Defense and claiming memorandums

- The plaintiff shall send, within the time and in the way agreed by parties or within the time and in the way determined by the arbitration authority, a written statement of his/her lawsuit to the defendant and each arbitrator. This statement shall include: the plaintiff's name and address, the defendant's name and address, an explanation of the lawsuit facts, a determination of the disputed matter, his/her claims and everything mentioned in the parties' agreement.

- The defendant shall, within the time and in the way agreed by parties or within the time and in the way determined by the arbitration authority, send to the plaintiff and each arbitrator a written memorandum of his/her defence against the lawsuit statement. The defendant may include in this memorandum, any incidental claims relating to the dispute subject matter or uphold a right arising from the dispute.
- The parties may attach all the related documents with their memorandums and they may also indicate any documents or evidences to be provided. This shall not conflict with the right of the arbitration authority in requesting the presentation of documents by the parties at any stage of the lawsuit (GCC, 2009).

Oral and written proceedings

- Each party shall receive a copy of all memos, documents and other papers submitted by the other party to the authority and the experts' reports and documents and other evidences submitted to the authority (GCC, 2009).

The parties may modify their requests or defences or complete them at any time during the arbitration proceedings (GCC, 2009).

- The arbitration authority may hold a principal session to determine the applied proceedings. It may also hold pleading sessions to allow parties to provide their evidences and explain the dispute subject or these may merely by provided in written memorandums and documents, unless otherwise agreed by the parties.
- The arbitration authority shall notify the parties of the principal and pleading sessions in enough time estimated by the authority.
- The facts of these sessions, meetings and previews shall be written and signed by the authority president and secretary. A copy shall be submitted to each party unless otherwise agreed by the parties.
- The witnesses and experts shall be heard without oath (GCC, 2009).

Non-appearance of the parties before the arbitration authority

- If the plaintiff does not provide a written statement of his/her claim, in a required form without a reasonable excuse, the arbitration authority shall terminate the arbitration proceedings unless otherwise agreed by the parties.
- If the defendant fails to provide a defence memorandum in a required form, the authority shall continue with the arbitration proceedings without considering that as a recognition of the plaintiff requests (GCC, 2009).
- If one of the parties fails to attend or present the required evidences, documents or information, the authority may continue with the arbitration proceedings and adjudicate in the dispute according to the available evidences and proof (GCC, 2009).

Appointment of experts by the arbitration authority

- The arbitration authority may appoint expert(s) to provide a written or verbal report on certain issues. A copy of such a decision shall be provided to each party. The authority may order any party or all of them to pay the expert(s)' fees.
- The parties shall provide the required information or documents for the expert. The arbitration authority shall adjudicate in any dispute arising between the expert and any party in this regard.
- A copy of the expert's report shall be provided to each party by the authority and the right of comments on the report shall be provided too.
- Unless agreed otherwise by the parties, the arbitration authority, after presenting the expert's report, may, on its own or upon request of one party, hold a pleading session to hear the expert and to allow the parties to discuss the report with the expert (GCC, 2009).

Assistance provided by the Court for obtaining the evidences

Upon a request of the arbitration authority, the competent court has jurisdiction to command letters rogatory and pass sentence on witnesses, who fail to attend or refrain from answering the sanctions, by the sanctions provided in the Laws of the GCC States (GCC, 2009).

The conduct of a lawsuit before the arbitration authority is interrupted in the circumstances and in accordance with the prescribed conditions of the GCC States' Laws and the consequent effects provided in these Laws (GCC, 2009).

### 7.6.3. Comments

Although the current provisions of arbitration state more details regarding the provisions of arbitration proceedings than other provisions, these provisions do not cover all matters of arbitration proceedings and the current law still consists only of general provisions, which are not effective enough in regulating the arbitration proceedings (Almeezan, 2015b). Therefore, the Qatari and the GCC Unified Draft Laws are keen to cover all matters related to arbitration proceedings.

The GCC Unified Draft, in matters relating to arbitration proceedings, virtually copies the provisions of the Egyptian Arbitration Law (Law, 1994)(El-Sharqawi, 2009).

At first view, the Qatari Draft Law and the GCC Unified Draft Law seem similar. However, upon a deeper examination of both of them, differences appear. Regarding the commencement of arbitration, the Qatari Draft Law considers the day on which the defendant received the request to refer the dispute to arbitration, as the commencement day of arbitration, while the GCC Unified one, as the UNCITRAL Model Law, considers the date of completion of the formation of the arbitration authority, which means that the previous procedures do not count as arbitration proceedings (See Appendix B)(GCC, 2009)(UNCITRAL, 2006).

According to the GCC Unified Draft, as well as the Egyptian Law, if neither the parties nor the arbitration authority determines the arbitration language, the Arabic Language shall be used (GCC, 2009)(Law, 1994)(El-Sharqawi, 2009). However, the Qatari Draft follows the UNCITRAL Model Law in leaving the determination of arbitration language up to the parties and if they do not agree, it gives the arbitration authority the right to determine the language(s) used (See Appendix B)(UNCITRAL, 2006).

Regarding the defence and claiming memorandums, the Qatari Draft grants the parties the right to agree on what data should be included in these memorandums, while the GCC Unified one does not (See Appendix B)(GCC, 2009).

In matters related to the oral and written procedures, the Qatari Drafts allows the parties to assign attorneys to represent each of them and to request the assistance of experts and translators to offer a complete and full opportunity for each party to defend his claims (See Appendix B). However, the GCC Unified one, as well as the Egyptian Arbitration Law and the UNCITRAL Model Law, omits this point (GCC, 2009)(Law, 1994)(El-Sharqawi, 2009)(UNCITRAL, 2006).

Finally, the Qatari Draft Law, following the UNCITRAL Model Law, allows the parties, after permission from the arbitration authority, to request the assistance of the competent court regarding evidences related to the dispute subject, while the GCC Unified one, following the Egyptian Law, grants this right only for the arbitration authority (See Appendix B)(UNCITRAL, 2006)(GCC, 2009)(Law, 1994)(El-Sharqawi, 2009).

## 7.7. The 6th Section: Arbitral Award and ending of procedures

This section will deal with issuing the arbitral award, here in all examined provisions called “Arbitral Judgment”, ending the procedures, challenging the arbitral award and then the recognition and enforcement of arbitral awards.

## 7.7.1. The Provisions of Arbitration of the CCP Code

The rules applicable to the dispute subject

Arbitrators shall issue their judgment according to the rules of law, unless they were authorised to do a reconciliation, and not to violate the public order and morals rules. The Laws of the State of Qatar shall be applied if Qatar is agreed as a seat of arbitration, unless otherwise agreed by the parties (Almeezan, 2015b).

Issuance of the judgments and its form and contents

- The arbitral judgment shall be issued by a majority in writing and include a copy of the arbitration document, a summary of statements and documents of liabilities, reasons for the judgment and the place where it was issued, the date of issuance and signatures of arbitrators. If one or more arbitrators refuse to sign, this shall be mentioned in the judgment. However, the judgment shall be signed by the majority of the arbitrators and it is considered as issued from the date when it was signed by the arbitrators (Almeezan, 2015b).
- Within fifteen days of being issued the judgment, accompanied by the original arbitration agreement, shall be filed to the clerk of the original competent court of the dispute and if the arbitration was in an appeal lawsuit, the judgment shall be filed to the clerk of the Court of Appeal (Almeezan, 2015b). The arbitral judgment shall not be enforced except by an order issued by the judge of the court where the judgment has been filed and after making sure that nothing prevents this enforcement (Almeezan, 2015b).

Challenging arbitral judgments

The arbitral judgment, according to the current provisions of arbitration, may be a subject to challenge by appeal, review or set aside.

Appeal against an arbitral judgment

An arbitral judgment may be appealed, according to the rules regulating the appeal of the judgments of the competent court of the dispute, within fifteen days, by filing the appeal to the competent court of appeal. However, the arbitral judgment is not subject to appeal if, and only if, arbitrators were authorised to do the reconciliation or were arbitrated in appeal or the parties truly waive their right to appeal (Almeezan, 2015b).

Review of an arbitral judgment

An arbitral judgment is subject to review according to the rules provided for reviewing court judgments (Almeezan, 2015b).

Set aside an arbitral judgment

An arbitral judgment may be set aside upon a party’s request, based on four grounds:

- Non-arbitrability, which is considered as being made without an agreement or with a void or expired one, if it is outside the scope of the agreement or if it violates the public order and morals.

- Invalidity of the arbitration agreement according to provisions of Article (190) of the CCP Code, or incapacity according to provisions of Article (193) of the same Code.
- Irregularity of the arbitrators or if some arbitrators issue the judgment without permission to do so in absence of other arbitrators.
- Voidance of the award or nullity of its proceedings (Almeezan, 2015b).

### 7.7.2. The Qatari Arbitration Law of Civil and Commercial Affairs (QALCCA) Draft

The rules applicable to the dispute subject

The arbitration authority shall adjudicate the dispute according to agreed legal rules by the parties; if they agree on applying a law system of any State, only the subjective rules of that law or legal system shall apply and not its jurisdiction rules. If the parties do not agree on the applicable rules, the arbitration authority shall apply the law decided by applicable jurisdiction rules. Unless the parties permit the arbitration authority to do so, the principles of justice and fairness shall not be applied without compliance with the provisions of law. In all cases, the adjudication shall be bound by the terms of contract and the commercial habits and traditions (See Appendix B).

Issuance of the decisions and judgments

Unless agreed otherwise by the parties, decisions and judgments, issued by the authority of multiple arbitrators, shall be issued according to the majority. If the parties or all arbitration authority members give the president of the authority permission, he may issue the decisions of the proceedings (See Appendix B).

Dispute Settlement

The arbitration authority shall terminate the arbitration proceedings if the parties agree on a settlement. If it has no objection to the settlement and its terms, the arbitration authority, upon the parties' request, shall prove the settlement in a form of reconciliation arbitral judgment, and the provisions of this law regarding the form and contents of the arbitral judgment shall be applied (See Appendix B).

Form and contents of the arbitral judgment

- The arbitral judgment shall be in writing and signed by the arbitrator(s) or the majority of arbitrators if there are more than one and provide the reason for not being signed by the rest.
- Unless otherwise agreed by the parties, or the applicable law rules do not require this, or the arbitration judgment is a reconciliation judgment, the arbitration judgment shall be causative.
- The arbitration judgment shall contain the parties' names and addresses, arbitrators' names, addresses, nationalities and titles, a copy of arbitration agreement, the arbitration judgment date of issuance and the place of arbitration. It shall include a summary of the parties' claims, depositions and documents and pronouncement of the judgment and its reasons, if it is obligatory to mention them.
- Each party shall receive a signed copy of the arbitration judgment within fifteen days of its issuance date. Parties may agree on the confidentiality of the arbitration judgment or parts of it (See Appendix B).

Termination of arbitration proceedings

- Arbitration proceedings may be terminated by issuing the arbitral judgment, which ends the dispute entirely or according to a decision of the arbitration authority if, and only if:
  a. The parties have agreed to end the proceedings.
  b. The plaintiff leaves the dispute, unless, upon a request from the defendant, the authority decides that the defendant has a real and legitimate interest in continuing the proceedings until adjudication.
  c. If the authority finds that continuing with the proceedings is useless or impossible for any other reason.
- The authority may all by itself or upon request of any party, reopen the pleading, if it considers a reason, prior to the issuance of the arbitration judgment.
- The arbitration judgment shall be issued within the agreed period between the parties or within a month of the closing date of the pleading if there is no agreement. Unless agreed or permitted by the parties, a month is the maximum extension limit for the period of issuing the arbitral judgment.
- At the end of arbitration proceedings, the jurisdiction of the arbitral authority shall end (See Appendix B).

Correction and interpretation of the arbitral judgment and supplementary arbitration

- Unless the parties have agreed otherwise, within seven days or an agreed period, any party, after notifying the other parties, may request the arbitration authority to correct any material error in the arbitration judgment or interpret a certain point or part of the arbitration judgment, if the parties agreed on doing so. The arbitration authority shall decide in writing to do the correction or interpretation within seven days of receiving the request if it finds this reasonable. The interpretation or correction shall be considered as a part of the final arbitral judgment.

- Considering the parties' notification, the arbitration authority may independently correct any material error within seven days of the date of issuing the arbitral judgment.
- Unless otherwise agreed by parties, any party may, within seven days of receiving the arbitration judgment and considers notifying other parties, request the arbitration authority to issue a supplementary arbitral judgment in previously filed claims, which were ignored by the arbitral judgment. The arbitration authority shall issue the supplementary arbitral judgment within seven days if it finds the request is justified.
- If required, the arbitration authority may amend the period of correction or interpretation or issuing the supplementary arbitral judgment to a period similar to as the original.
- The correction shall be written on the original document of the judgment and signed by the arbitration authority.
- Unless the parties have agreed otherwise, if it has proved impossible to hold the arbitration authority, which issued the judgment, to adjudicate the requests for correction or interpretation or to judge ignored claims, the matter may be raised to the competent court for adjudication (See Appendix B).

Challenging arbitral judgments

According to the provisions of this Draft, an arbitral judgment shall not be challenged except for nullification and before the competent court and based on four grounds:

- The incapacity of one of the parties of the arbitration agreement or the invalidity of the arbitral agreement, under the agreed law between the parties and if they do not agree, according to this law.
- The nullification applicant was not correctly notified of the appointment of one of the arbitrators or the arbitration proceedings or he/she for a reason beyond his/her control fails to submit his/her defence.

- The arbitral judgment adjudicates in matters not included in the arbitration agreement or exceeds the scope of this agreement. If separation of these matters is possible, the other matters shall not be nullified.
- If the formation of the arbitration authority or arbitrators' appointment or arbitration proceedings are done in violation of the parties' agreement or if they have not agreed, in violation of provisions of this law.

The competent court shall independently decide to nullify the arbitration judgment if the dispute subject, according to the State Laws, is not be agreed to be settled by arbitration or if the arbitral judgment violates the State public order.

The arbitral judgment nullification lawsuit shall be raised before the competent court within a month of receiving the judgment copy by the parties, or the date of notifying the nullification applicant with the arbitral judgment, or the issuing of a correction decision, or interpretation judgment of the supplementary arbitration, unless the parties agree in writing on extending the date of raising the nullification lawsuit.

Unless otherwise agreed by the parties, for the purpose of giving the opportunity for arbitration to continue the arbitration proceedings or carry out any other procedure that may remove the reasons for nullification, the competent court, upon a party's request, may suspend procedures for the consideration of the claim for a period determined by the court if it finds this suitable (See Appendix B).

Recognition and enforcement of arbitral judgment

- According to the provisions of this law, irrespective of which State the judgments are issued, the arbitral judgments shall be recognised and enforced.
- Unless otherwise agreed by the parties, the judgment's enforcement application shall be in writing and submitted to the competent judge with a

copy of the arbitration agreement and the original judgment or a signed copy in the language, in which it has been issued. If the judgment has been issued in a foreign language, a certified Arabic translation should be attached. However, the application of the enforcement the arbitral judgment shall not be accepted except after the expiration of the deadline of this judgment nullification lawsuit.

- The parties may agree on other procedures or ways of recognising and enforcing the arbitral judgment. Also, suitable guarantees may be provided or deposited by the parties to the competent authority for the purpose of enforcing the arbitral judgment (See Appendix B).

Grounds for refusal of recognition or enforcement

The provisions of this Draft Law states that regardless of the State in which the arbitration judgment is issued, the recognition and enforcement of any arbitral judgment shall not be refused, upon the request of any party, unless on the same grounds of challenging the arbitration judgments provided in this law, and if the parties are no longer bound by the arbitral judgment or if the enforcement of this arbitral judgment has been nullified or suspended by any court of the State where it was issued or according to the law of this State.

The Draft Law also provides that the competent judge shall refuse to recognise or enforce the arbitral judgment, on its own, based on two cases:

- If the dispute subject is not being agreed on to be settled by arbitration, according to the State Law.
- If the recognition or enforcement of the judgment is in conflict with the State public order.

The competent judge may postpone the order of enforcement if he finds that the arbitral judgment is challenged by nullification before the court of the State where it was issued. Also, the competent judge may, upon the request of the party who requests the recognition and enforcement, order the other party to provide an appropriate guarantee.

The order to enforce an arbitral judgment shall not be subject to complaint, while a grievance against the order to refuse enforcement of an arbitral judgment may be raised to the competent court within thirty days of the decision issuance date (See Appendix B).

### 7.7.3. GCC Unified Arbitration Law (UAL-GCC) Draft

The rules applicable to the dispute subject

The arbitration authority shall adjudicate the dispute according to legal rules agreed by the parties. If the parties agree on applying a law system of any State, only the subjective rules of that law or legal system shall apply and not its jurisdiction rules. If the parties do not agree on the applicable rules, the arbitration authority shall apply the subjective rules of the most relevant and suitable law to the dispute. The adjudication shall be bound by the terms of contract and commercial habits and traditions. If the parties expressly agree to delegate the arbitration authority on conciliation, the arbitration may adjudicate in the dispute subject in accordance with the principles of justice and fairness without compliance with the provisions of law (GCC, 2009).

Issuance of the decisions and judgments

Judgments issued by the authority of multiple arbitrators shall be issued according to the majority, unless otherwise agreed by the parties (GCC, 2009).

The arbitration authority may issue temporary judgments or adjudicate in part of the claims before issuing the judgment ending the entire dispute (GCC, 2009).

Dispute Settlement

If the parties agree on settlement, they may apply to prove the terms of the settlement before the arbitration authority, which shall issue a reconciliation arbitral judgment, including the terms of the agreement. This judgment shall have the same power as the arbitral judgment with regard to enforcement (GCC, 2009).

Form and contents of the arbitral judgment

- An arbitral judgment shall be in writing and signed by arbitrators or the majority of arbitrators if there are more than one providing the reason for not being signed by the minority.
- The arbitration judgment shall be causative, unless otherwise agreed by parties, or the applicable law rules do not require this or the arbitration judgment is a reconciliation judgment.
- The arbitration judgment shall contain the opponents' names and addresses, the arbitrators' names, addresses, nationalities and titles, the text of the arbitration agreement, a summary of the parties' claims depositions and documents and pronouncement of the judgment and its date and place of issuance and its reasons, if it is obligatory to mention them (GCC, 2009).
- The arbitration authority shall send a signed copy of the arbitration judgment to each party within fifteen days of the issuance date. The authority may refuse to submit the judgment copy until after payment of arbitrators' fees and expenses. In all cases, the competent court shall adjudicate in any dispute regarding the fees and expenses and the period of submission for the judgment copy shall be extended until its adjudication by the court. The court's decision is final.
- The publishing of the arbitration judgment or parts of it shall not be permitted unless agreed by the parties (GCC, 2009).

Termination of arbitration proceedings

- The arbitration authority shall issue the arbitration judgment within the agreed period between the parties. If such agreement is not available, the judgment shall be issued within a year of the date of the commencement of the arbitration proceedings. If the arbitral judgment is not issued within the mentioned time limit, any party may apply to the president of the court to issue an order to determine an extra period or to terminate the arbitration proceedings (GCC, 2009).
- If a matter out with the jurisdiction of the judgment authority arises during the arbitration proceedings or a presented paper to the authority is challenged by fraud or any criminal procedures take place, the arbitration authority may continue considering the dispute subject if it deems that adjudicating in this matter does not require adjudicating in the dispute subject. If it suspends the proceedings, the time limit for issuing the arbitral judgment shall be suspended too (GCC, 2009).
- Any party shall file the original judgment or a signed copy of it, in the language in which it has been issued, to the clerk of the competent court and the clerk shall record this filing. Any party may apply to get a copy of this record (GCC, 2009).
- Arbitration proceedings may be terminated by issuing the arbitral judgment, which ends the dispute entirely or according to a decision of the arbitration authority if, and only if:

a. The parties have agreed to end the proceedings.
b. The plaintiff leaves the dispute, unless, upon a request of the defendant, the authority decides that the defendant has a real and legitimate interest in continuing the proceedings until adjudication.
c. If the authority finds that continuing with the proceedings is useless or impossible for any other reason (GCC, 2009).

- At the end of arbitration proceedings, the jurisdiction of the arbitral authority shall end.

Correction and interpretation of the arbitral judgment and supplementary arbitration

- Any parties, within 15 days of receiving the arbitral judgment, may request the arbitration authority to correct any material error in the arbitration judgment or interpret any ambiguity in the arbitral judgment. The party requesting the interpretation shall notify the other parties before requesting it. The interpretation shall be issued in writing within fifteen days of receiving the request. The interpretation shall be considered as part of the final arbitral judgment.
- If it is impossible to hold the arbitration authority after issuing the arbitral judgment, the competent court shall do that (GCC, 2009).
- The arbitration authority may independently or upon the opponents' request, correct any material error within fifteen days of the date of issuing the arbitral judgment or filing the correction request.
- The correction shall be issued in writing and notification given to the parties within fifteen days of its issuing date. If the arbitration authority exceeds its authority in correction, the decision may be subject to nullification.
- If it is impossible to hold the arbitration authority after issuing the arbitral judgment, the competent court shall do so (GCC, 2009).
- Any party, even after the end of arbitration, may request from the arbitration authority, within fifteen days of receiving the arbitration judgment, to issue a supplementary arbitral judgment in claims filed during the proceedings and ignored by the arbitral judgment. This request shall be notified to other parties before submission.
- The arbitration authority shall issue its judgment within fifteen days of submitting the request (GCC, 2009).

Challenging arbitral judgments

Arbitral judgments, which are issued in accordance to this Draft Law provisions, shall not be challenged by any way of appeal provided in the laws of the GCC States (GCC, 2009).

A lawsuit for nullification of an arbitral judgment may only be raised based on seven grounds:

- If there was no arbitration agreement or if this agreement was invalid.

Incapacity or incomplete eligibility of one of the arbitration agreement's parties, at the time of conclusion the agreement, according to the law governing this party's capacity.

- If one of the parties fails to submit his/her defendant according to incorrect notification by appointing one of the arbitrators or arbitration proceedings.
- If the arbitral judgment rules out the application of the law which the parties agreed to apply to the dispute subject.
- If the formation of the arbitration authority or arbitrators' appointment or arbitration proceedings was done in violation of the law or the parties' agreement.
- If the arbitral judgment is adjudicated in matters not included in the arbitration agreement or exceeds the scope of this agreement. If separation of these matters is possible, the other matters shall not be nullified.
- If invalidity occurs in the arbitral judgment or arbitration proceedings are null and void, which affects the judgment.

The competent court shall independently decide to nullify the arbitration judgment if the arbitral judgment violates the public order, general morals and Shari'a (GCC, 2009).

The arbitral judgment nullification lawsuit shall be raised before the competent court within the next thirty days of notifying the arbitral judgment to the party against whom the judgment was given. The revelation of the right to nullify the

judgment, by the nullification applicant, does not preclude the acceptance of this lawsuit (GCC, 2009).

Recognition and enforcement of arbitral judgments

- Arbitral judgments issued according to the provisions of this law, shall be recognised and enforced (GCC, 2009).
- The president of the competent court or the judge nominated by the court president shall order the execution of the arbitrators' judgment. The application of a judgment's execution shall be submitted with the original judgment or a signed copy, a copy of the arbitration agreement and a copy of the record of the judgment submitted to the court. If the judgment is issued in a foreign language, a certified Arabic translation should be attached (GCC, 2009).
- The court shall adjudicate in the nullification application within thirty days of first session of its hearing. Raising a nullification lawsuit shall not suspend the execution of the arbitral judgment. If the court orders suspension of the execution of the judgment, it might order a suitable guarantee or a financial guarantee and it shall adjudicate in the lawsuit within three months of its order for suspension.
- If the court nullifies the arbitral judgment, the arbitration agreement shall remain valid, unless agreed otherwise by the parties (GCC, 2009).

Grounds for refusal of recognition or enforcement

- The provisions of this Draft Law states that the application of enforcement of the arbitral judgment shall not be accepted except after the expiration of the deadline of this judgment nullification lawsuit.
- The order of the enforcement of the arbitral judgment, according to this law, shall not be issued, unless the following conditions are proven:

a. It does not conflict with a previous judgment issued by GCC States Courts in the dispute subject.
b. It does not conflict with GCC States public order.
c. It is correctly notified to the party against whom the judgment was issued.

- The order to enforce or nullify an arbitral judgment may be appealed to the president of the competent court within fifteen days of its issuance date (GCC, 2009).

## 7.7.4. Comments

- First of all, the term "Arbitral Judgment" (in Arabic called: "*Hukum Al-Tahkeem*"), which is used in the current arbitration provisions and both examined draft laws instead of the term "Arbitral Award" (in Arabic called: "*Qarar Al-Tahkeem*", is used in almost all Arabic States' Laws. This is because most, if not all, Arabic Laws are civilian law systems, based on the Egyptian amended version of French law, and the Egyptian Arbitration uses "*Hukum*" term instead of "*Qarar*". Critical practical issues have arisen as a result of using this term.[7]

Arabic is a rich language with an extensive vocabulary; however, Arabic legislators keep using this complicated term. In contrast, the Palestinian Arbitration Law No. (3)/2000 is an exception. It uses the term "*Qarar Al-tahkeem*", which clearly means Arbitral Award, and this differentiates it from the court judgment, which explains the reason for the misunderstanding that caused the previous practical issues (Palistinian, 2000). The Egyptian Court of Cassation stated that arbitration judgments are different from Court Judgments. However, the Qatari Court of Cassation treats with them as equal.[8] Therefore, to avoid practical issues in the future, which may arise because of using the term of "*Hukum*" it is highly recommended that the term "*Qarar*" should be used instead of "*Hukum*" when passing a new law in Qatar.

[7] See previous mentioned example of the Qatari Court of Cassation.
[8] See previous mentioned example of the Qatari Court of Cassation.

- With regard to the applicable rules to the dispute subject, the current provisions of arbitration state that unless otherwise agreed by the parties, if the parties choose Qatar as a seat of arbitration, the Laws of the State of Qatar shall be applied to the arbitration (Almeezan, 2015b). The Qatari Draft follows the UNCITRAL Model Law and provides that the agreed legal rules by parties shall be applied and if they are not agreed on which rules shall be applied, then the arbitration authority shall apply the rules of the law decided by the applicable jurisdiction rules (See Appendix B)(UNCITRAL, 2006). Following the Egyptian Arbitration Law, the GCC Unified Law provides that the legal rules agreed by parties shall be applied and if such an agreement is not available, the arbitration authority shall apply the subjective rules of the most relevant and suitable law to the dispute (GCC, 2009)(Law, 1994)(El-Sharqawi, 2009). Although the GCC Unified Draft Law seems more appropriate for the dispute subject, the Qatari Draft Law, in this regard, is clearer. This results from the fact that the applicable jurisdiction rules, which are considered in the Qatari draft, are clear about the applicable law in each case. However, the term "most relevant and suitable law to the dispute" is wide one which might cause conflict of jurisdiction.

- The current arbitration provisions and the both Draft Laws, as well as the Egyptian Arbitration Law and the UNCITRAL Model Law, agree that the arbitral judgment shall be issued by the majority of arbitrators (UNCITRAL, 2006)(Law, 1994)(Amr-Allah, 2015)(Almeezan, 2015b). However, both drafts give the parties the right to agree otherwise. The Qatari Draft states that the parties or the arbitral tribunal may give the president of the authority permission to issue the decisions of procedures matters (GCC, 2009)(See Appendix B). These additional terms will assist in avoiding unnecessary delay which may resulted from collecting the signatures of arbitral tribunal members.

- The current provisions do not mention the case when the parties agree on the settlement, which is stated in the Egyptian Arbitration Law and the UNCITRAL Model Law, as well as the two examined drafts (Almeezan, 2015b)(Law, 1994)(El-Sharqawi, 2009)(UNCITRAL, 2006)(See Appendix B)(GCC, 2009). Such solution, which is provided by the two drafts, is required when the parties of the dispute agree on settlement during arbitral proceedings to avoid extra expenses and delay.

- The confidentiality of the arbitral judgment, which is one of the advantages of arbitration, is not provided by the current law, while the GCC Unified Draft, as well as the Egyptian Law, prevent the publishing of the arbitral judgment, except with the parties' permission (Almeezan, 2015b)(GCC, 2009)(Law, 1994). However, the Qatari Draft gives the parties the right to agree on the prevention of the arbitral judgment (See Appendix B). This means that the GCC draft allows the parties to agree on publishing the arbitral judgment and if they are silent about it, it should be confidential. In contrast, the Qatari draft keeps the publishing of the judgment as the default position and the agreement on its confidentiality or part of it is the exception that the parties can agree on. Both drafts are silent about the confidentiality of the entire proceedings of arbitration, which, as mentioned above, is considered as an important advantage of referring to arbitration as a dispute resolution method. The researcher suggests that the confidentiality of the entire arbitration proceedings should be adopted.

- The Provisions of Arbitration included in the CCP Code sets out that the lawsuit shall be terminated if any reason for its termination provided in the CCP Code arises, while both drafts provide a list of cases, in which arbitration proceedings may be terminated without issuing the arbitral judgment.

In addition, the current provisions, as well as the UNCITRAL Model Law, do not provide a time limit for issuing the arbitral judgment, which if the parties silent about it, will result in delay (Almeezan, 2015b). In contrast, the GCC Unified Draft Law, following the Egyptian Law, provides that if the parties do not agree on the time limit for issuing the judgment, a year from the date of the commencement of arbitration proceedings is the time limit to issue the arbitral judgment, which ends the entire dispute (GCC, 2009)(Law, 1994). However, the Egyptian Law provides that the maximum extra time limit is six months, while the GCC Draft gives the parties the right to refer to the competent court, if the arbitration authority does not issue the judgment within the time limit, to decide on determining a new time limit or to terminate the arbitration proceedings (El-Sharqawi, 2009). These proposed periods are too long as the speed is an advantage of arbitration. The Qatari Draft states that the arbitral judgment, which ends the entire dispute, shall be issued within the agreed period between the party or if there is no such agreement, within a month of the closing date of

the pleading and the maximum extension limit for this period, if the parties do not agree otherwise or are not permitted to do so, is a month (See Appendix B). Therefore, for the purpose of having a fast dispute settlement, which is another advantage of arbitration as above mentioned, the time limit provided by the Qatari Draft is more efficient.

- The current provisions do not regulate the correction and interpretation of the arbitral judgment and the supplementary arbitration( Almeezan 2015). The GCC Unified Draft and the Qatari Draft, as well as the Egyptian Law, follow the UNCITRAL Model Law and give the parties the right to apply for the correction, interpretation and issuance of a supplementary judgment in missing matters. They also provide that the arbitral authority may correct its material mistakes, by itself or upon a party's request. However, the time limit for applying such applications and issuing such judgments differ: The Egyptian Law time limit for applying such applications, as well as the UNCITRAL Model Law, is thirty days after receiving the arbitral judgment and for issuing such judgments and decisions is thirty days from the day of application and it may be extended to another thirty days (Law, 1994)(El-Sharqawi, 2009)(UNCITRAL, 2006). The GCC Draft provides that the time limits are fifteen days from receiving the arbitral judgment, for applying such applications and fifteen days, from the day of application, for issuing the judgments and decisions in this regard, which are more reasonable periods than the others (GCC, 2009). The Qatari Draft provides the shortest period, which is seven days for each (See Appendix B). The researcher prefers the period provided by the GCC draft as it is more reasonable.

- According to the current provisions, an arbitral judgment may be appealed according to the rules regulating the appeal to the judgments of the competent court of the dispute subject. It might be subject to a review according to the reviewing rules of the court's judgments and, finally, the arbitral judgment may be set aside if it is non-arbitrable, or invalid or irregular (Almeezan, 2015b).

Both Draft Laws, as well as the Egyptian Law, follow the UNCITRAL Model Law, as they provide that the arbitral judgments shall not be challenged unless by nullification and based on specific grounds. Such provisions ensure certainty. Further, the Egyptian Law, follows the UNCITRAL Model Law, and provides that the time limit for arising the nullification lawsuit is ninety days from the day of

notifying the judgment for the party against whom the judgment was issued, while both the Qatari and the Unified GCC Drafts provide that the time limit is fifteen days, which is more reasonable and insures the speed (Law, 1994)(El-Sharqawi, 2009)(UNCITRAL, 2006)(GCC, 2009)(See Appendix B).

- An arbitral judgment, under the current Provisions, shall be enforced except by an issued order, by the judge of the court where the judgment has been filed and the foreign arbitral judgments and awards shall be recognised and enforced according to the principle of reciprocity; however, in 2003, Qatar ratified the NYC Convention without any reservation which means that reciprocity is no longer binding and an arbitral award, which is issued in any NYC member State, is subject to be enforced in Qatar (Almeezan, 2015b).

The UNCITRAL Model Law provides that the arbitral award shall be recognised as binding upon a writing application to the competent court if it does not fall under any of the grounds for refusing recognition or enforcement, which are provided in Article 36 of the Model Law (UNCITRAL, 2006). According to the Egyptian Arbitration Law and the GCC Unified Draft Law, the arbitral judgments issued according to their provisions shall be recognised and enforced and the order to execute them shall be issued by the president of the competent court or by the judge nominated, by him to do so.

The arbitral judgment, according to the Egyptian Law and the GCC Unified Draft, shall not be enforced, unless the time limit for filing a nullification lawsuit is run. It shall not conflict with any previous Egyptian Court judgment, under the Egyptian Law, and GCC States Court, for the Unified GCC Draft Law. It shall not conflict with the public order of Egypt, for the Egyptian Law, and the public order, general morals and Shari'a, for the GCC Unified Law. Finally, it shall be correctly notified to the party against whom it was issued. (Law, 1994)(El-Sharqawi, 2009)(GCC, 2009).

The Qatari Draft provides that the arbitral judgment shall be recognised and enforced wherever it has been issued. Just as the Egyptian Law and the GCC Draft, the application of enforcement shall not be accepted except after the expiration of the time limit of its nullification lawsuit. The Qatari Draft provides an exception to the enforcement of the arbitral judgment, by giving the parties

the right to agree on other procedures or ways to recognise and enforce the arbitral judgment. In the researcher's view, it is highly recommended that this exception shall be supervised by the competent court or the other authority to avoid any agreement on recognition and enforcement of a judgment which may conflict with public order (See Appendix B).

The grounds for refusing the recognition and enforcement of the arbitral judgment, which are included in the Qatari Draft, as well as the UNCITRAL Model Law, are more detailed and comprehensive than those are included in the GCC Unified Draft and the Egyptian Law (See Appendix A)(UNCITRAL, 2006)(GCC, 2009)(Law, 1994)(El-Sharqawi, 2009)(Amr-Allah, 2015).

Finally, according to the GCC Unified Draft Law, the order of enforcement and refusal are subject to appeal within fifteen days of its issuance. Under the Egyptian Law and the Qatari Draft Law, the enforcement order shall not be subject to appeal; however, the refusal order may be subject to appeal within thirty days of its issuance (GCC, 2009)(Law, 1994)(El-Sharqawi, 2009)(See Appendix B). The UNCITRAL Model Law is silent about this case (UNCITRAL, 2006).

As a result, the Qatari draft law, as well as the Egyptian Law ensure greater certainty and speed of enforcement of the arbitral judgment than the GCC draft.

## 7.8. The 7th Section: Arbitration Centres and Entities and the Accreditation of the Arbitrators

The Qatari Draft Law, in a unique step, provides that giving a license for establishing an arbitration centre and entity or any branches for foreign arbitration centres in the State requires a decree issued by the Minister of Justice. The arbitrators shall be accredited by the Ministerial decree and a register for listing them shall be established in the Ministry. These steps will provide the public easy access to the arbitrators' professional data, qualifications and CVs, which helps them to choose suitable arbitrators for their disputes. In addition, it will organise and regulate the practice of arbitration in Qatar.

However, none of the drafts consider the electronic arbitration centres which are operated by many websites recently. Such arbitration centres might be the future of global arbitration and should be regulated by these drafts.

Further, the Draft makes two proposals for establishing a department of arbitration affairs in the Ministry of Justice. The task of this department is to manage arbitration affairs, including the license of arbitration centres and entities, the branches of foreign arbitration centres, the licenses of arbitrators and their accrediting and the National Register for arbitrators (See Appendix B).

## 7.9. Conclusion

This chapter made a critical comparison between the current Provisions of Arbitration, the GCC Unified Arbitration Draft Law and the Qatari Draft of the Arbitration Law in Civil and Commercial Affairs. The comparison was in light of the Egyptian Arbitration Law and the UNCITRAL Model Law. It presented the shortage of the current provisions in dealing with arbitration and how the draft Laws deal with this issue. The comparison shows that the current provisions are general and do not regulate the arbitral proceedings. There is no definition of arbitration and the provisions do not stipulate when and where this provisions should apply. With regard to the arbitration agreement, the current provisions do not determine what the conditions are which should be considered to prove the term of "in writing". Regarding to the formation of the arbitral authority, the procedures for appointing the arbitrators by parties are missing. The provisions do not cover all of the arbitration proceedings matters. With regard to the arbitral judgment, the current provisions state that the arbitral judgment is subject to appeal and review in addition to challenge for nullification. In addition to the above mentioned factors, the current provisions do not deal with the new principles of arbitration and do not contain regulations for the licensing of arbitration centres and entities.

The comparison proved the similarity between the GCC Unified Draft Law and the Egyptian Arbitration Law. In addition, it presented the significant changes of the

Qatari Draft Law, compared to its early versions, which were copied and pasted from the Egyptian Law. It showed how the Qatari legislator applies the provisions of UNCITRAL Model Law with a significant Qatari touch in the Draft Law and follows the modern principles of arbitration.

The Qatari Draft Law contains provisions which stipulate the creation of a circuit of arbitration under the Court of Appeal, which due to its specific jurisdiction in arbitration affairs, will enhance and improve the practice of arbitration in Qatar. The appeal and review of the arbitration judgments allowed in the current law, have been prevented in the Qatari Draft. The creation of the National Register for Arbitration and the Arbitration Affairs Department, in the Ministry of Justice, is another significant point in the Qatari Draft Law, which will help in encouraging dispute parties, especially Qataris, to resolve their disputes by arbitration in Qatar. Although the Qatari Draft Law contains many significant well-drafted provisions, some provisions need to be reviewed; such as the following:

Using the term "*Hukum*" (Judgment) comes at the top of the revision pyramid. To avoid misunderstanding and misinterpretation which may affect the practice of arbitration in Qatar, the term "*Qarar*" (Award) shall replace the term "*Hukum*". The provisions for the formation of an arbitration authority needs to be revised in light of the provisions of the English Arbitration Act and the Rules of LCIA and ICC, which are included in the comparison section concerning the formation of the arbitration authority. The time limit for some regulated applications, judgments and decisions making needs to be extended to the limits provided by the GCC Unified Arbitration Draft Law. Finally, the confidentiality of arbitral proceedings needs to be improved as the Qatari draft stipulates that the publishing of the arbitral judgment is the default position and the parties are permitted to reach an agreement on confidentiality of all or part of the arbitral judgment. However, it remains silent about the confidentiality of the rest of arbitral proceedings.

There are also some provisions missing in the Qatari draft law; such as the regulation of electronic arbitration centres.

# Chapter eight: Legal Analysis and Discussion

## 8.1. Introduction

This chapter evaluates the way in which the findings of the empirical research, analysis of the law and comparative study relate to existing research and how they answer the research questions. In doing so, the doctoral research aim should be mentioned and then the findings, which are included in the previous two chapters, will be discussed. This doctoral research aims to identify the ways in which the law and practice of arbitration in the State of Qatar can be improved in order to make Qatar a more desirable seat of arbitration in the Middle East region. Previous chapters have examined the current provisions of arbitration and the drafts of new laws related to arbitration in Qatar, the opinion of key stakeholders in arbitration in Qatar and the solutions found by other jurisdictions to the issues faced by Qatar. The conclusions suggest that the law itself is not the only reason for parties to avoid choosing Qatar as a seat of arbitration.

According to the findings, this chapter will be divided into three main sections; the current issues of arbitration in Qatar, factors which can improve arbitration in Qatar and the draft laws.

## 8.2. The current issues of arbitration

Based on the literature review, arbitration in Qatar is affected by several issues, as already mentioned. Those issues can be classified as: issues related to cultural attitude towards arbitration, issues related to the law and regulations and issues related to confidence in the practice of arbitration in Qatar.

### 8.2.1. Issues related to cultural attitude towards arbitration

In accordance with the literature review, the findings show that previous pessimistic view of arbitration still has its effect on society (Stovall, 2010). Participants of the interviews agreed that most Qataris do not realise that there are alternative ways for judiciary, such as arbitration and mediation. The findings went further than the literature review in this regard. They state that Judges and local lawyers are not familiar with arbitration as an alternative method of dispute resolution. As a result, lawyers lead their clients to litigation rather than arbitration as they have more experience in litigation and litigation procedures rather than arbitration and arbitration process.

Unlike the literature review, the findings provide other reasons which lead to the lack of familiarity with arbitration in Qatari society. The lack of training and technical support for judges is one of them, as judges in Qatar are not aware of arbitration. Also the Qatari Courts do not offer any formal reporting of court decisions and they do not depend on the principle of precedent from the case law system. The courts do not provide a research team to prepare the required information about the previous similar cases and scholars' views for the judges. In addition, the judges have many cases and do not have enough time to do such research and preparation. This leads to lack of confidence of arbitration in Qatar. Lack of courses and advertisements of arbitration are further reasons which lead to lack of awareness of arbitration, which leads to lack of familiarity with arbitration. Finally, the ready-made contract and poorly-drafted arbitration agreement or contracts with a weak term of arbitration, also result in the avoidance of arbitration as the term of arbitration, in this case, is null or unclear.

The findings show that there are courses, conferences and training in arbitration, held by the Legal and Judicial Centre of the Ministry of Justice and some international and joint venture law firms. Furthermore, Qatar University provides a specific course in arbitration and negotiation as part of its Bachelors Law Degree. However, these are not enough. Continuing legal education in Qatar is not mandatory. For example, once attorneys receive their license to practise the legal profession before the courts, they do not have to attend any training

courses, and even if they do not practise the profession before the courts, they will be promoted to be lawyers in the higher courts exactly the same as those who practise the profession and develop their skills by attending training courses, attending conferences and seminars and getting higher education certificates. This confirms that the current system does not encourage lawyers to improve their legal skills and diversification their legal expertise by accessing arbitration and other alternative dispute resolution methods fields rather than restricting themselves in litigation field.

### 8.2.2. The current law and regulations

Although the findings of the interviews show that a third of participants said there are some advantages in the current law, all the participants agreed that the current provisions of arbitration are outdated and not compatible with the development of Qatar's economy. Therefore, the issuing of a new modern law, which should be in accordance with the UNCITRAL Model Law, is required. This view matches the result of the literature research, which called for the amendment of arbitration provisions in Qatar (Al-Emadi, 2008)(Sharar, 2011).

Apart from being outdated, the most significant disadvantages, of the current provisions of arbitration, as reviewed in the previous literature and confirmed by the findings of interviews, can be summarised as follows:

- The current provisions do not cover the procedural regulation of arbitration. In other words, they are general principles rather than procedural rules. Therefore, more detailed provisions are required to cover and manage the arbitral proceedings.
- The modern concepts of arbitration, such as the separation of arbitration, have not been considered. For example, according to the current provisions, the Court hearing the nullification claim has the right to settle the dispute on its own. Such provision devalues the arbitral proceeding and discourages parties from resolving their issues by arbitration.

- Arbitration judgments, under the current provisions, are subject to appeal and review in addition to the nullification, which is the only way that the arbitration awards should be challenged in specific circumstances in the other modern laws of arbitration. The appeal and review of arbitral decisions result in the fact that the arbitration judgment not being final. Therefore, arbitration loses one of the main advantages, which is the finality of an arbitral award, and becomes similar to litigation.

What is more, the findings of interviews show other disadvantages, which are not included in the literature. These disadvantages can be summarised as follows:

- There is no specific time to file the nullification claim. This means that the party, who the decision was issued against him, can file the nullification claim after several years, which might cause the legal status of the arbitration parties to be unstable
- The current provisions do not define arbitration itself and do not differentiate between domestic and international arbitration. This resulted in misunderstanding of arbitration and lack of knowledge about where and when the provisions of this law shall be applied.
- The current provisions do not contain any regulations which govern the violation of arbitration proceedings by arbitrators. Also, the criminal responsibility of arbitrators is not being regulated as the arbitrators are not public employees and therefore, they are not included under the penalty law provisions, which apply to public employees.
- There is no defined body to supervise the practice of arbitration in Qatar including the qualification of arbitrators. For example, non-expert and non-qualified arbitrators may practise arbitration in Qatar and arbitration process might be violated. This resulted in lack of confidence of arbitration in Qatar.
- The procedures for establishing arbitration centres in Qatar are not regulated in the current provisions. This had the result that the requirements for establishing arbitration centres are unknown and there is no official authority, which is responsible of issuing license for the establishment of arbitration centres or branches of foreign arbitration centre in Qatar.

- Electronic arbitration centres, which are a new field of arbitration, are not regulated in the current provisions.

### 8.2.3. Confidence in arbitration in Qatar

The findings show that Qatar International Centre for Conciliation and Arbitration, as well as Qatar Financial Centre, are not the preferred arbitration centres chosen as a seat of arbitration. The preference goes to the international arbitration centres, such as LCIA and ICC, while regionally, it goes to the Gulf Countries Council's Commercial Arbitration Centre rather than the Qatari one. This preference, according to the literature and the findings, results from the fact that the international centres and the GCC one are more well-established than QICCA and QFC. However, the interview findings provide more details in this regard. The good reputation of international arbitration centres and their neutrality, make them preferable to QICCA; in fact, despite being active since 2009, the QFC does not have an arbitration centre yet. In other words, the QFC, currently, deals only with ad-hoc arbitration and, until now, no single case of arbitration has been resolved via the QFC.

The international arbitration centres and the GCC one are more professional in dealing with disputes than QICCA. This proves the fact that Qatar suffers from a lack of experienced well-established international arbitration centres. As the QFC still does not operate their arbitration centre, only one centre exists, which is QICCA, and it is an individual centre as it has been established by the Qatari Chamber of Commerce and Industry. This centre, as above mentioned, needs to be improved.

The slow proceedings of arbitration adjudication in Qatar form another factor which leads to avoidance of Qatar as a seat of arbitration. In addition to the slow proceedings, the courts in Qatar do not seem to be familiar with arbitration. This can be observed from the Rule of the Court of Cassation of Qatar No. 64 which was issued in June 2012 to set aside an arbitral judgment issued in Qatar because the judgment had not been rendered in the name of His Highness the Emir of Qatar. The latter two rules of the Court of Cassation gave preference to

enforcing foreign arbitral awards in Qatar and declared that domestic arbitral judgments are not binding unless they are issued in the name of the Emir of Qatar (QICCA, 2010).

Accordingly, QICCA started issuing its judgments in the name of His Highness the Emir of Qatar, despite having no legal coverage to do so. This solution provided by QICCA is not efficient as the Court of Cassation may revise its rule again and notice that this was misinterpretation of law. Then, it may set aside all the judgments that have been issued in the name of the Emir. As a result, the instability of the legal status of arbitration's parties can be observed from the above-mentioned reasons leading to the avoidance of Qatar as a seat of arbitration.

## 8.3. Factors which can improve arbitration in Qatar

The existing literature suggested that the adoption of a new modern arbitration law compatible with the UNCITRAL Model Law is a solution that will improve arbitration in Qatar. However, in the researcher's view, although a new modern arbitration law will assist in improving arbitration in Qatar, it is not enough and the law itself cannot solve all existing issues related to arbitration in Qatar. Therefore, the researcher sought for other factors which may assist in improving arbitration and arbitration practice in Qatar. The main reason for holding the empirical study in this research was to receive feedback from the participants about factors which might improve the practice of arbitration in Qatar. The analysis of the interviews shows that there are four main elements, which may improve this practice. Having a new well-drafted modern law is the first element while having efficient arbitration centres and expertise arbitrators is the second. Including introducing arbitration as a subject in the law courses of universities, enacting rules to make continuing legal education a requirement for the professional development of attorneys as well as providing special training courses in arbitration and advertising for arbitration form the third element. Creating a suitable legal environment for arbitration is the fourth element.

### 8.3.1. A new well-drafted modern law

Calling for the arbitration provisions in Qatar to be updated and issuing a new modern law has been proven essential by the literature (Al-Emadi, 2008). Almost all the interviewees were agreed that a new well-drafted modern law is required to promote arbitration in Qatar. The law should be compliant with the UNCITRAL Model Law (Sharar, 2011). It should convert the practice of arbitration in Qatar to be more familiar to domestic and foreign parties, assure more freedom to the dispute parties to manage their dispute and reduce the court's intervention. The law should also differentiate between arbitrators and judges. Additionally, Qatar contains two court systems, the Qatar International Courts and the State Courts. The QFC has its own regulations, which are not bound by the State Laws, as early explained in the chapter on the black paper findings. One of the participants suggested having a single state law, which allows the parties to choose the overseeing court. This suggestion has been submitted due to the fact that the jurisdiction of Qatar International Courts is limited to disputes where the parties, or at least one of them, are one of the members, authorities or entities of the QFC. This means that it cannot oversee disputes which do not contain one of the QFC authority or entities. The Qatari legislator has not considered the latter suggestion. As a result, Qatar still has dual court systems; the civil law system, which is the State Court and the common law system, which is the Qatar International Courts. However, the QFC Draft Law extends the jurisdiction of the QICDRC to the extent that it can oversee disputes which do not include a party from the QFC members, authorities or entities if the parties to the dispute agreed to raise dispute for it (See Chapters five and six above).

### 8.3.2. Efficient arbitration centres

The participants agreed on the importance of having efficient arbitration centres, which have qualified arbitrators, efficient rules of arbitration and provide good case managers. These centres should be supported by courts experienced in

arbitration with open-minded judges who have a good background in arbitration. On the other hand, QICCA has adopted a significant new modern regulation of rules of arbitration and the QFC has drafted a new law for the entire QFC and specifically for QICDRC, which will accordingly establish an alternative dispute resolution centre that includes institutional arbitration with modern regulation rules.

Although the literature is silent about having a special court or circuit for arbitration, some participants strongly suggested having a special chamber for arbitration in the Court with specialist judges who have experience in arbitration. This chamber should have a research team to assist the judge in their research. The new draft law states that a new court circuit for arbitration shall be established under the court of appeal, which is compatible with the participants' suggestion and will be a great step toward enhancing the practice of arbitration in Qatar, as the judges of this circuit should be more familiar with arbitration. However, the research team which should assist the judge in their research is still required.

### 8.3.3. Education and training courses

The importance of training courses and continued education in the legal field, in specific arbitration, is noticeable from the findings. QICCA and some international and joint venture law firms provide some training courses and hold conferences and seminars in arbitration. However, the currently provided courses, conferences and seminars are not enough. Some participants suggested that the concept of continuing legal education and courses should be considered in upgrading lawyers' professional development. This should be done by adopting a specific mechanism to take sessions or courses in order for lawyers to qualify for their next upgrade. The Legal and Judicial Centre of the Ministry of Justice, Qatar University and arbitration centres should have a larger role in offering courses for lawyers and judgments and ensuring a good educational programme.

The findings prove that advertising arbitration in Qatar may help to spread arbitration culture in society, which may assist in attracting domestic and foreign parties to arbitration. A participant suggested having a Qatari legal monthly or quarterly review, which allows lawyers and academic researchers to publish articles and present their comments on laws, draft laws and court judgments.

The above-mentioned suggestions were not provided by the literature and, in the researcher's view, they should be considered.

### 8.3.4. A suitable legal environment for arbitration

As provided earlier by the participants, the Qatari Courts form a non-friendly environment for arbitration. The interview findings consider that creating a suitable legal environment for arbitration is an important factor to enhance arbitration in Qatar and attract parties to arbitrate there. According to the findings, the creation of this environment needs to be based on several factors. Well-established arbitration centres with good practical rules and experienced arbitrators is one of them. The availability of experienced specialist lawyers in arbitration is another one. Training national staff and providing support for them is suggested as a factor, which will help in creating a suitable environment for arbitration. However, in the researcher's view, all of these factors will not be efficient if the court remains averse to arbitration. This due to the fact that when people resort to arbitration to solve their disputes, they are not only looking to obtain an award in their favor. They need to enforce this award. The courts in Qatar suffer from lack of experience and training with regard to arbitration. There is a lack of understanding of the arbitration process in addition to a lack of technical support for judges. The national judges need to have training courses about the arbitration process so that they can decide when the arbitral judgment should be enforced and when it should be invalidated. Also, the absence of specific time limits to file invalidity claims in the current law leads to instability of the legal status of the parties, wasting time and effort. The rule of the Court of Cassation in the Appeal No. 64/2012 has caused many problems and disrupted the arbitration process. It led many parties, namely those against whom

arbitration decisions were issued, and not issued under the name of His Highness the Emir of Qatar, to file claims of invalidity due to its violation of the public order.

## 8.4. The draft laws

The Draft of QFC Law was discussed earlier in the chapter on the black paper findings. This section will consider the Draft of the Qatari Arbitration Law in Civil and Commercial Affairs and determine the possibility of adopting the GCC Unified Arbitration Draft Law in Qatar.

Although few researchers have reviewed the early version of the Draft, this has been almost totally revised in the current version (Bachman & Oberdorfer 2011). The final version of the Qatari Draft Law, which is discussed in this doctoral research, has not been reviewed by researchers, until the moment of writing this thesis. Therefore, the discussion in this section will be based on the findings of interviews and the Draft Law itself.

This section will be divided into two sub-sections: the features of the draft law and the role of the Ministry of Justice in enhancing arbitration in Qatar. After that, the estimated time of passing the draft will be discussed in light of whether the Qatari Draft Law will be passed or the GCC Unified Law.

### 8.4.1. The features of the draft law

#### 8.4.1.1. Advantages of the draft law

According to the responses of the interviewees, the draft law has not been widely reviewed as it has not been officially passed to academics, lawyers, other specialists and concerned parties. It has not even been published on the Ministry of Justice website or any other websites. Although the draft law has had limited

reviews, it seems that it covers most of the current issues and deficiencies of the current provisions of arbitration, which were mentioned by the participants.

- Unlike the current provisions and as most of modern arbitration laws all over the world, the Draft Law designed compatibility with the UNCITRAL Model Law. However, the Qatari Legislator adds a Qatari touch to it. This touch can be noticed from the context of the draft itself and from the additional provisions, which are included in the draft. Such as Articles 37, 38 and 39, which, sequentially, regulated the establishment of arbitration centres and entities, accrediting of arbitrators and establishment of a department of arbitration affairs under the Ministry of Justice.
- Unlike the current provisions, the draft law contains definitions of many terms, such as; arbitration, arbitrator(s) arbitration agreement.
- It also provides the possibility of agreeing to arbitrate in disputes resulting from administrative contracts with the required permission of the Ministry of Justice to do so.
- The draft law has treated a main issue, which is caused by the current provisions. This issue is the possibility of reviewing arbitration judgments and challenging them by appeal in accordance with the procedures of appeal of court judgments. This will assure certainty, stability and speed.
- The draft law states that the only reason to challenge arbitration judgments is for nullification.
- It determines the need to establish a specific circuit in the Court of Appeal for arbitration. This means that judges of this circuit will have more experience in arbitration and the arbitration process, which will lead to increase in confidence of parties in the Qatari courts.
- The draft law deals with the principle of Competence-competence and the autonomy of arbitration clause, which are not dealt with in the current provisions. Such principles ensure more protection for the arbitral tribunal from the courts' interference in the arbitration process.
- Also, the draft law considers a specific definition of commercial arbitration and clearly differentiates between international and the domestic arbitration. Moreover, it considers institutional arbitration, even

if the arbitration institution or centre is located in Qatar, as international. This consideration will give the parties of arbitration more freedom, by limiting the interference of the national court in the arbitration process and assistance provided by the national court, for example selecting arbitrators. In addition, the consideration of the local institutional arbitration as international increases the enforceability of arbitration agreements and judgments as the member States of the NYC are committed by the convention itself to recognise and enforce international commercial arbitration agreements and awards (Born, 2001).

- The draft law allows the parties to agree on the confidentiality of the arbitration judgments or part(s) of it. However, it does not address the confidentiality of the hearings and pleadings sessions and other arbitration proceedings.
- The draft provides that arbitrators may be responsible if they exercise the arbitration in bad faith or gross negligence or complicity; however, the draft law does not provide specific punishment in this regard.
- The draft considers the accreditation of arbitrators and arbitration centres. This consideration will be briefly discussed in the next sub-section, which deals with the role of the Ministry of Justice in enhancing arbitration in Qatar, as the draft law waives the role of regulation, in this regard, to the Ministry of Justice represented by the Arbitration Affairs Department, which shall be established according to this draft.

The other advantages of the draft law have been discussed early in the comparison chapter.

#### 8.4.1.2. Disadvantages of the Draft Law

- The provisions regulating the appointment of arbitrators, as described in detail in the comparison chapter, are incomplete. They do not regulate the appointment of the chairman or the president of the arbitral authority. Also, the appointment of arbitrators in multi-parties' arbitration is missing. Accordingly, the provisions of the draft law, in this regard, need to be reflected in accordance with the arbitration regulation rules of one of

the leader arbitration institutions, such as ICC and LCIA or the English Arbitration Act 1996.

- The draft law does not specify the matters in which arbitration is not allowed as it stipulates that arbitration is not allowed in matters in which legal compromise is not allowed and it does not determine what these matters are. Therefore, it would be useful if such matters are included in this article. The following matters are provided as examples: matters contrary to public order or related to nationality or personal status, except where it concerns the financial effects resulting from such matters.
- The draft law does not treat the issues caused by the misinterpretation of the term "*Hukum*", which means judgment, and is provided by the current provisions of arbitration instead of the term "*Qarar*", which means award.
- The draft law gives an exception to the parties to have the right to agree to recognise and enforce an arbitral judgment in other procedures or ways, rather than recognising and enforcing it via the competent court. Accordingly, the parties may agree to recognise and enforce a judgment which violates the public policy, in another way if the exception was not under the supervision of the competent court or the other authority, which are specified by the draft law.
- The draft law does not include regulations for electronic arbitration centres.

### 8.4.2. The role of the Ministry of Justice in enhancing arbitration in Qatar

The touch of the Qatari legislator can be noticed in the seventh section of the draft law, which concerns arbitration centres and entities and arbitrators' accreditation. Article (39) of the draft law provides that a department of arbitration affairs shall be established in the Ministry of Justice to manage arbitration affairs. The role of this department and the Ministry of Justice, in general, is managing and enhancing arbitration, according to the provisions of

chapter seven of the draft law, will be discussed in three sub-sections. Arbitrators' affairs, arbitration centres' affairs and other arbitration affairs.

#### 8.4.2.1. Arbitrators' affairs

Article (38) of the draft law states that the Ministry of Justice shall establish a register for listing arbitrators. Those arbitrators shall be accredited by a decree of the Minister of Justice. The Arbitration Affairs Department shall propose and frame the standards and terms for accrediting and registering arbitrators. In its future plan, the Ministry will create lists of arbitrators according to the register. These lists shall be divided into categories based on the specialty of the arbitrators. In addition to the arbitrators' names and contacts, the lists shall include a brief statement about each arbitrator, such as the previous number of cases has he/she dealt with, his/her fees and review or feedback from previous parties who arbitrated with him/her. These lists will be sited on the Ministry website and be available for anyone who wishes to choose an arbitrator. In addition, any complaint addressed to any registered arbitrator shall be submitted to the Arbitration Affairs Department. This will ease the process of choosing arbitrators, especially for small and medium local businesses, and ensure quality.

#### 8.4.2.2. Arbitration centres affairs

According to Article (39) of the draft law, the Arbitration Affairs Department shall supervise the licensing and establishing of arbitration centres and entities and foreign arbitration centre's branches in the State. If there is any issue arising from dealing with these centres, the Arbitration Affairs Department shall be the body that receives the complaint. This will regulate the establishing of arbitration centres in Qatar and ensure their standard and quality

#### 8.4.2.3. Other arbitration affairs

The Arbitration Affairs Department has several tasks, in addition to the one previously mentioned, in terms of managing arbitration in a way that enhances it and improves the practice of arbitration in Qatar. Preparing guidance modules for arbitration agreements and designing ideal standard models of arbitration agreements and arbitration clauses is one of these tasks. The Department shall work on advertising arbitration to encourage dispute parties to resort to arbitration. It shall also prepare studies, encourage research and propose recommendations in the arbitration field including legislation tools. The Department has the responsibility of following up arbitration conferences and seminar in addition to signing agreement memorandums of cooperation and forming partnerships with organisations and institutions interested in arbitration.

In addition, the Legal and Judicial Studies Centre will provide courses in arbitration for judges, lawyers and others. It will assist in explaining arbitration law and qualifying Qatari arbitrators.

In terms of translating the law into other foreign languages, issuing official certified translations of documents, accrediting submitted translations and qualifying legal translation centres within the State, the Ministry of Justice plans to establish a department specialising in legal translation affairs.

### 8.4.3. The estimated time of passing the draft law

The GCC Unified Arbitration Draft Law still has to pass many procedures to go through to be moved from the phase of the guidance law. After that, in terms of being enforced, it shall be submitted to the magistrate. Then, the law shall be submitted to the member States, each of which has its own mechanism to accredit the unified law. These procedures take an uncontrolled period of time, which may extend to three years. In addition, each Member State has the right to apply the law or not apply or amend its local law in accordance with the Unified Law.

On the other hand, the Qatari Arbitration Law in Civil and Commercial Affairs Draft is in the final stages of the issuance of the law as it has already been approved by the Council of Ministers and should be accredited by "*Majlis Al-Shura*", the Advisory Council, and published in the Gazette soon.

Therefore, the Qatari Draft is more likely to be enforced than the GCC Unified Law.

### 8.4.4. Conclusion

This chapter demonstrates the findings of empirical research and the Qatari Arbitration Law in Civil and Commercial Affairs Draft. As mentioned earlier, the findings of the empirical research resulted from the interviews held with fifteen participants of different categories of the arbitration stakeholders. The discussion of the above-mentioned findings in light of the literature reviews proved that the current provisions of arbitration, which are included in the CCP Code, form one of the main issues influencing the practice of arbitration in Qatar. However, it is not the only one. The participants provided suggestions, which can improve arbitration in Qatar and attract domestic and foreign disputes parties to arbitrate in Qatar.

The Qatari Draft Law showed that the Qatari legislator considered solving the current issues of arbitration and the participants' suggestions when drafting the new law. The draft law is a Qatari version of the UNCITRAL Model Law with some amendments regarding the accreditation of arbitrators, arbitration centres and institutions and other arbitration affairs. The draft law contains some provisions, which need to be revised. The Qatari Draft is more likely to be passed and enforced than the GCC Unified one due to the long procedures that the GCC unified law has to go through before being accredited. Passing the Qatari Draft Law and the QFC Law, which will lead to establishing an Alternative Dispute Resolution Centre within the QFC, will result in the practice of arbitration in Qatar being more professional, trusty and mature.

# Chapter nine: Conclusion

## 9.1. Summary

This research aims to enhance arbitration practice in Qatar to the extent of making Qatar an arbitration hub in the Middle East region. The research identifies the advantages of arbitration and its importance in international and local contracts in the introduction chapter. These can be summarised here as: speed (Drahozal 2010) and flexibility of arbitration process compared to litigation, especially with regard to jurisdiction, seat of arbitration, applicable law, language and procedures (Roberts 2004), neutrality, especially when parties of the disputes are from different nationality (Roberts 2004), confidentiality (Drahozal 2010), the lower cost of arbitration compared to litigation in most cases (Mazirow 2008), the experience when dealing with the disputes by arbitrators as they are supposed to be experts in the same field (Drahozal 2010), finality and certainty of the arbitration decision (Mazirow 2008), and finally, the enforceability of arbitral awards (Roberts 2004).

Further, in chapter three, the research identifies the impediments to arbitration in Qatar. These impediments, according to the literature review, can be classified as issues related to cultural attitude towards arbitration, issues related to the current provisions that regulate arbitration and issues related to the confidence in the practice of arbitration in Qatar. The research then considers the action taken by the Qatari Government to improve arbitration practice in Qatar. The thesis critically analyses the current provisions of arbitration. Unlike previous research, the thesis examines and analyses the drafts of QFC Law, GCC Unified Arbitration Law and the Qatari Arbitration Law in Civil and Commercial Affairs. Using different methods to achieve the aim of the research, including doctrinal study, interviews and a comparative study, the researcher sought to answer the following questions which support him in achieving its objectives:

1. To what extent do the differences in cultures and laws between the local organisations and international organisations affect commercial contracts?
2. Do local companies prefer local law and international companies prefer English, American or international law to regulate their contracts? Why? Are their reasons sound or just unfounded perceptions?
3. What role does arbitration play in finding a compatible foundation law for multilateral international contracts?
4. Why are the current regulations of arbitration in Qatar inefficient?
5. Does the new draft of Arbitration Law cover all the issues? If not, what are the criticisms that can be directed to it? What are the best ways of avoiding and/or solving such criticisms and issues?
6. To what extent is the separation of the Qatar Financial Centre judgment system from the Qatari judgment system efficient? What are the criticisms that can be directed to this separation?
7. To what extent is QICCA successful? What are the issues affecting its success?
8. What are the procedures and methods used to make the arbitral awards of QICCA binding and enforceable in Qatari and foreign courts?
9. What are the difficulties that face arbitration when dealing with GCC laws, and in particular Islamic Law, and how to avoid such difficulties?

## 9.2. Answering the research questions

The empirical findings of chapter five, which were extracted from the interviews held with participants from among the stakeholders of arbitration in Qatar, resulted in using different methods including doctrinal study, interviews and a comparative study, the identification of themes and sub-themes. These themes and sub-themes have been used in combination with both the black paper findings, in chapter six, and the comparison study, in chapter seven, to answer the study questions. The legal analysis and discussion of the research findings, which forms chapter eight, has found that the issues, which are raised about arbitration in Qatar in previous research, are found in reality and not only theoretically. It explored the issue of the previous poor reputation of the Middle

East region, including Qatar, which still casts its shadow on the cultural attitude towards arbitration. Domestic parties and local lawyers avoid referring disputes to arbitration and prefer to refer them to litigation, especially local courts, as they are more familiar with the Qatari law and litigation procedures. On the other hand, foreign parties prefer to refer their disputes to arbitration to solve issues resulting from their contracts instead of Qatari courts as they are more familiar with arbitration and unfamiliar with and suspicious of Qatari Law, which they believe is still influenced by Shari'a law.

It found that the current provisions of arbitration are general provisions which do not regulate the arbitration proceedings and they are out dated. They do not lead to the previous mentioned advantages of arbitration, which need to be ensured in any effective and attractive arbitration system. The current provisions do not define arbitration and do not differentiate between domestic and international arbitration. the current provisions lack in matters regarding the arbitration agreement and formation of the arbitration authority; such as that they do not specify what conditions have to be available in the arbitration agreement to consider it as a written agreement, when arbitration is not allowed, they are silent about confidentiality and do not include terms which regulate the arbitrator's appointment by the parties. They stipulate that in addition to the fact that the arbitral judgment may be challenged for nullification, it may be subject to appeal and review same as any civil court decision. With regard to recognition and enforcement of foreign arbitral awards, the current provisions apply the principle of reciprocity, which is no longer binding as Qatar ratified NYC in 2003. The provisions use the term "judgment" instead of "award", which caused interpretation issues. Finally, the provisions do not consider modern arbitration principles. Although the current provisions of arbitration are not the only issues, a modern separated law for arbitration is required. The situation in Qatar is complicated.

This research has found that Qatar and QICCA are not the preferable seat of arbitration for many reasons. The unprofessionalism of the QICCA administration and preference for foreign arbitral awards over local ones in Qatar are the most significant reasons. However, the QFC is working on establishing a centre for

alternative dispute resolution, which will contain an arbitration centre. This centre might be more attractive for parties who wish to solve their disputes via arbitration.

Further, even though the draft of the Qatari Arbitration Law in Civil and Commercial Affairs has been given to practitioners and researchers for review only in a limited way, this research has proved that the draft considers the points suggested by the participants in the interviews, which might help in improving arbitration in Qatar. The later version of the draft, which is discussed for the first time in this research, has significantly evolved compared with the previous version, which was identical to the Egyptian Law. The draft is compatible with the UNCITRAL Model Law with Qatari features. It contains provisions created by the Qatari legislator in terms of solving the issues related to arbitration in Qatar. The draft takes care to provide more independence for arbitration centres and institutions in Qatar and more freedom for the arbitration parties in arbitration proceedings. However, a new department under the Ministry of Justice will be established according to the new draft. This department will monitor, organise and regulate arbitration affairs in Qatar. A register for arbitrators will be created in accordance with the draft law and will be called the National Register of Arbitrators. Only accredited arbitrators by the Minister of Justice will be listed in this register with useful information about each one and will be available for anybody seeking arbitration.

Although the draft law is well drafted, there are some provisions, which need to be revised. The Qatari draft law does not determine when arbitration is not allowed. It does not include terms which regulate the appointment of arbitrators for multi parties dispute and it does not contain regulation for assigning the chairman or president of the arbitral tribunal. The Qatari draft includes term which give the parties of dispute the freedom to choose another way to enforce the arbitral judgment rather than the court and the other authority. Such term allows parties agree to enforce arbitral judgment which conflict with public policy if it would not be monitored by the court or another authority. The draft law allows parties of the disputes to agree on the confidentiality of the arbitral judgment; however, it is silent about the confidentiality of the rest of arbitral

proceedings. Finally, the draft does not solve the issues of interpretation, which resulted from using the term "judgment" instead of the term "award", as it uses the same term.
Answering these questions leads to answer the main research question, namely "Will the New Arbitration Draft Law solve all the issues related to arbitration in Qatar, thereby attracting international companies to Qatar and its law for their arbitration?".
The study has found that the draft law needs modification and support to form an ideal arbitration environment in Qatar. This support and other recommendations will be addressed in the next section.

## 9.3. Recommendations

This section is devoted to recommendations resulting from this research in terms of enhancing arbitration practice in Qatar and forming a well-established hub for arbitration. The recommendations will be divided into three sub-sections: recommendations concerning the Draft Law, recommendations concerning the Ministry of Justice and, finally, recommendations concerning Qatar University, law firms and arbitration centres and entities.

### 9.3.1. Recommendations concerning the Draft Law

The researcher has already submitted some comments regarding the Draft Law to the Minister of Justice. This was done by means of an official letter headed by the logo, name and address of Robert Gordon University. The letter was registered as an official incoming document to the Minister Office and was given a register number: 36417 dated 16/12/2014. (See Appendix B)
However, these comments were submitted after a brief review of the draft law, as the time was limited. After a deeper review, more comments shall be addressed to the draft law.

With regard to the matters where arbitration is not allowed:

The draft law should name matters where arbitration is not allowed such as; matters which conflict with public policy and matters related to nationality or personal status, except where it concerns the financial effects resulting from such matters.

With regard to the formation of an arbitration authority:

- The draft law may follow the provisions of the English Arbitration Act 1996 in terms of appointing the Chairman or president of the arbitral authority.
- The case of appointing arbitrators, if there is more than one arbitrator and the parties are more than two, shall be adopted. The draft law may follow, in this case, the rules of ICC and LCIA, which were mentioned in the comparison chapter.
- As with other jurisdictions' laws, the draft law should allow appointing rehabilitated persons as arbitrators.

With regard to liability of the arbitrators:

The draft law should determine the penalties against arbitrators who practise arbitration in bad faith or commit gross negligence or complicity. Since the arbitrators are not bound by the penalties which can be imposed on public employees.

With regard to confidentiality:

The draft law provides that the parties have the right to agree on the prevention of the arbitral judgment. However, the confidentiality of the arbitration proceedings is not guaranteed. Therefore, it is recommended that the right of parties to agree on the confidentiality of the arbitration proceedings, both all and partial, should be included.

With regard to the arbitral judgment:

- The researcher has already recommended changing the term "*Hukum*" to the term "*Qarar*" "award" to avoid misinterpretation, which leads to practical issues. The Palestinian Arbitration Law No. (3)/2000, which was mentioned in the comparative chapter, may be a good guidance in this regard.
- The time limit of applying to correct or interpret the arbitral judgment and the supplementary arbitration, which is provided by the draft law, is very short, as it is only seven days. Therefore, the draft law may, in this regard, follow the GCC Unified Arbitration Draft Law, which provides that the time limit is fifteen days.
- The Qatari Draft provides an exception to the enforcement of the arbitral judgment, by giving the parties the right to agree on other procedures or ways to recognise and enforce the arbitral judgment. This exception should be supervised by the competent court or the other authority which is stated in the draft law to avoid any agreement on recognition and enforcement of a judgment, which may conflict with public order.

With regard to electronic arbitration centres:

The draft law should include provisions which regulate electronic arbitration centres as they started spreading and might overtake arbitration centres in the near future.

## 9.3.2. Recommendations concerning the Ministry of Justice

- The Ministry of Justice should adopt the rules of licensing arbitration centres and entities in Qatar.
- It shall also adopt rules for licensing and accrediting arbitrators. The arbitrators should be from different categories and not only lawyers.
- A Quarterly law review journal is recommended to be created under the auspices of the Legal and Judicial Studies Centre to review and comment

on court and arbitral judgments and decisions, as well as draft laws and laws.

- Special courses in arbitration and arbitration practice shall be designed and provided for judges, lawyers and others.
- A system of professional development for lawyers, based on attending legal courses shall be adopted.

### 9.3.3. Recommendations concerning Qatar University, law firms and arbitration centres and entities

Qatar University:

The Law College of Qatar University includes a special course for negotiation and arbitration in its Bachelor Law Degree Course. It also holds an annual forum for arbitration. However, in addition academic research in arbitration, comments on court judgments should be provided by academic staff, researchers and students. Furthermore, postgraduate course for arbitration should be designed.

Law firms:

Law firms should contribute to conferences and forums of arbitration. Lawyers should write articles and comments on court judgments and decisions.

Arbitration centres and entities:

- Arbitration centres and entities should work on improving their administration, so they can manage arbitration proceedings in more professional way.
- They should have various categories of qualified arbitrators.
- Arbitration centres and entities should make effective contributions in holding courses and conferences in arbitration.

# References

**Articles and Books**


Abou El Farag, M. S. (2014). *Introduction to the Commercial Law of Qatar* (2014th ed.). Cairo: Dar Al Nahda Al Arabia.

Aboul-Enein, M. (1999). The development of international commercial arbitration laws in the Arab world * Arbitration 314 historical background systems adopting the uncitral model law of arbitration Egypt. *Arbitration*, 314–319.

Aktaqi, R, 2002 Procedure of civil and commercial matters Trials. 9th edn, Damascus, Damascus University Press.

Al Ahdab, A.H., 1998. Arbitration with the Arab Countries 1st ed. Beirot, pp. 529 Published by: Encyclopedia of Arbitration (Arabic text).

Alabid, F S, n.d. Britain's policy in the Gulf, 1953-1914 Part II, no publisher.

Al Asiri, M, 2004 'A lecture on the history of the judiciary in Qatar: 7/1/2002', Publications of the Judicial Supreme Council, pp. 2–7.

Al-Baharna, H.M., 2009. The Enforcement of Foreign Judgments and Arbitral Awards in the GCC Countries with Particular Reference to Bahrain Author ( s ): Husain M . Al-Baharna Source: Arab Law Quarterly, Vol. 4, No. 4 (Nov., 1989), pp. 332-344 Published by: BRILL Stable, 4(4), pp.332–344.

Al-Emadi, T., 2008. Qatar arbitration law: some central issues. International Arbitration Law Review, 11(2), pp.69–83. Available at: http://login.westlaw.co.uk/maf/wluk/ext/app/document?sp=at6b49cedaee-55123&crumb-action=reset&docguid=ICCAE2600047611DD8ECDB25D60325CF1.

Al-Emadi, T., 2011. Qatar arbitration law: some central issues. QNRS Repository, 2011(1),

Al-Jarba, A.H.M., 2001. Commercial Arbitration in Islamic Jurisprudence: A study of its role in the Saudi Arabia Context. Available at: http://cadair.aber.ac.uk/dspace/handle/2160/1935\nhttp://cadair.aber.ac.uk/dspace/bitstream/2160/1935/1/Al Jarba phd.pdf.

Al-Kuwari, N.K., 2008. Arbitration in Qatar, Doha.

Almansour, A, n.d. Political development of Qatar, Doha-Qatar, Doha Press.

Al-naddaf, H. (2008). The enforcement of the international arbitration awards in Qatar and the principle of reciprocity. Doha: Al Tamimi & Company.

Alshalq, A, 1999 Political history of Qatar, Doha, Qatar, Doha Modern Printing Press.

Alzaman, Y & Alkhunji, A, 2005 Civil and Commercial Procedure Code No. 13 of 1990 Cairo, Dar Al-Manhal Press.

Amr-Allah, B. (2015). An invitation to consider amending some provisions of the Egyptian Arbitration Law promuglated by the Law No. 27/1994. *Arbitration Journal (Arabic Text Book)*, *25*(January), 47–56.

Andrews, N. (2013). *Andrews on civil processes. Volume II: mediation & arbitration*. Cambridge: Intersentia.

Anani, A., 2008. Arbitration Questionnaire. Doha: Advocate Mohammed Al Marri in association with Al Tamimi & Company.

Anani, A., 2009. The four pillars of development: Qatar national vision 2030. Al Tamimi and Co Law Update. [online] (217). Available from: http://www.yasni.com/ext.php?url=http%3A%2F%2Fnewsweaver.ie%2Faltamimi%2Findex000364179.cfm&name=Ahmad+Anani&cat=news&showads=1

Awwad, M, 2004 Civil procedure and the judicial organisation, Amman, Jordan, Dar Althaqafah for Publishing and Distribution.

Bachman, Meagan & Oberdorfer, J., 2011. The International Arbitration Review 4th Edition. J. Carter, ed., NewYork.

Badawi, H, 1999 Civil trials, jurisprudence, studies, Location of Publication, Al-Halabi Legal Publications.

Banakar, M., Reza & Travers, M., 2005. Studying legal cultures. In: Banakar,M., Reza and Travers, ed. Theory and method in socio-legal research. Oxford: Hart Publishing, p. 239. Available at: http//:www.hartpub.co.uk.

Bayat, M., 2009. The basics of the Qatari Judicial System, past and present, Journal of Economics and Legal of University of Damascus, 25(1), pp. 57-108. In Arabic text

Bayyat, M, 2003 Introduction to the science of law, Damascus, Damascus University publications, Faculty of Law, Department of Open Education.

Bayyat, M, 2009 'Fundamentals of the Qatari judicial system, its past and present', vol. 25, no. I, pp. 57–108.

Bell, J., 2013a. Legal Research and the Distinctiveness of Comparative Law. In M. Van Hoecke, ed. Methodologies of Legal Research. Oxford: Hart Publishing, 1st ed., pp. 155 – 176.

Bell, J., 2013b. Methodologies of Legal Research First. M. Van Hoecke, 1st ed., Oxford: Hart Publishing. Available at: http://www.hartpub.co.uk.

Blanke, G. (2009). The DIFC : a brave new world of arbitration 3 . Arbitration in the DIFC. *Arbitration*, *75*(3), 422–424.

Born, G.B., 2001. International Commercial Arbitration 2nd ed. G. B. Born, ed., CN the Hague: Kluwer Law International.

Brand, O., 2007. conceptual comparisons: towards a coherent methodology of comparative legal studies. 32 Brook. J. Int'l L, 32:2, p.405. Available at: http://heinonline.org.

Brandes, U., 2011. Research Methodology (for private circulation only). doi:10.1515/9783034610421.23.

Brown, M. & Lexis, A., 1996. An introduction to arbitration. Arbitration in Middle East.

Bryman, A., 2012. Social research methods 4th ed., NewYork: Oxford University Press.

Clarkson, C. M. V., Hill, J. & Jaffey, A.J.E., 2006. Jaffey on the conflict of laws. 3rd ed. Oxford: Oxford University Press.

Constitution, 2004. The Permanent Constitution of the State of Qatar. Available at: http://www.almeezan.qa/LawPage.aspx?id=2284&language=en [Accessed December 2, 2015].

Daf'allah, HA, 1997 Fundamentals of civil and commercial procedure. Doha, Qatar, Mannai Library.

Drahozal, C.R., 2010. Why do businesses use or not use arbitration clauses? [online] 25(2). Available from: http://kuscholarworks.ku.edu/dspace/bitstream/1808/7452/1/Why%20Do%20Businesses%20Use%20or%20Not%20Use%20Arbitration%20Clauses_JDR%20Vol.25%20No.2.pdf

Duck, S. & McMahan, D.T., 2012. The Basics of Communication: A Relational Perspective: Second Edition. SAGE Publications, p.472. Available at: http://www.sagepub.com/books/Book234083.

Dundas, H. & B. (2014). *Dundas & Bartos on the Arbitration (Scotland) Act 2010* (2nd ed.). Edinburgh: W. Green.

ElGhatit, M., 2014. Qatar Court of Cassation clarifies grounds for setting aside an arbitral award. Arblog, pp.3–4. Available at: http://www.hlarbitrationlaw.com/2014/04/qatar-court-of-cassation-clarifies-grounds-for-setting-aside-an-arbitral-award/.

El-Sharqawi, M. (2009). A comparison between the new Syrian Arbitration Law and the Egyptian Arbitration Law. *Arbitration Journal (Arabic Text Book)*, *3*(July), 129–197.

Finizio, S., And & Howitt, C., 2013. Meets Sharia. the middle east: international arbitration, (April), pp.49–52.

Gilbert, N., 2007. 2 Theory and method-RSL-2.0 - fulltext.pdf. Available at: http://epubs.surrey.ac.uk/1586/1/fulltext.pdf [Accessed November 24, 2015].

Goddard, W.& M., 2004. Research Methodology: An Introduction,

Haseesh, A, 2007 The judicial organization. Cairo, Modern Legal Library.

Hattab, D S, 1999 Studies in the Iraqi Procedures Act. Baghdad, Baghdad Press.

Karrar, R. & L. (2011). Legislative Comment Revolution in Bahrain - Decree No . 30 of 2009 and the world ' s first arbitration freezone. *International Arbitration Law Review*, *14*(3), 80–89.

Khatchadourian, D.M., 2012. Comments on the Qatari Supreme Court Ruling of 12 June 2012. Mejallet El-Tahkim El-Alameya, 15(July), p.485.

LLP, L., 2014. Doing Business in Qatar, pp.1–21. Available at: http://www.lw.com/thoughtLeadership/doing-business-in-qatar.

Luscombe, S. (2015). British Empire: Middle East: Qatar. Retrieved November

23, 2015, from http://www.britishempire.co.uk/maproom/qatar.htm

Maita, A., 2013. Development of a Commercial Arbitration Hub in the Middle East: Case Study -- The State of Qatar. Theses and Dissertations. Available at: http://digitalcommons.law.ggu.edu/theses/36\nhttp://digitalcommons.law.ggu.edu/theses/36/.

Mazirow, A, 2008. <br />The advantages and disadvantages of arbitration <br />as compared to litigation. [online] Available from: www.cre.org/.../The_Advantages_And_Disadvantages_of_Arbitration_As_Compared_to_Litigation_2_Mazirow.pdf - [Accessed April 13, 2008]

McCrudden, C., 2006. Legal Research and the Social Sciences. The Law Quarterly Review, 122(3), pp.632–650.

Mills, M., 2006. Comparative Research: Persistent Problems and Promising Solutions. International Sociology, 21(5), pp.619–631. Available at: http://iss.sagepub.com/cgi/doi/10.1177/0268580906067833 [Accessed January 31, 2013].

Musgrove, R., 2012. QICDRC eyes Islamic finance jurisdiction. Gulf times, p.31.

Norton Rose Group, July 2008. Arbitration in the Middle East Norton Rose Group Middle East, Qatar. Middle East: Norton Rose Group.

Oxford, D., 2015. scope - definition of scope in English from the Oxford dictionary. Available at: http://www.oxforddictionaries.com/definition/english/scope [Accessed December 15, 2015].

Quran, 1987. the Holy Quran (Koran), pp.1–329. Available at: http://www.streathammosque.org/uploads/quran/english-quran-yusuf-ali.pdf.

Qushayri, A.S., 2009. "Cairo Court of Appeal—Seventh Department—Economic—suits 61 and 147/124." Mejallet El-Tahkim El-Alameya, 3(July), p.537.

Rajasekar, S., Philominathan, P. & Chinnathambi, V., 2006. Research Methodology. The Journal of Mathematical Behavior, 13(2), p.239.

Redfern, A. & Hunter, M 2004. Law & Practice of ICA. 4th ed. ed. Thomson Sweet & Maxwell.

Roberts, P., 2004. Gas and LNG sales and transportation agreements: Principles and Practice 4th ed., London: Sweet & Maxwell.

Saleh, S., 2009. The Recognition and Enforcement of Foreign Arbitral Awards in the States of the Arab Middle East Author (s): Samir Saleh Source: Arab Law Quarterly, Vol. 1, No. 1 (Nov., 1985), pp. 19-31 Published by: BRILL Stable URL: http://www.jstor.org/st., 1(1), pp.19–31.

Sharar, Z., 2011. Does Qatar Need to Reform Its Arbitration Law and to Adopt the UNCITRAL Model Law for Arbitration? A Comparative Analysis. The Legal & Judicial Journal-Ministry of Justice-State of Qatar, 2, pp.3–38.

Sheta, A., 2009. GCC Unified Arbitration Draft Law (Arabic Text). Arbitration Journal (Arabic Text Book), 1(January), pp.35 – 37.

Sklenyte, A., 2003. International Arbitration: the Doctrine of Separability and Competence-Competence. The Aarhus School of Business.

Stovall, H.L., 2010. Arbitration and the Arab Middle East: Some Thoughts from a Commercial Lawyer.

Webley, L. (2013). Research Methodologies: PhD research, questions and methods. How to get PhD in Law, Day2, 16/3/2013. London: Institute of Advanced Legal Studies, School of Advanced Study, University of London.

Xanthaki, H. (2013). Comparative research methods, How to get PhD in Law, Day2, 16/3/2013. London: Institute of Advanced Legal Studies, School of Advanced Study, University of London.

**Statues**

Arbitration Act 1996, England. Available at: http://www.legislation.gov.uk/ukpga/1996/23/data.pdf.

Arbitration (Scotland) Act 2010.

Article 1 of Law 12 of 2005, regarding cases and procedures to challenge abrogation in non-criminal terms.

Article 2 of Law 13 of 1971 (the repealed law of the courts of justice).

Article 4 of the Judicial Authority Law No. 10 of 2003.

Article 4 of the New Attorneys' Law No. 23 of 2006.

Article 5 of the New Attorneys' Law No. 23 of 2006.

Article 6/1 of the Judicial Authority Law No. 10 of 2003.

Article 6/2 of the Judicial Authority Law No. 10 of 2003. Article 10 of the Judicial Authority Law No. 10 of 2003.

Article 7 of the New Attorneys' Law No. 23 of 2006.

Article 8 of Law No.10 of 2003.

Article 9 of the Judicial Authority Law No. 10 of 2003.

Article 9 of the New Attorneys' Law No. 23 of 2006.

Article 11/1 of the Judicial Authority Law No. 10 of 2003.

Article 11/2 of the Judicial Authority Law No. 10 of 2003.

Article 12 of the Judicial Authority Law No. 10 of 2003.

Article 13 of the Judicial Authority Law No. 10 of 2003.

Articles 17-21 of the Judicial Authority Law No. 10 of 2003.

Article 23 of the Judicial Authority Law No. 10 of 2003.

Article 24 of Law No. 13 of 2005.

Article 77 of Law No.10 of 2003.

Article 117 of the Civil and Commercial Procedure Code.

Article 118 of the Civil and Commercial Procedure Code.

Article 129 of the Permanent Constitution of the State 2004.

Article 130 of the Permanent Constitution of the State 2004.

Article 131 of the Permanent Constitution of the State 2004.

Article 135 of the Permanent Constitution of the State 2004.

Article 379 of the Civil and Commercial Procedure Code of Qatar, the third book (implementation).

Chapters seventeen, twelve and the twenty-three of the penalties Law of Qatar No. 14 of 1971.

Civil and Commercial Procedure Law - Law No. 13 of 1990. Available at: http://www.almeezan.qa/LawView.aspx?opt&LawID=2492&language=en [Accessed November 9, 2015].( Almeezan, 2015.)

Civil and Commercial Procedures Code, the Law No.13 of 1968 (Egypt,1968).

Convention on the Recognition and Enforcement of Foreign Arbitral Awards done in New York on 10 June 1958., (June).

Emiri Decree No.: 29 of 2003 by virtue of which Qatar acceded to the Convention on the Recognition & Enforcement of Foreign Arbitral Awards (New York, 1958). (2003). Qatar.

First article of the general provisions of the Civil and Commercial.

First article of the new Attorneys' Law No. 23 of 2006.

GCCAC, 1993. مركز التحكيم التجاري - النظام الأساسي. Available at: http://www.gcac.biz/new/catalog.php?catid=23 [Accessed November 9, 2015].

ICC Arbitration Mediation Rules,

Judicial Authorities. Available at: http://www.almeezan.qa/CustomPage.aspx?id=32&language=en [Accessed November 9, 2015].( Almeezan, 2015a.)

Law No. 4 of 1962, the establishment of the Labour Court.

Law No. 5 of 1962 for the litigation proceedings of the Labour Court.

Law No. 8 of 1962 on the judicial fees of the Labour Court.

Law of judicial fees No. 5 of 1962.

Law (4) 1963 and its Implementation Decree No.1 of February 16, 1963, modified by Law (11) 1990., Qatar.

Law No. 19 of 1969 establishing the Court of Municipality affairs of Qatar.

Law No. 12 of 1970 establishing the Criminal Court of Qatar.

Law No. 13 of 1971 on the System of the Courts of Justice). Available at: http://www.almeezan.qa/LawPage.aspx?id=2498&language=en [Accessed November 24, 2015].

Law (14), 1971. الميزان - البوابة القانونية القطرية :: التشريعات :: قانون رقم (14) لسنة 1971 بإصدار قانون عقوبات قطر. Available at: http://www.almeezan.qa/LawPage.aspx?id=2505&language=ar [Accessed December 2, 2015].

Law No. 15 of 1971 for the issuance of the Amended Criminal Procedure Law. الميزان - البوابة القانونية القطرية :: التشريعات :: قانون رقم (15) لسنة 1971 بإصدار قانون الإجراءات الجنائية. Available at: http://www.almeezan.qa/LawPage.aspx?id=102&language=ar [Accessed December 2, 2015].

Law No.18 of 08/25/1971.

Law No. 18 of 1978, the establishment of the Traffic Court.

Law No. 8 of 1985.

Law No. 6 of 1999.

Law No. 12 of 2005 on Procedures in Non-penal Cassation Appeals. Available at: http://www.almeezan.qa/LawPage.aspx?id=3955&language=en [Accessed December 2, 2015].

Law (13), 2005. الميزان - البوابة القانونية القطرية :: التشريعات :: قانون رقم (13) لسنة 2005 بتعديل بعض أحكام قانون المرافعات المدنية والتجارية الصادر بالقانون رقم (13) لسنة 1990. Available at: http://www.almeezan.qa/LawPage.aspx?id=56&language=ar [Accessed December 2, 2015].

Law no (22) of 2004 Regarding Promulgating the Civil Code. Available at: http://www.almeezan.qa/LawView.aspx?opt&LawID=2559&language=en [Accessed November 9, 2015].( Almeezan, 2015c.)

Law (23) for year 2006 regarding Enacting the code of law practice. Available at: http://www.almeezan.qa/LawPage.aspx?id=2563&language=en [Accessed December 2, 2015].

Law No. 27 / 1994 Promulgating the Law Concerning Arbitration in Civil Law Concerning Arbitration in Civil and Commercial Matters, Egypt.

LCIA Arbitration Rules, Available at: http://www.lcia.org/Dispute_Resolution_Services/lcia-arbitration-rules-2014.aspx.

New Attorneys' Law No. 23 of 2006.

Palestinian Arbitration Law, Palestine (2000).

Procedures Act No. 4 of 1962.

QFC_Law_No_14_of_2009. (QFC, 2009a.)

QFC_Law_No.2/2009, Qatar. (QFC, 2009b.)

QFC Draft Law. (QFC, 2015.)

Qatar Financial Centre law, Qatar, 2005.

QFC arbitration regulations, 2006.

Qatar set of laws, Volume VI 1962.

Riyadh Convention on Judicial Cooperation, and the implementation of judgments Treaty, and letters rogatory in the Gulf Cooperation Council (GCC), publications of the General Secretariat of the Gulf Cooperation Council (GCC), 2002.

State Council's decision, the first of November 1926 French Dallowes Group 02/25/1927.

The Draft of the GCC Unified Arbitration Law in Civil and Commercial Subjects (Arabic Text). Arbitration Journal (Arabic Text Book), 1(January), pp.701 – 720.

The explanatory memorandum to Law No. 1 of 1963 amending laws 3-4 for the year 1962, relating to labour law and the establishment of the Labour Court Act, set of laws Qatar 1963. Volume VII.

The Permanent Constitution of the State of Qatar, 2004. Retrieved December 2, 2015, from http://www.almeezan.qa/LawPage.aspx?id=2284&language=en

UNCITRAL Model Law on International Commercial Arbitration with amendments as adopted in 2006

**Cases**

Qatari Court of Appeal, judgment No.: 145/94, dated on: 1/4/1997, Judgment, 1997a.

Qatari Court of Appeal, judgment No.5/97 dated on 25/11/1997, Judgment, 1997b.

Qatari Court of Appeal, judgment No.: 170+171/99 dated on 4/12/1999, Judgment, 1999.

State of the UP v Satish [2010] QICCA Civ. 1245/2010 QCR., QICCA, 2010.

Qatari Court of Appeal, judgment No.: 145/94, dated on: 1/4/1997, (1997), Judgment.

Qatari legal Portal | Legislations and Decrees and Decisions | Court of Cassation Rulings | Legal Advisory Opinions and Desciplinary Measures | Legal References | Official Journal from Ministry of Justice. Available at: http://www.almeezan.qa/default.aspx?language=en [Accessed November 9, 2015]. Rule, 2012. Al Meezan

State of the UP v Satish [2010] QICCA Civ. 1245/2010 QCR. (2010). QICCA.

**Websites**

Amiri Dewan, Doha, Qatar, Online, Qatar, viewed 12 September 2012 <http://www.diwan.gov.qa/english/main_page_english.htm>.

Ministry of Foreign Affairs, n.d., Title of publication, Online, Ministry of Foreign Affairs of Qatar, Online, Viewed 12 September 2012, <http,//english.mofa.gov.qa/index.cfm>.

Ministry of Justice n.d., Title of publication, Online, Ministry of Justice of Qatar, online, Viewed 12 September 2012, <http,//english.mofa.gov.qa/index.cfm>.

QFC, 2013. QFC. Available at: http://www.qfc.qa/Pages/qfc-home.aspx [Accessed November 9, 2015].

QICDRC, 2014. Qatar International Court and Dispute Resolution Centre. Available at: http://www.qicdrc.com.qa/ [Accessed November 9, 2015].

Qatar Chamber, Q., 2012. About QICCA | Qatar Chamber. Available at: http://qatarchamber.com/1505 [Accessed November 9, 2015].

UNCITRAL. (2016). Status Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958). Retrieved January 29, 2016, from http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html

United Nations Conference on Trade and Development, Dispute Settlement. International Commercial Arbitration, 5.7 Recognition and Enforcement of Arbitral Awards: The New York Convention. UNCTAD/EDM/Misc.232/Add.37. United Nations. pp. p.3. 2003

# Bibliography

Abdel Wahab, M. (2008). International commercial arbitration and constitutional court review : contemporary trends and national policies. *International Arbitration Law Review*, *11*(3), 118–123.

Ad-fadhel, F. (2009). Recognition and enforcement of arbitral awards under current Saudi arbitration law. *CMS Guide to Arbitration*, *30*(8), 249–256.

Aitkin, N. (2004). Oil , Gas & Energy Law Intelligence. *Gas and Oil*, *2*(1).

Al-ghadyan, A. (1997). The changing phases of arbitration in Saudi Arabia. *Arbitration*, *63*(2), 130–134.

Al-Obaidli, J. (2015). The role of arbitration in completion the infrastructure projects in qatar. *The Universal Journal of Arbitration (Arabic Text)*, *28*(October), 131–148.

Al-rimawi, L. M. (2011). Relevance of Sharia as a legislative source in a modern Arab legal context : a brief constitutional synopsis with emphasis on selected commercial aspects. *Comp. Law*, *32*(2), 57–64.

Barrett, U. M., & Update, L. (2012). Westlaw Gulf - Summary Page Sharia Law and its application to International Arbitration. *Al-Tamimi & Company*, (8), 7–11.

Blair, M., Orchard, J., & Arab, U. (2005). Journal of International Banking Law and Regulation Legal issues arising in the new Dubai International Financial Centre. *J.I.B.L.R.*, *20*(5), 207–215.

Blanke, G. (2009). The DIFC : a brave new world of arbitration. *Arbitration*, *75*(3), 422–424.

Bonnell, M. (2008). International Arbitration Law Review When is an arbitration agreement " inoperative "? *International Arbitration Law Review*, *11*(3),

111–117.

Cossio, M. L. T., Giesen, L. F., Araya, G., Pérez-Cotapos, M. L. S., VERGARA, R. L., Manca, M., … Héritier, F. (2012). No Title No Title. *Uma Ética Para Quantos?*, *XXXIII*(2), 81–87. http://doi.org/10.1007/s13398-014-0173-7.2

Cottage, S. (2010). The A rbitration ( Scotland ) A ct 2010 : Converting Vision into Reality Reprinted from.

Dingwall, J. (2010). International Arbitration in Scotland : A Bold , New Future, (4), 138–147.

Dundas, H. E. W. R. (2008). Confidentiality in English Arbitration : The Final Word ? Emmott v Michael Confidentiality in English Arbitration : The Final.

Dundas, H. R. (2004). Oil , Gas & Energy Law Intelligence. *Gas and Oil*, *2*(2).

Elshurafa, D. (2012). International Arbitration Law Review The 2012 Saudi Arbitration Law and the Sharia factor : a friend or foe in construction ? *International Arbitration Law Review*, *15*(4), 132–139.

England, U. K., Tweedale, J., & Dwyer, C. (2010). UK (England and Wales), 171–179.

English, T. (2011). Barristers from the Same Chambers Appearing as Counsel and Arbitrator : Independence Revisited ? Barristers from the Same Chambers Appearing as Counsel, (November).

Gillies, P. (2008). Forum non conveniens in the context of international commercial arbitration. *Arbitration*, *74*(1), 46–56.

Hassan, U., & Tahir, E. (2012a). Westlaw Gulf - Summary Page Document THE DIFC ARBITRATION LAW IN. *Al-Tamimi & Company*, (8), 1–5.

Hassan, U., & Tahir, E. (2012b). Westlaw Gulf - Summary Page Enforcing Foreign Judgments and Arbitral Awards. *Al-Tamimi & Company*, (September), 1–4.

Hassan, U., & Tahir, E. (2012c). Westlaw Gulf - Summary Page Methods of Dispute Resolution Series : *Al-Tamimi & Company*, (September), 1–4.

Hough, R. (2009). Arbitration ( Scotland ) Bill : Stage 3, (November).

Kantaria, S. (2012). International Arbitration Law Review The enforcement of domestic and foreign arbitral awards in the UAE under the Civil Procedure Code and proposed arbitration law. *International Arbitration Law Review*, *15*(2), 61–66.

Keyson, D. V, & Bruns, M. (n.d.). Empirical Research Through Design.

Lembo, S. (2010). THE 1996 UK A RBITRATION ACT AND THE UNCITRAL M ODEL L AW - A C ONTEMPORARY A NALYSIS -, (January), 2006–2009.

Leroy, M. H., Nolan, D., Malin, M., Hodges, A., Johnson, M., & Leroy, J. (2009). ARE ARBITRATORS ABOVE THE LAW ? THE " MANIFEST DISREGARD OF THE LAW " STANDARD, *349*(1854), 137–188.

Mistelis, L. A. (n.d.). PERVASIVE PROBLEMS IN International arbitration.

Murad, A. (1996). *Explanation of arbitration legislations (Arabic text)*. Cairo: Dar Al Nahda Al Arabia.

Not, S. (2011). Methodology in comparative studies, 136–137.

Pendell, B. G., & Bridge, D. (n.d.). ARBITRATION IN England and Wales. *CMS Guide to Arbitration*, *1*.

Qushayri, A. S. (2009). "Cairo Court of Appeal—Seventh Department—Economic—suits 61 and 147/124." *Mejallet El-Tahkim El-Alameya*, *3*(July), 537.

Rawach, E. (2006). Legislative Comment The law of arbitration in Saudi Arabia : reality and perceptions. *I.B.L.J*, *5*, 617–631.

Rees, H. (2010). A SEMINAR ON INTERNATIONAL COMMERCIAL, (May), 1–26.

Resolution, I. D. (2004). Oil, Gas & Energy Law Intelligence. *Gas and Oil*, *2*(4).

Sadah, M. A. (2010). Journal of International Trade Law & Policy International arbitration contract principles : analysis of Middle East perceptions. *J.I.T.L & P*, *9*(2), 148–174.

# Appendices

## Appendix A

Interviews

participant information leaflet

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ROBERT GORDON UNIVERSITY ABERDEEN

**PARTICIPANT INFORMATION**

**Research Team**


Robert Gordon University (RGU): Jassim Al-Obaidli

Margaret Downie

University of Aberdeen: Derek Auchie


**Title of Project**

Arbitration in Qatar

You are being invited to take part in a research study. Before you decide if you wish to take part, it is important for you to understand why the research is being undertaken and what it will involve. Please take time to read the following information carefully. Talk to others about the study if you wish.

Please feel free to ask me if there is anything that is not clear or if you would like more information. Take time to decide whether or not you wish to take part.

**What is the purpose of the study?**

The proposed research aims to identify appropriate methods of enhancing arbitration law and bodies in Qatar to match the International Standards, thus keeping it up to speed with the economic boom in Qatar.

### Study aim

This research will identify the impediments to arbitration in Qatar. In addition, the research will explore the reasons why foreign and domestic companies avoid selecting one of the existing arbitration centres in the State of Qatar as a tribunal to solve disputes that might arise between them in relation to their contracts. Moreover, the study will determine the reasons why they avoid choosing Qatari Law as the law, which governs the arbitration.

The result of this research will allow these issues to be avoided in the future and thereby improve the arbitration process and institutions, thus enabling arbitration in Qatar to meet international standards and to be more suited to the economic boom in Qatar.

### Why have I been chosen?

You have been chosen because you are a stakeholder in the arbitration system in Qatar. Stakeholders include lawmakers, lawyers and authorities' members. You therefore deal with arbitration and have experience of issues related to arbitration in Qatar and have an informed view of the problems and possible solutions.

### Do I have to take part?

No. It is up to you to decide whether or not to take part. If you do, you will be given this information sheet to keep and be asked to sign an informed

consent form. You are still free to withdraw at any time and without giving a reason.

### What will happen to me if I take part?

If you interested, you will be invited to take part in an interview of approximately 30 to 45 minutes with the researcher at either your office or anywhere you prefer, whichever is more convenient. The researcher will forward the list of questions for you before determining the interview's time. This to let you read the questions, prepare for the interview and give your approval. The interview will be audio recorded with your permission. The recording will be transcribed into a qualitative data software system to aid analysis. You will be provided with a transcript of the audio recording if requested and allowed to make any required amendments to the transcript.

Any information provided during the interview will be anonymous and confidential. Your name will not appear on the transcript or any report of the research, except with your express agreement. This information may be used anonymously in any publication or presentation of the study results.

### What do I have to do?

If you decide to take part in the study, you will be asked to sign an informed consent form and to take part in the interview as described above.

### What are the possible benefits of taking part?

There are no direct benefits to you by taking part in the study.

There may be benefits to the organisation in term of learning from your views and experiences of arbitration in Qatar. There are benefits to the system of arbitration in Qatar as a whole since the results of the research will influence the future development of the system.

### What if there is a problem?

Any complaint about the way you have been dealt with during the study will be addressed. If you have any complaints or would like further information about the study please contact:

Margaret Downie

Aberdeen Business School

The Robert Gordon University

Garthdee Road

Aberdeen AB10 7QE

Tel: (0)1224 263944

### Will my taking part in the study be kept confidential?

Yes.  All the information about your participation in this study will be kept confidential.  Any data relating to your participation will be stored securely at all times and can only be accessed by the researcher and supervisory team.

### You will be given a copy of the information sheet and a signed consent form to keep.

Thank you for taking time to read the information sheet and for considering taking part in this study.

Interview participant consent form

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ROBERT GORDON UNIVERSITY ABERDEEN

**CONSENT FORM**

| Title of Project<br><br>Arbitration in Qatar |
|---|


**Researcher**

Jassim Al-Obaidli

PhD Student

Robert Gordon University

UK

E-mail: j.alobaidli@rgu.ac.uk


Participant Study Number.....

| | Please INITIAL box |
|---|---|
| I confirm that I have read and understand the information sheet for the above study and have had the opportunity to ask questions. | ☐ |

| | |
|---|---|
| I understand that my participation is voluntary and that I am free to withdraw at any time, without giving reason. | ☐ |
| I agree to take part in the above study. | ☐ |
| I agree to the interview being audio recorded. | ☐ |
| I agree to my identity, including my (name), (position) and (organization) to be included in the research and any publications. | ☐ |
| I agree to the use of attributed quotes in publications. | ☐ |
| I agree to the use of anonymised quotes in publications. | ☐ |

| | | |
|---|---|---|
| _____ | _____ | _____ |
| Name of Participant | Date | Signature |
| | | |
| _____ | _____ | _____ |
| Name of Researcher | Date | Signature |

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ROBERT GORDON UNIVERSITY ABERDEEN

## SEMI-STRUCTURED INTERVIEW SCHEDULE

| Title of Project<br><br>Arbitration in Qatar |
|---|

| **Participant Number 1** | **Date**<br><br>**/ /** | **Start time**<br><br>**:** |
|---|---|---|

**Introduction**

Hello, thanks for agreeing to be interviewed for this project. Please, can I check you have read the participant information sheet?

If not, here is a copy to read before we begin.

The main purpose of this interview is to get knowledge about the current Arbitration Law and the New Draft of Arbitration Law.

Your participation is voluntary and you may withdraw at any point.

If you do not want to answer a specific question, then you have the right to decline to answer any question.

There are no right or wrong answers and I am interested in your personal opinions.

Your identity will remain strictly confidential and it will not be possible to identify individuals from the study results.

The interview should take approximately 30 to 45 minutes.

| | |
|---|---|
| **IF NO:** When would be more convenient?<br><br>Thank you I will see you on day/date/time at .....location. | Write the new day/date/time here and in the diary chart: |

**IF YES continue:** That's great, thank you.

## Housekeeping

As you are aware from the information sheet and consent form, this conversation is being audio recorded but I would emphasise that it is confidential. Do you consent to recording?

| | |
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| **IF NO:**<br><br>That's fine. I'll need a bit more time to write down notes as we go through the sections and I may ask you to repeat some answers so I don't miss anything. | Reminders<br><br>• Take time to write detailed notes<br>• If in doubt, ask the interviewee for clarification before you move on to the next section |

If you decide after the interview you no longer wish to be a part of the research, please let me know. The contact details are on the information sheet.

Do you have any questions before we begin?

**Technical problem? Keep calm!** Explain, apologise and rearrange interview day/date/time

| **Section one: General questions** | |
|---|---|
| The following questions will be addressed to all participants.<br><br>1. What are the advantages and disadvantages in the current law?<br>2. What are the issues in the current law?<br>3. Do you think that the Current Law itself has caused these issues or there are other issues?<br>4. Do you think that the law is the only reason that prevents international companies from arbitrating in Qatar?<br>5. How do you think the new law will change the practice of arbitration in Qatar?<br>6. What are the elements, which can improve arbitration in Qatar and attract International companies to arbitrate in Qatar? | |
| **Section two: Specific questions for the participant** | |

| | |
|---|---|
| 1. When will the New Act be issued and passed?<br>2. Have you released a draft of the Act so that experts can suggest revisions to it?<br>3. Will it follow the UNCITRAL Model Law?<br>4. Will it include mediation or is it just for Arbitration?<br>5. Have you take the latest revision of UNCITRAL Model Law into account, when you drafted the Bill of Arbitration Law?<br>6. Which countries laws have you considered?<br>7. Will the new Act solve all issues those issues, which are found in the current Arbitration Law? Especially with regard to the language public policy?<br>8. The new law repealed the articles from 190 to 210 of the first book of the Civil and Commercial Procedure Code, but it did not mention articles 379 to 383 of the third chapter of the third book of the same law, concerning the implementation of the official foreign judgments and orders. What effect do you think this will | |

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| have on implementation of the law regulating foreign orders?<br>9. According to the new draft law, any institutional arbitration, which is held in Qatar, is an international arbitration. On the other hand, in some specific circumstances, some add-hoc arbitrations, which might be held out with Qatar, can be count as non- international arbitration. Is this not inconsistent?<br>10. With regard to hand over written letters or announcements, according to the new law, e-mail is considered as received on the date, which has been sent in it, if no automated message stating an error in the transmitter has been received. Do you think this is a secure method of dealing with these?<br>11. With regard to the formation of the arbitral tribunal, Article 10 of the new law does not state that the arbitral tribunal should be formed of an odd number of arbitrators. What do you think the impact of this will be and what is the method for | |

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| adoption of a decision on the other if the vote was split in half?<br><br>12. Chapter 6 of the new law still uses the term decision instead of award. What impact will that have? Do you think that will keep the effect of the ruling of the Court of Cassation on the Appeal No. 64/2012 over any arbitral award, which would be issued in Qatar?<br><br>13. The law did not take the confidentiality in its account. Why do you think that was? And what impact will it have?<br><br>14. Also, it does not state the procedures, which should be followed if the arbitral award may affect a third party. What will the impact of this omission be?<br><br>15. The Draft contains terms about after arbitration- mediation, however; it does not contain terms about mediation, which comes before arbitration. Is there a special Act for mediation? | |

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| Well that's all of my questions. You've been very helpful and I appreciate you taking the time to speak to me. If you think of anything else you would like to add, please get in touch.<br><br>If you would like to see a copy of the transcript from the interview, please let me know and I will arrange for this to be supplied to you.<br><br>Thank you very much. | **Transcript Y/N**<br><br>**Interview concluded at:**<br><br>**:** |

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ROBERT GORDON UNIVERSITY ABERDEEN

**SEMI-STRUCTURED INTERVIEW SCHEDULE**

| Title of Project<br><br>Arbitration in Qatar |
|---|

| **Participant Number 2** | **Date**<br><br>**/ /** | **Start time**<br><br>**:** |
|---|---|---|

**Introduction**

Hello, thanks for agreeing to be interviewed for this project. Please, can I check you have read the participant information sheet?

If not, here is a copy to read before we begin.

The main purpose of this interview is to get knowledge about Qatar Financial Centre overall.

Your participation is voluntary and you may withdraw at any point.

If you do not want to answer a specific question, then you have the right to decline to answer any question.

There are no right or wrong answers and I am interested in your personal opinions.

Your identity will remain strictly confidential and it will not be possible to identify individuals from the study results.

The interview should take approximately 30 to 45 minutes.

| | |
|---|---|
| **IF NO:** When would be more convenient?<br><br>Thank you I will see you on day/date/time at .....location. | Write the new day/date/time here and in the diary chart: |

**IF YES continue:** That's great, thank you.

## Housekeeping

As you are aware from the information sheet and consent form, this conversation is being audio recorded but I would emphasise that it is confidential. Do you consent to recording?

| | |
|---|---|
| **IF NO:**<br><br>That's fine. I'll need a bit more time to write down notes as we go through the sections and I may ask you to repeat some answers so I don't miss anything. | Reminders<br><br>• Take time to write detailed notes<br>• If in doubt, ask the interviewee for clarification before you move on to the next section |

If you decide after the interview you no longer wish to be a part of the research, please let me know. The contact details are on the information sheet.

Do you have any questions before we begin?

**Technical problem? Keep calm!** Explain, apologise and rearrange interview day/date/time

| **Section one: General questions** | |
|---|---|
| The following questions will be addressed to all participants.<br>1. What are the advantages and disadvantages in the current law?<br>2. What are the issues in the current law?<br>3. Do you think that the Current Law itself has caused these issues or there are other issues?<br>4. Do you think that the law is the only reason that prevents international companies from arbitrating in Qatar?<br>5. How do you think the new law will change the practice of arbitration in Qatar?<br>6. What are the elements, which can improve arbitration in Qatar and attract International companies to arbitrate in Qatar?<br>7. Do you think the New Bill treat these issues? Especially with regard to the language and public policy? | |

| **Section two: Specific questions for the participant** | |
|---|---|
| 1. What is the nature of QFC?<br>2. What are the objectives of the QFC Authority?<br>3. What are the regulations and procedural rules of QFC Civil and Commercial Court?<br>4. What is the QFC Centre Regulatory Tribunal? And what are the regulations and procedural rules of it?<br>5. How does the QFC interact with other laws?<br>6. What are the methods of enforcement of the awards of QFC Centre Regulatory Tribunal?<br>7. How does it deal with NYC?<br>8. Through my reading about the QFC Regulation, I found that the regulation silent about confidence would the new Bill tackle this issue? | |
| Well that's all of my questions. You've been very helpful and I appreciate you taking the time to speak to me. If you think of anything else you would like to add, please get in touch.<br>If you would like to see a copy of the transcript from the interview, please let me know and I will arrange for this to be supplied to you.<br>Thank you very much. | **Transcript Y/N**<br>**Interview concluded at:**<br>**:** |

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**SEMI-STRUCTURED INTERVIEW SCHEDULE**

| Title of Project<br><br>Arbitration in Qatar |
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| **Participant Number 3** | **Date**<br><br>**/ /** | **Start time**<br><br>**:** |
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**Introduction**

Hello, thanks for agreeing to be interviewed for this project. Please, can I check you have read the participant information sheet?

If not, here is a copy to read before we begin.

The main purpose of this interview is to get knowledge about Qatar International Arbitration Centre since you become a secretary-general of the centre.

Your participation is voluntary and you may withdraw at any point.

If you do not want to answer a specific question, then you have the right to decline to answer any question.

There are no right or wrong answers and I am interested in your personal opinions.

Your identity will remain strictly confidential and it will not be possible to identify individuals from the study results.

The interview should take approximately 30 to 45 minutes.

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|---|---|
| **IF NO:** When would be more convenient?<br><br>Thank you I will see you on day/date/time at .....location. | Write the new day/date/time here and in the diary chart: |

**IF YES continue:** That's great, thank you.

**Housekeeping**

As you are aware from the information sheet and consent form, this conversation is being audio recorded but I would emphasise that it is confidential. Do you consent to recording?

| | |
|---|---|
| **IF NO:**<br><br>That's fine. I'll need a bit more time to write down notes as we go | Reminders<br><br>• Take time to write detailed notes |

| | |
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| through the sections and I may ask you to repeat some answers so I don't miss anything. | • If in doubt, ask the interviewee for clarification before you move on to the next section |

If you decide after the interview you no longer wish to be a part of the research, please let me know. The contact details are on the information sheet.

Do you have any questions before we begin?

**Technical problem? Keep calm!** Explain, apologise and rearrange interview day/date/time

| **Section one: General questions** | |
|---|---|
| The following questions will be addressed to all participants.<br>1. What are the advantages and disadvantages in the current law?<br>2. What are the issues in the current law?<br>3. Do you think that the Current Law itself has caused these issues or there are other issues?<br>4. Do you think that the law is the only reason that prevents international companies from arbitrating in Qatar?<br>5. How do you think the new law will change the practice of arbitration in Qatar?<br>6. What are the elements, which can improve arbitration in Qatar and attract | |

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| International companies to arbitrate in Qatar? | |
| **Section two: Specific questions for the participant** | |
| 1. What did you add to the Centre?<br>2. How do you treat the previous issues and how can they be avoided?<br>3. What procedures of Arbitration do they use?<br>4. What is the standard clause, which they follow?<br>5. What is the language for the proceedings?<br>6. How are the awards enforced?<br>7. How many awards have been enforced and how many awards have been challenged and refused? And why?<br>8. How is the current Arbitration Law enforced in their awards? Or how are awards enforced under current law?<br>9. Will the new Act solve all the issues, which are found in the current Arbitration Law, especially with regard to the language and public policy? | |

| | |
|---|---|
| 10. How does the ruling of the Court of Cassation on the Appeal No. 64/2012 affect on QICCA arbitral awards?<br>11. From your view, what are the factors behind this ruling?<br>12. How do you solve this issue?<br>13. Do you think the solution is efficient or it will cause new issues?<br>14. Will the new Bill treat this issue? If yes, how? | |
| Well that's all of my questions. You've been very helpful and I appreciate you taking the time to speak to me. If you think of anything else you would like to add, please get in touch.<br>If you would like to see a copy of the transcript from the interview, please let me know and I will arrange for this to be supplied to you.<br>Thank you very much. | **Transcript Y/N**<br>**Interview concluded at:**<br>**:** |

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ROBERT GORDON UNIVERSITY ABERDEEN

## SEMI-STRUCTURED INTERVIEW SCHEDULE

| Title of Project<br><br>Arbitration in Qatar |
|---|

| **Participant Number 4** | **Date**<br><br>**/ /** | **Start time**<br><br>**:** |
|---|---|---|

**Introduction**

Hello, thanks for agreeing to be interviewed for this project. Please, can I check you have read the participant information sheet?

If not, here is a copy to read before we begin.

The main purpose of this interview is to get knowledge about Qatar Financial Centre overall.

Your participation is voluntary and you may withdraw at any point.

If you do not want to answer a specific question, then you have the right to decline to answer any question.

There are no right or wrong answers and I am interested in your personal opinions.

Your identity will remain strictly confidential and it will not be possible to identify individuals from the study results.

The interview should take approximately 30 to 45 minutes.

| | |
|---|---|
| **IF NO:** When would be more convenient?<br><br>Thank you I will see you on day/date/time at .....location. | Write the new day/date/time here and in the diary chart: |

**IF YES continue:** That's great, thank you.

## Housekeeping

As you are aware from the information sheet and consent form, this conversation is being audio recorded but I would emphasise that it is confidential. Do you consent to recording?

| | |
|---|---|
| **IF NO:**<br><br>That's fine. I'll need a bit more time to write down notes as we go through the sections and I may ask you to repeat some answers so I don't miss anything. | Reminders<br><br>• Take time to write detailed notes<br>• If in doubt, ask the interviewee for clarification before you move on to the next section |

If you decide after the interview you no longer wish to be a part of the research, please let me know. The contact details are on the information sheet.

Do you have any questions before we begin?

**Technical problem? Keep calm!** Explain, apologise and rearrange interview day/date/time

| **Section one: General questions** | |
|---|---|
| The following questions will be addressed to all participants.<br>1. What are the advantages and disadvantages in the current law?<br>2. What are the issues in the current law?<br>3. Do you think that the Current Law itself has caused these issues or there are other issues?<br>4. Do you think that the law is the lonely reason that prevents international companies from arbitrates in Qatar?<br>5. How do you think the new law will change the practice of arbitration in Qatar?<br>6. What are the elements, which can improve arbitration in Qatar and attract International companies to arbitrate in Qatar? | -Do you think the New Bill treat these issues? Especially with regard to the language and public policy? |

| **Section two: Specific questions for the participant** | |
|---|---|
| 1. What is the nature of QFC?<br>2. What are the objectives of the QFC Authority?<br>3. What are the regulations and procedural rules of QFC Civil and Commercial Court?<br>4. What is the QFC Centre Regulatory Tribunal? And what are the regulations and procedural rules of it?<br>5. How does the QFC interact with other laws?<br>6. How to enforce the award of QFC Centre Regulatory Tribunal?<br>7. How does it deal with NYC? | -Through my reading about the QFC Regulation, I found that the regulation silent about confidence, will the new Bill treat this issue? |
| Well that's all of my questions. You've been very helpful and I appreciate you taking the time to speak to me. If you think of anything else you would like to add, please get in touch.<br>If you would like to see a copy of the transcript from the interview, please let me know and I will arrange for this to be supplied to you.<br>Thank you very much. | **Transcript Y/N**<br>**Interview concluded at:**<br>**:** |

## SEMI-STRUCTURED INTERVIEW SCHEDULE

| Title of Project<br><br>Arbitration in Qatar |
|---|

| **Participant Number 5** | **Date**<br><br>**/ /** | **Start time**<br><br>**:** |
|---|---|---|

**Introduction**

Hello, thanks for agreeing to be interviewed for this project. Please, can I check you have read the participant information sheet?

If not, here is a copy to read before we begin.

The main purpose of this interview is to get knowledge about the practice of arbitration in Qatar.

Your participation is voluntary and you may withdraw at any point.

If you do not want to answer a specific question, then you have the right to decline to answer any question.

There are no right or wrong answers and I am interested in your personal opinions.

Your identity will remain strictly confidential and it will not be possible to identify individuals from the study results.

The interview should take approximately 30 to 45 minutes.

| | |
|---|---|
| **IF NO:** When would be more convenient?<br><br>Thank you I will see you on day/date/time at .....location. | Write the new day/date/time here and in the diary chart: |

**IF YES continue:** That's great, thank you.

## Housekeeping

As you are aware from the information sheet and consent form, this conversation is being audio recorded but I would emphasise that it is confidential. Do you consent to recording?

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|---|---|
| **IF NO:**<br><br>That's fine. I'll need a bit more time to write down notes as we go through the sections and I may ask you to repeat some answers so I don't miss anything. | Reminders<br><br>• Take time to write detailed notes<br>• If in doubt, ask the interviewee for clarification before you move on to the next section |

If you decide after the interview you no longer wish to be a part of the research, please let me know. The contact details are on the information sheet.

Do you have any questions before we begin?

**Technical problem? Keep calm!** Explain, apologise and rearrange interview day/date/time

| **Section one: General questions** | |
|---|---|
| The following questions will be addressed to all participants.<br>1. What are the advantages and disadvantages in the current law?<br>2. What are the issues in the current law?<br>3. Do you think that the Current Law itself has caused these issues or there are other issues?<br>4. Do you think that the law is the only reason that prevents international companies from arbitrating in Qatar?<br>5. How do you think the new law will change the practice of arbitration in Qatar?<br>6. What are the elements, which can improve arbitration in Qatar and attract International companies to arbitrate in Qatar? | |
| **Section two: Specific questions for the participant** | |
| 1. Did the Commission drafting committee of the new Bill of Arbitration Act expose the Bill for you to take your feed back on it?<br>2. Have you read the new Bill of Law? If yes, what are your comments on it? | |

| | |
|---|---|
| 3. What, in your opinion, is the difference between arbitration practice in Qatar and England?<br>4. Which are preferable ICC, LCIA, QIAC and QFC?<br>5. Why ICC and LCIA are more preferable than QIAC and QFC? (or vice versa)<br>6. As you know, the Scottish Arbitration Act is more compliant with the UNCITRAL Model Law than the English one because it is more recent than the English one. Do you think this will lead parties to prefer using the Scottish one rather than the English one? And why?<br>7. How does the ruling of the Court of Cassation on the Appeal No. 64/2012 affect enforcement of arbitral awards? From your view, what are the factors behind this ruling?<br>8. What are the elements, which can improve arbitration in Qatar and attract International companies to arbitrate in Qatar? | |

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|---|---|
| Well that's all of my questions. You've been very helpful and I appreciate you taking the time to speak to me. If you think of anything else you would like to add, please get in touch.<br><br>If you would like to see a copy of the transcript from the interview, please let me know and I will arrange for this to be supplied to you.<br><br>Thank you very much. | **Transcript Y/N**<br><br>**Interview concluded at:**<br><br>**:** |

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**SEMI-STRUCTURED INTERVIEW SCHEDULE**

| Title of Project<br><br>Arbitration in Qatar |
|---|

| **Participant Number 6** | **Date**<br><br>**/ /** | **Start time**<br><br>**:** |
|---|---|---|

**Introduction**

Hello, thanks for agreeing to be interviewed for this project. Please, can I check you have read the participant information sheet?

If not, here is a copy to read before we begin.

The main purpose of this interview is to get knowledge about the current Arbitration Law and the New Draft of Arbitration Law.

Your participation is voluntary and you may withdraw at any point.

If you do not want to answer a specific question, then you have the right to decline to answer any question.

There are no right or wrong answers and I am interested in your personal opinions.

Your identity will remain strictly confidential and it will not be possible to identify individuals from the study results.

The interview should take approximately 30 to 45 minutes.

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| **IF NO:** When would be more convenient?<br><br>Thank you I will see you on day/date/time at .....location. | Write the new day/date/time here and in the diary chart: |

**IF YES continue:** That's great, thank you.

## Housekeeping

As you are aware from the information sheet and consent form, this conversation is being audio recorded but I would emphasise that it is confidential. Do you consent to recording?

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| **IF NO:**<br><br>That's fine. I'll need a bit more time to write down notes as we go through the sections and I may ask you to repeat some answers so I don't miss anything. | Reminders<br><br>• Take time to write detailed notes<br>• If in doubt, ask the interviewee for clarification before you move on to the next section |

If you decide after the interview you no longer wish to be a part of the research, please let me know. The contact details are on the information sheet.

Do you have any questions before we begin?

**Technical problem? Keep calm!** Explain, apologise and rearrange interview day/date/time

| **Section one: General questions** | |
|---|---|
| The following questions will be addressed to all participants.<br><br>1. What are the advantages and disadvantages in the current law?<br>2. What are the issues in the current law?<br>3. Do you think that the Current Law itself has caused these issues or there are other issues?<br>4. Do you think that the law is the only reason that prevents international companies from arbitrating in Qatar?<br>5. How do you think the new law will change the practice of arbitration in Qatar?<br>6. What are the factors, which can improve arbitration in Qatar and attract International companies to arbitrate in Qatar? | |

| **Section two: Specific questions for the participant** | |
|---|---|
| 1. As the Ministry of Justice is responsible Body of issuing the Laws in Qatar, Do you have an official English version of the Qatari's Laws?<br>2. The Federation of the GCC Chambers of Commerce and Industry had drafted a new law on a unified arbitration mechanism in the six States and presented it to the GCC Secretariat for approval. It is expected to replace the current Qatari State law concerning arbitration once it is enacted. How true is this? What is the destiny of the Uniform Code?<br>3. When will the New Act be issued and passed?<br>4. Have you created a web site for the Act to allow academics, lawyers and other experts to comment on it and suggest revisions?<br>5. Will it follow the UNCITRAL Model Law?<br>6. Did you take the latest revision of UNCITRAL Model Law into account, when you drafted the Bill of Arbitration Law? | |

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| 7. Did you consider other countries' laws or did you just follow the example of Egypt?<br>8. Will it include mediation or is it just for Arbitration?<br>9. Will the new Act solve all the issues, which are found in the current Arbitration Law, especially with regard to the language and public policy?<br>10. How does the new Bill deal with the issues, caused by the Ruling of the Court of Cassation on the Appeal No. 64/2012?<br>11. Until this new Act is enforced, what are the possible solutions to treat issues those caused by this Ruling? And is the Role of the Ministry of Justice toward them?<br>12. Who is the responsible Body for interpretation of Laws and the correction of misunderstanding and misapplication of them?<br>13. There are those who mentioned that some issues are referring to education. What is the role of the Judicial and Legal Studies Centre in solving these issues? In other words, does the Centre offer | |

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| courses for Judges, lawyers, and individuals about arbitration and the importance of it? | |
| Well that's all of my questions. You've been very helpful and I appreciate you taking the time to speak to me. If you think of anything else you would like to add, please get in touch.<br><br>If you would like to see a copy of the transcript from the interview, please let me know and I will arrange for this to be supplied to you.<br><br>Thank you very much. | **Transcript Y/N**<br><br>**Interview concluded at:**<br><br>**:** |

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## SEMI-STRUCTURED INTERVIEW SCHEDULE

| Title of Project<br><br>Arbitration in Qatar |
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| **Participant Number 7** | **Date**<br><br>**/ /** | **Start time**<br><br>**:** |
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**Introduction**

Hello, thanks for agreeing to be interviewed for this project. Please, can I check you have read the participant information sheet?

If not, here is a copy to read before we begin.

The main purpose of this interview is to get knowledge about the current Arbitration Law and the New Draft of Arbitration Law.

Your participation is voluntary and you may withdraw at any point.

If you do not want to answer a specific question, then you have the right to decline to answer any question.

There are no right or wrong answers and I am interested in your personal opinions.

Your identity will remain strictly confidential and it will not be possible to identify individuals from the study results.

The interview should take approximately 30 to 45 minutes.

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| **IF NO:** When would be more convenient?<br><br>Thank you I will see you on day/date/time at .....location. | Write the new day/date/time here and in the diary chart: |

**IF YES continue:** That's great, thank you.

## Housekeeping

As you are aware from the information sheet and consent form, this conversation is being audio recorded but I would emphasise that it is confidential. Do you consent to recording?

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| **IF NO:**<br><br>That's fine. I'll need a bit more time to write down notes as we go through the sections and I may ask you to repeat some answers so I don't miss anything. | Reminders<br><br>• Take time to write detailed notes<br>• If in doubt, ask the interviewee for clarification before you move on to the next section |

If you decide after the interview you no longer wish to be a part of the research, please let me know. The contact details are on the information sheet.

Do you have any questions before we begin?

**Technical problem? Keep calm!** Explain, apologise and rearrange interview day/date/time

| **Section one: General questions** | |
|---|---|
| The following questions will be addressed to all participants.<br><br>1. What are the advantages and disadvantages in the current law?<br>2. What are the issues in the current law?<br>3. Do you think that the Current Law itself has caused these issues or there are other issues?<br>4. Do you think that the law is the only reason that prevents international companies from arbitrating in Qatar?<br>5. How do you think the new law will change the practice of arbitration in Qatar?<br>6. What are the factors, which can improve arbitration in Qatar and attract International companies to arbitrate in Qatar? | |

| **Section two: Specific questions for the participant** | |
|---|---|
| 1. When will the New Act be issued and passed?<br>2. Have you created a web site for the Act to allow academics, lawyers and other experts to comment on it and suggest revisions?<br>3. Will it follow the UNCITRAL Model Law?<br>4. Did you take the latest revision of UNCITRAL Model Law into account, when you drafted the Bill of Arbitration Law?<br>5. Did you consider other countries' laws or you just follow the example of Egypt?<br>6. Will the new Act solve all the issues, which are found in the current Arbitration Law, especially with regard to the language and public policy?<br>7. How does the new Bill deal with the issues, caused by the Ruling of the Court of Cassation on the Appeal No. 64/2012?<br>8. Will it include mediation or is it will just for Arbitration?<br>9. The new law repealed the articles from 190 to 210 of the first book of the Civil and Commercial Procedure Code, but it | |

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| does not mention Articles 379 to 383 of the third chapter of the third book of the same law, concerning the implementation of the official foreign judgments and orders. Do you think that this issue results in duplication in the implementation of the law regulating foreign orders?<br><br>10. According to the new draft Law, any institutional arbitration, held in Qatar, is an international arbitration. On the other hand, in some specific circumstances, some add-hoc arbitrations, which might be held out with Qatar, can be counted as non- international arbitration. What are your views on this?<br>11. What do you think about the new provision about email submission of letters and announcements? Do you think it is secure?<br><br>12. With regard to the formation of the arbitral tribunal, Article 10 of the new law does not state that the arbitral tribunal | |

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| should be formed of an odd number of arbitrators. Why was that? What do you think the impact will be?<br><br>13. Chapter 6 of the new law repeats the use of the term (decision) instead of award. Do you think that the decision of the Court of Cassation over any arbitral award, which would be issued in Qatar, will continue to apply?<br><br>14. The law did not take confidentiality into account. Why do you think that was? And what impact will it have?<br><br>15. Why does the Bill not state the procedures, which should be followed if the arbitral award may affect a third party? And will that have an impact?<br><br>16. The Draft contains terms about after arbitration- mediation, however; it does not contain terms about mediation, which comes before arbitration. Is there a special Act for mediation? | |

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| 17. The Federation of the GCC Chambers of Commerce and Industry had drafted a new law on a unified arbitration mechanism in the six States and presented it to the GCC Secretariat for approval. It is expected to replace the current Qatari State law concerning arbitration once it is enacted. How true is this? What is the destiny of the Uniform Code? | |
| Well that's all of my questions. You've been very helpful and I appreciate you taking the time to speak to me. If you think of anything else you would like to add, please get in touch.<br>If you would like to see a copy of the transcript from the interview, please let me know and I will arrange for this to be supplied to you.<br>Thank you very much. | **Transcript Y/N**<br>**Interview concluded at:** **:** |

## SEMI-STRUCTURED INTERVIEW SCHEDULE

| Title of Project<br><br>Arbitration in Qatar |
|---|

| **Participant Number 8** | **Date**<br><br>**/ /** | **Start time**<br><br>**:** |
|---|---|---|

**Introduction**

Hello, thanks for agreeing to be interviewed for this project. Please, can I check you have read the participant information sheet?

If not, here is a copy to read before we begin.

The main purpose of this interview is to get knowledge about the practice of arbitration in Qatar.

Your participation is voluntary and you may withdraw at any point.

If you do not want to answer a specific question, then you have the right to decline to answer any question.

There are no right or wrong answers and I am interested in your personal opinions.

Your identity will remain strictly confidential and it will not be possible to identify individuals from the study results.

The interview should take approximately 30 to 45 minutes.

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| **IF NO:** When would be more convenient?<br><br>Thank you I will see you on day/date/time at .....location. | Write the new day/date/time here and in the diary chart: |

**IF YES continue:** That's great, thank you.

## Housekeeping

As you are aware from the information sheet and consent form, this conversation is being audio recorded but I would emphasise that it is confidential. Do you consent to recording?

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| **IF NO:**<br><br>That's fine. I'll need a bit more time to write down notes as we go through the sections and I may ask you to repeat some answers so I don't miss anything. | Reminders<br><br>• Take time to write detailed notes<br>• If in doubt, ask the interviewee for clarification before you move on to the next section |

If you decide after the interview you no longer wish to be a part of the research, please let me know. The contact details are on the information sheet.

Do you have any questions before we begin?

**Technical problem? Keep calm!** Explain, apologise and rearrange interview day/date/time

| **Section one: General questions** | |
|---|---|
| The following questions will be addressed to all participants.<br>1. What are the advantages and disadvantages in the current law?<br>2. What are the issues in the current law?<br>3. Do you think that the Current Law itself has caused these issues or there are other issues?<br>4. Do you think that the law is the only reason that prevents international companies from arbitrating in Qatar?<br>5. How do you think the new law will change the practice of arbitration in Qatar?<br>6. What are the factors, which can improve arbitration in Qatar and attract International companies to arbitrate in Qatar? | |
| **Section two: Specific questions for the participant** | |
| 1. Did the Commission drafting committee of the new Bill of Arbitration Act make the Bill available for the Qatari Law firms and lawyers to give feedback on it?<br>2. Have you read the new Bill of Law? If yes, what are your comments on it? | |

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|---|---|
| 3. What, in your opinion, is the difference between arbitration practice in Qatar and England?<br>4. Which are preferable ICC, LCIA, QIAC and QFC?<br>5. Why ICC and LCIA are more preferable than QIAC and QFC?(or vice versa)<br>6. As you know, the Scottish Arbitration Act is more compliant with the UNCITRAL Model Law than the English one because it is more recent than the English one. Do you think this will lead parties to prefer using the Scottish one rather than the English one? And why?<br>7. How does the ruling of the Court of Cassation on the Appeal No. 64/2012 affect enforcement of arbitral awards? From your view, what are the factors behind this ruling?<br>8. What are the elements, which can improve arbitration in Qatar and attract International companies to arbitrate in Qatar? | |

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| Well that's all of my questions. You've been very helpful and I appreciate you taking the time to speak to me. If you think of anything else you would like to add, please get in touch.<br><br>If you would like to see a copy of the transcript from the interview, please let me know and I will arrange for this to be supplied to you.<br><br>Thank you very much. | **Transcript Y/N**<br><br>**Interview concluded at:**<br><br>**:** |

## SEMI-STRUCTURED INTERVIEW SCHEDULE

| Title of Project<br><br>Arbitration in Qatar |
|---|

| **Participant Number 9** | **Date**<br><br>**/ /** | **Start time**<br><br>**:** |
|---|---|---|

**Introduction**

Hello, thanks for agreeing to be interviewed for this project. Please, can I check you have read the participant information sheet?

If not, here is a copy to read before we begin.

The main purpose of this interview is to get knowledge about the practice of arbitration in Qatar.

Your participation is voluntary and you may withdraw at any point.

If you do not want to answer a specific question, then you have the right to decline to answer any question.

There are no right or wrong answers and I am interested in your personal opinions.

Your identity will remain strictly confidential and it will not be possible to identify individuals from the study results.

The interview should take approximately 30 to 45 minutes.

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| **IF NO:** When would be more convenient?<br><br>Thank you I will see you on day/date/time at .....location. | Write the new day/date/time here and in the diary chart: |

**IF YES continue:** That's great, thank you.

## Housekeeping

As you are aware from the information sheet and consent form, this conversation is being audio recorded but I would emphasise that it is confidential. Do you consent to recording?

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|---|---|
| **IF NO:**<br><br>That's fine. I'll need a bit more time to write down notes as we go through the sections and I may ask you to repeat some answers so I don't miss anything. | Reminders<br><br>• Take time to write detailed notes<br>• If in doubt, ask the interviewee for clarification before you move on to the next section |

If you decide after the interview you no longer wish to be a part of the research, please let me know. The contact details are on the information sheet.

Do you have any questions before we begin?

**Technical problem? Keep calm!** Explain, apologise and rearrange interview day/date/time

| **Section one: General questions** | |
|---|---|
| The following questions will be addressed to all participants.<br>1. What are the advantages and disadvantages in the current law?<br>2. What are the issues in the current law?<br>3. Do you think that the Current Law itself has caused these issues or there are other issues?<br>4. Do you think that the law is the only reason that prevents international companies from arbitrating in Qatar?<br>5. How do you think the new law will change the practice of arbitration in Qatar?<br>6. What are the factors, which can improve arbitration in Qatar and attract International companies to arbitrate in Qatar? | |
| **Section two: Specific questions for the participant** | |
| 1. Did the Commission drafting committee of the new Bill of Arbitration Act make the Bill available for the Qatari Law firms and lawyers to give feedback on it? | |

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|---|---|
| 2. What, in your opinion, is the difference between arbitration practice in Qatar and England?<br>3. Which are preferable ICC, LCIA, QIAC and QFC?<br>4. Why ICC and LCIA are more preferable than QIAC and QFC?(or vice versa)<br>5. As you know, the Scottish Arbitration Act is more compliant with the UNCITRAL Model Law than the English one because it is more recent than the English one. Do you think this will lead parties to prefer using the Scottish one rather than the English one? And why?<br>6. How does the ruling of the Court of Cassation on the Appeal No. 64/2012 affect enforcement of arbitral awards? From your view, what are the factors behind this ruling?<br>7. What are the elements, which can improve arbitration in Qatar and attract International companies to arbitrate in Qatar? | |

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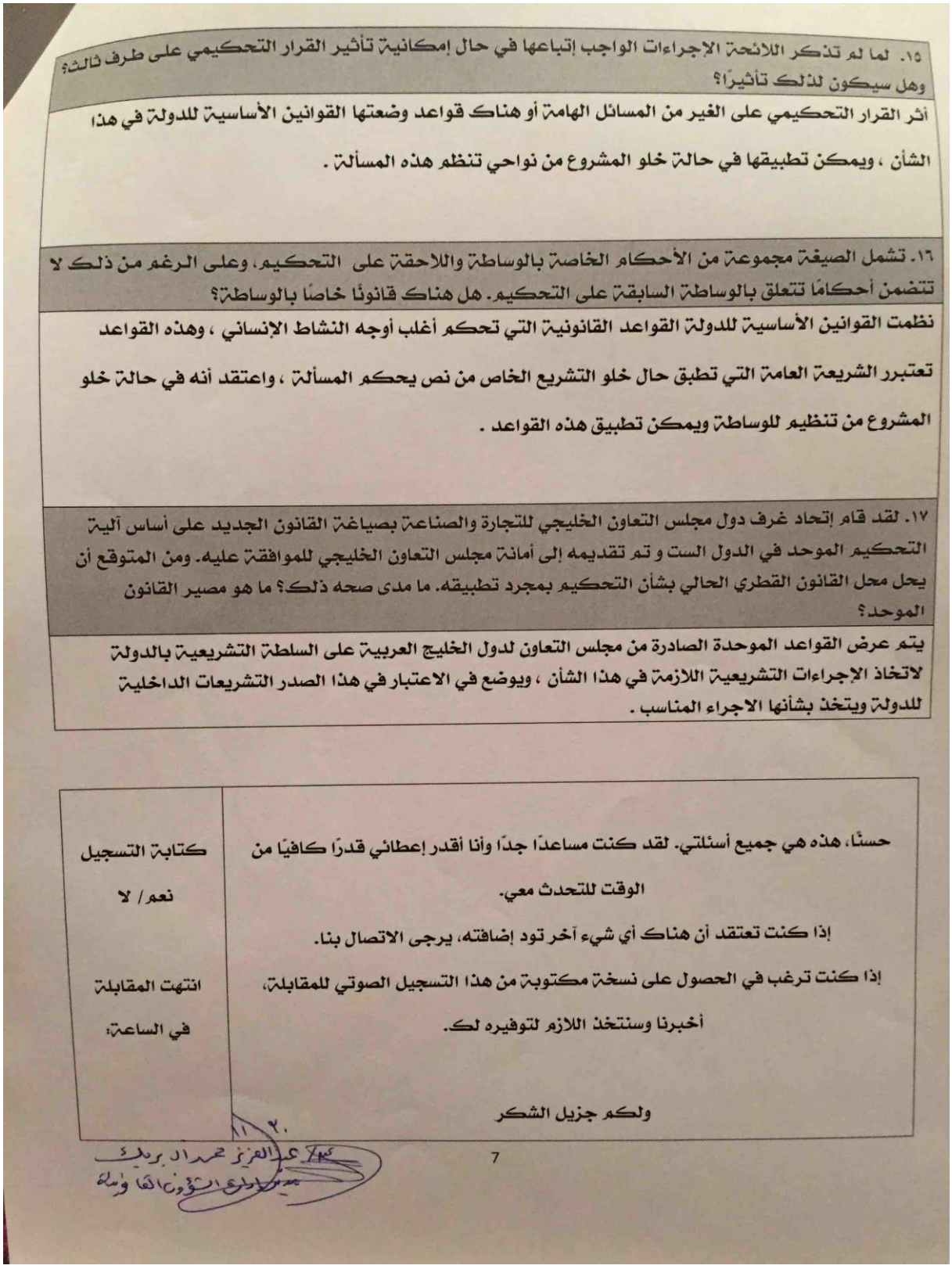
|---|---|
| Well that's all of my questions. You've been very helpful and I appreciate you taking the time to speak to me. If you think of anything else you would like to add, please get in touch.<br><br>If you would like to see a copy of the transcript from the interview, please let me know and I will arrange for this to be supplied to you.<br><br>Thank you very much. | **Transcript Y/N**<br><br>**Interview concluded at:**<br><br>**:** |

Participants signatures



١٥. لما لم تذكر اللائحة الإجراءات الواجب إتباعها في حال إمكانية تأثير القرار التحكيمي على طرف ثالث؟ وهل سيكون لذلك تأثيرًا؟

أثر القرار التحكيمي على الغير من المسائل الهامة أو هناك قواعد وضعتها القوانين الأساسية للدولة في هذا الشأن ، ويمكن تطبيقها في حالة خلو المشروع من نواحي تنظم هذه المسألة .

١٦. تشمل الصيغة مجموعة من الأحكام الخاصة بالوساطة واللاحقة على التحكيم، وعلى الرغم من ذلك لا تتضمن أحكامًا تتعلق بالوساطة السابقة على التحكيم. هل هناك قانونًا خاصًا بالوساطة؟

نظمت القوانين الأساسية للدولة القواعد القانونية التي تحكم أغلب أوجه النشاط الإنساني ، وهذه القواعد تعتبر الشريعة العامة التي تطبق حال خلو التشريع الخاص من نص يحكم المسألة ، واعتقد أنه في حالة خلو المشروع من تنظيم للوساطة ويمكن تطبيق هذه القواعد .

١٧. لقد قام إتحاد غرف دول مجلس التعاون الخليجي للتجارة والصناعة بصياغة القانون الجديد على أساس آلية التحكيم الموحد في الدول الست و تم تقديمه إلى أمانة مجلس التعاون الخليجي للموافقة عليه. ومن المتوقع أن يحل محل القانون القطري الحالي بشأن التحكيم بمجرد تطبيقه. ما مدى صحه ذلك؟ ما هو مصير القانون الموحد؟

يتم عرض القواعد الموحدة الصادرة من مجلس التعاون لدول الخليج العربية على السلطة التشريعية بالدولة لاتخاذ الإجراءات التشريعية اللازمة في هذا الشأن ، ويوضع في الاعتبار في هذا الصدر التشريعات الداخلية للدولة ويتخذ بشأنها الاجراء المناسب .

| | |
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| حسنًا، هذه هي جميع أسئلتي. لقد كنت مساعدًا جدًا وأنا أقدر إعطائي قدرًا كافيًا من الوقت للتحدث معي.<br>إذا كنت تعتقد أن هناك أي شيء آخر تود إضافته، يرجى الاتصال بنا.<br>إذا كنت ترغب في الحصول على نسخة مكتوبة من هذا التسجيل الصوتي للمقابلة، أخبرنا وسنتخذ اللازم لتوفيره لك.<br><br>ولكم جزيل الشكر | كتابة التسجيل<br>نعم / لا<br><br>انتهت المقابلة في الساعة: |

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" لما كان حكم المحكمين هو قضاء خاص يستند إلى إرادة الأفراد فان المشرع لم يوجب تضمنيه كافة البيانات التي نص عليها القانون بالنسبة لأحكام المحاكم وإنما اكتفي ببيانات أوردها على سبيل الحصر وليس من بينها صدوره باسم الشعب ، ومن ثم لا يكون الحكم معيبا بالبطلان لخلو ورقة الحكم من هذا البيان . ويضحى النعي على الحكم المطعون فيه - لعدم قضاءه ببطلان حكم التحكيم - على غير أساس " **الطعن رقم 1640 لسنة 54 ق نقض مدني مصري**

**وهذا الحكم سبب الكثير من المشاكل واربك العملية التحكيمية حيث ادي ذلك الى اتجاه الكثير من ممن صدر ضدهم احكام تحكيم سابقا ولم يتضمن صدورها باسم صاحب السمو أمير دولة قطر الى رفع دعاوى بطلان لمخالفتها للنظام العام ، في ظل عدم وجود ميعاد لرفع دعوى البطلان في القانون الحالي وهو ما يؤدي الى عدم استقرار المراكز القانونية ويؤدي الى اهدار الوقت والجهد ويؤدي الى تفريغ التحكيم من مضمونه**

**ويؤكد على عدم فهم القانون وتفسيره التفسير الخاطئ من قبل محكمة التميز و هي المعنية بتطبيق القانون على وجهه الصحيح .**

تمت الإجابة على أسئلة المقابلة الشخصية من قبل الأستاذ / أحمد صابر محمد ( المحامي بمكتب سكري والهاجري للمحاماة والاستشارات القانونية - والمحكم بغرفة تجارة قطر ) بتاريخ ١٥ / ١١ / ٢٠١٤م
الساعة الرابعة عصراً .

أحمد صابر
١٥/١١/١٤

Aberdeen Business School

ROBERT GORDON UNIVERSITY ABERDEEN

## CONSENT FORM

Title of Project

Arbitration in Qatar

**Researcher**

Jassim Al-Obaidli

PhD Student

Robert Gordon University

UK

E-mail: j.alobaidli@rgu.ac.uk

Participant Study Number.....

| | Please INITIAL box |
|---|---|
| I confirm that I have read and understand the information sheet for the above study and have had the opportunity to ask questions. | |
| I understand that my participation is voluntary and that I am free to withdraw at any time, without giving reason. | |
| I agree to take part in the above study. | |

| | |
|---|---|
| I agree to the interview being audio recorded. | ☑ |
| I agree to my identity, including my (name), (position) and (organization) to be included in the research and any publications. | ☑ |
| I agree to the use of attributed quotes in publications. | ☑ |
| I agree to the use of anonymised quotes in publications. | ☑ |

| Name of Participant | Date | Signature |
|---|---|---|
| CHRISTOPHER GROUT | 18 AUG 2013 | CKGrout. |
| JASSEM ALOBAIDI | 19.8.13 | |
| Name of Researcher | Date | Signature |

Aberdeen Business School

ROBERT GORDON UNIVERSITY ABERDEEN

**SEMI-STRUCTURED INTERVIEW SCHEDULE**

| Title of Project<br><br>Arbitration in Qatar |
|---|

| **Participant Number 6** | **Date**<br>/ / | **Start time**<br>: |
|---|---|---|

**Introduction**

Hello, thanks for agreeing to be interviewed for this project. Please, can I check you have read the participant information sheet?

If not, here is a copy to read before we begin.

The main purpose of this interview is to get knowledge about Qatar Financial Center overall.

Your participation is voluntary and you may withdraw at any point.

If you do not want to answer a specific question, then you have the right to decline to answer any question.

There are no right or wrong answers and I am interested in your personal opinions.

Your identity will remain strictly confidential and it will not be possible to identify individuals from the study results.

The interview should take approximately 30 to 45 minutes.

| | |
|---|---|
| And what are the regulations and procedural rules of it?<br><br>5. How does the QFC interact with other laws?<br><br>6. How to enforce the award of QFC Centre Regulatory Tribunal?<br><br>7. How does it deal with NYC? | |
| Well that's all of my questions. You've been very helpful and I appreciate you taking the time to speak to me. If you think of anything else you would like to add, please get in touch.<br><br>If you would like to see a copy of the transcript from the interview, please let me know and I will arrange for this to be supplied to you.<br><br>Thank you very much. | **Transcript Y/N**<br><br>**Interview concluded at:**<br><br>13:00<br><br>فيصل الحوتي<br><br>12/2/15 |

## SEMI-STRUCTURED INTERVIEW SCHEDULE

| Title of Project |
| --- |
| Arbitration in Qatar |

| Participant Number 12 | Date | Start time |
| --- | --- | --- |
| م. فهاي الشاف | / / | : |

**Introduction**

Hello, thanks for agreeing to be interviewed for this project. Please, can I check you have read the participant information sheet?

If not, here is a copy to read before we begin.

The main purpose of this interview is to get knowledge about the practice of arbitration in Qatar.

Your participation is voluntary and you may withdraw at any point.

If you do not want to answer a specific question, then you have the right to decline to answer any question.

There are no right or wrong answers and I am interested in your personal opinions.

Your identity will remain strictly confidential and it will not be possible to identify individuals from the study results.

The interview should take approximately 30 to 45 minutes.

| **IF NO:** When would be more convenient? | Write the new day/date/time here and in the diary chart: |
| --- | --- |

| | |
|---|---|
| 3. Which are preferable ICC, LCIA, QIAC and QFC?<br><br>4. Why ICC and LCIA are more preferable than QIAC and QFC?(or vice versa)<br><br>5. As you know, the Scottish Arbitration Act is more compliant with the UNCITRAL Model Law than the English one because it is more recent than the English one. Do you think this will lead parties to prefer using the Scottish one rather than the English one? And why?<br><br>6. How does the rule of the Court of Cassation on the Appeal No. 64/2012 affect enforcement of arbitral awards? From your view, what are the factors behind this rule?<br><br>7. What are the elements, which can improve arbitration in Qatar and attract International companies to arbitrate in Qatar? | |
| Well that's all of my questions. You've been very helpful and I appreciate you taking the time to speak to me. If you think of anything else you would like to add, please get in touch.<br><br>If you would like to see a copy of the transcript from the interview, please let me know and I will arrange for this to be supplied to you.<br><br>Thank you very much. | **Transcript Y/~~N~~**<br><br>**Interview concluded at:**<br>12:34<br>26.11.14 |

Aberdeen Business School

ROBERT GORDON UNIVERSITY ABERDEEN

## CONSENT FORM

Title of Project

Arbitration in Qatar

**Researcher**

Jassim Al-Obaidli

PhD Student

Robert Gordon University

UK

E-mail: j.alobaidli@rgu.ac.uk

Participant Study Number.....

| | Please INITIAL box |
|---|---|
| I confirm that I have read and understand the information sheet for the above study and have had the opportunity to ask questions. | ☑ |
| I understand that my participation is voluntary and that I am free to withdraw at any time, without giving reason. | ☑ |
| I agree to take part in the above study. | ☑ |

| | |
|---|---|
| I agree to the interview being audio recorded. | ☑ |
| I agree to my identity, including my (name), (position) and (organization) to be included in the research and any publications. | ☑ |
| I agree to the use of attributed quotes in publications. | ☑ |
| I agree to the use of anonymised quotes in publications. | ☑ |

| Dr. Minas Khatchadourian | 15 August 2013 | M. K. |
|---|---|---|
| Name of Participant | Date | Signature |

| JASSIM ALOBAIDLI | 15.08.2013 | |
|---|---|---|
| Name of Researcher | Date | Signature |

| مدرسة أبردين للأعمال | جامعة روبرت جوردون – أبردين |
|---|---|

## جدول مواعيد المقابلات شبه منظم

| اسم المشروع |
|---|
| التحكيم في قطر |

| رقم المشارك ١٠ | التاريخ | وقت البدء |
|---|---|---|
| المحامي محمد صباح عبد الإله عيد | 2014/11/2 | 12 : 15 |

**مقدمة:**

تحية طيبة. شكرًا جزيلًا على الموافقة على عمل مقابلة شخصية لهذا المشروع. من فضلك, هل يمكنني التأكد ما إذا كنت قد راجعت وقرأت استمارة معلومات المشترك؟

في حالة عدم القراءة, لديك هنا نسخة للقراءة قبل أن نبدأ.

الغرض الرئيسي من المقابلة هو تحصيل معرفة حول قانون التحكيم الحالي والصيغة الجديدة لقانون التحكيم.

مشاركتك اختياريه ويمكنك الانسحاب في أي وقت.

إذا كنت لا ترغب الإجابة على سؤال معين, يحق لك أن تمتنع عن الإجابة عن أي سؤال من الأسئلة.

لا يوجد أية إجابات صحيحة أو إجابات خاطئة وأنا لدي اهتمام خاص بآرائك الشخصية.

ستبقى هويتك سرية بصرامة ولا يمكن تحديد هوية الأفراد من نتائج الدراسة.

ستستغرق المقابلة من ٣٠ إلى ٤٥ دقيقة تقريبًا.

| | |
|---|---|
| واللاحقة على التحكيم, وعلى الرغم من ذلك لا تتضمن أحكامًا تتعلق بالوساطة السابقة على التحكيم. هل هناك قانونًا خاصًا بالوساطة؟<br><br>١٧. لقد قام إتحاد غرف دول مجلس التعاون الخليجي للتجارة والصناعة بصياغة القانون الجديد على أساس آلية التحكيم الموحد في الدول الست و تم تقديمه إلى أمانة مجلس التعاون الخليجي للموافقة عليه. ومن المتوقع أن يحل محل القانون القطري الحالي بشأن التحكيم بمجرد تطبيقه. ما مدى صحه ذلك؟ ما هو مصير القانون الموحد؟ | |
| حسنًا, هذه هي جميع أسئلتي. لقد كنت مساعدًا جدًا وأناأقدر إعطائي قدرًا كافيًا من الوقت للتحدث معي.<br>إذا كنت تعتقد أن هناك أي شئ آخر تود إضافته, يرجى الإتصال بنا.<br>إذا كنت ترغب في الحصول على نسخة مكتوبة من هذا التسجيل الصوتي للمقابلة, أخبرنا وسنتخذ اللازم لتوفيره لك.<br><br>ولكم جزيل الشكر | كتابة التسجيل نعم/لا<br><br>انتهت المقابلة<br>في الساعة:<br>13:05 |

Aberdeen Business School

ROBERT GORDON UNIVERSITY ABERDEEN

## CONSENT FORM

Title of Project

Arbitration in Qatar

**Researcher**

Jassim Al-Obaidli

PhD Student

Robert Gordon University

UK

E-mail: j.alobaidli@rgu.ac.uk

Participant Study Number.....

| | Please INITIAL box |
|---|---|
| I confirm that I have read and understand the information sheet for the above study and have had the opportunity to ask questions. | ☑ |
| I understand that my participation is voluntary and that I am free to withdraw at any time, without giving reason. | ☑ |
| I agree to take part in the above study. | ☑ |

| | |
|---|---|
| I agree to the interview being audio recorded. | ☑ |
| I agree to my identity, including my (name), (position) and (organization) to be included in the research and any publications. | ☑ |
| I agree to the use of attributed quotes in publications. | ☑ |
| I agree to the use of anonymised quotes in publications. | ☑ |

[redacted] 19/8/13 [redacted]

Name of Participant | Date | Signature

JASSIM AL-GBAIDI 19/8/13 [redacted]

Name of Researcher | Date | Signature

Sultan Al-Abdullah (a Qatari Lawyer & Partner) (5 pgs.)

## SEMI-STRUCTURED INTERVIEW SCHEDULE

| Title of Project |
| --- |
| Arbitration in Qatar |

| Participant Number 11 | Date | Start time |
| --- | --- | --- |
| | 21/10/2014 | 12 :00 Noon |

**Introduction**

Hello, thanks for agreeing to be interviewed for this project. Please, can I check you have read the participant information sheet?

If not, here is a copy to read before we begin.

The main purpose of this interview is to get knowledge about the practice of arbitration in Qatar.

Your participation is voluntary and you may withdraw at any point.

If you do not want to answer a specific question, then you have the right to decline to answer any question.

There are no right or wrong answers and I am interested in your personal opinions.

Your identity will remain strictly confidential and it will not be possible to identify individuals from the study results.

The interview should take approximately 30 to 45 minutes.

| **IF NO:** When would be more convenient? | Write the new day/date/time here and in the diary chart: |
| --- | --- |

| | |
|---|---|
| Well that's all of my questions. You've been very helpful and I appreciate you taking the time to speak to me. If you think of anything else you would like to add, please get in touch.<br><br>If you would like to see a copy of the transcript from the interview, please let me know and I will arrange for this to be supplied to you.<br><br>Thank you very much. | **Transcript Y/N**<br><br>**Interview concluded at:**<br>13 : 13 |

Aberdeen Business School

ROBERT GORDON UNIVERSITY ABERDEEN

## CONSENT FORM

Title of Project

Arbitration in Qatar

**Researcher**

Jassim Al-Obaidli

PhD Student

Robert Gordon University

UK

E-mail: j.alobaidli@rgu.ac.uk

Participant Study Number.....

| | Please INITIAL box |
|---|---|
| I confirm that I have read and understand the information sheet for the above study and have had the opportunity to ask questions. | ☑ TF. |
| I understand that my participation is voluntary and that I am free to withdraw at any time, without giving reason. | ☑ TF. |
| I agree to take part in the above study. | ☑ TF. |

| | |
|---|---|
| I agree to the interview being audio recorded. | ☑ TF. |
| I agree to my identity, including my (name), (position) and (organization) to be included in the research and any publications. | ☐ |
| I agree to the use of attributed quotes in publications. | ☐ |
| I agree to the use of anonymised quotes in publications. | ☐ |

Tariq Falamarzi — 21/08/2013 — Date — Signature

Name of Participant

~~Aarij~~ S. Wasti — 21/08/2013 — Aarij S. Wasti

JASSIM AL-OBAIDLI — 21.08.13 — Date — Signature

Name of Researcher

# Appendix B

## The draft of the Arbitration Law in Civil and Commercial Affairs

### The Draft Law No. (  ) for the year 2014

Regarding the issuance of the Arbitration Law in the Civil and Commercial Affairs

We, Sheikh Tamim Bin Hamad Al Thani, the Emir of the State of Qatar

Having perused the constitution,

The Code of Civil & Commercial Procedures No. (13) of 1990 and its amendments,

The Judicial Authority Law issued by Law No. (10) of 2003, and amended by decree law No. 21 of 2010,

The Civil Law issued by the law No. (22) of 2004,

Qatar Financial Centre Law issued by the law No. (7) of 2005, amended by the law No. (2) of 2009,

The Commercial Law issued by the law No. (27) of 2006, amended by the law No. (7) of 2010,

The Decree No. (29) of 2003 concerning the approval on the accession of the State of Qatar to Convention on the Recognition and Enforcement of Foreign Arbitral Awards,

The Decree by the law No. (16) of 2010 regarding Electronic Transactions and Commerce Law,

The Emiri Decision No. (25) of 2014 regarding the Organizational Structure of the Ministry of Justice,

And the suggestion of the Minister of Justice,

The Draft Law submitted by Council of Ministers and after taking the opinion of Advisory Council,

We have decided the following Law:

**Article No. (1)**

The provision of the Arbitration Law in the Civil and Commercial Affairs attached to this law shall be enforced.

**Article No. (2)**

The provisions of the Arbitration Law in the Civil and Commercial Affairs shall not be enforced on the disputes, which any other law does not allow their settlement by arbitration or which are not allowed to be filed to arbitration, except as per different provisions other than the provisions of this law.

**Article No. (3)**

The attached Arbitration Law in the Civil and Commercial Affairs shall be enforced on any existing arbitration or claim at its effective date or starts after its effective date.

**Article No. (4)**

The Articles from No. (190) to (210) of the 1st volume of the mentioned Code of Civil & Commercial Procedures shall be nullified and any provision infringing the provisions of the attached law shall be nullified.

**Article No. (5)**

The Minister of Justice shall issue the executive regulation and the decisions necessary for the enforcement of the provisions of the attached law.

**Article No. (6)**

All the competent authorities shall respectively enforce this law and this shall be published in the Gazette.

**Tamim Bin Hamad Al Thani**

**The Emir of the State of Qatar**

**Issued in the Emiri Diwan on: / /1435 A.H**

**Corresponding to: / /2013 A.D**

# The 1st Chapter

# General Provisions

## Article No. (1)

## Definitions & Rules of Interpretation

1- Upon applying the provisions of this law, the following words and phrases shall have the meanings ascribed thereto hereunder, unless the context indicates otherwise:

a) **The Minister:** "The Minister of Justice"
b) **The Ministry:** "The Ministry of Justice"
c) "**Arbitration":** A legal conventional style for settling the disputes rather than resorting to judiciary, whether the entity in charge of the arbitration, as per an agreement among the two parties, is a permanent centre for arbitration or not.
d) "**Arbitration Agreement":** the agreement defined as per the stipulation of the Article (7 Item No. 1) of this law.
e) **"The Parties":** the two parties or the parties of the dispute, who agreed about resorting to arbitration.
f) **"Arbitration Board":** one or more than one arbitrator.
g) **"The other authority:"** the entity, chosen by the parties in their agreement as per what is allowed by virtue of this law to perform certain functions relating to assisting and supervising arbitration, whether it is a permanent centre or institution for arbitration.
h) **"The Competent court":** Disputes Settlement Department of the commercial arbitration affiliated to the court of appeal or any other entity determined by the Minister of Justice in coordination with the supreme judiciary council.
i) **"The Competent Magistrate":** Execution magistrate of the Full Jurisdiction Court
j) **"Plaintiff":** the Plaintiff of the dispute resorted to arbitration
k) **"Defendant":** the Defendant of the dispute resorted to arbitration

l) **“Arbitration Centres & Entities”:** Each legal entity, of which activities is settling the disputes, on which, the provisions of this law are applied by arbitration.

2- In the cases, when this law allows the arbitration parties to choose the procedures to be followed up in a certain disputes; this includes their right to give permission to others to select this procedure and each institution or arbitration centre inside or outside the country is considered of these others in this regard.

**Article No. (2)**
**The Scope of Law Application**

1- Taking into consideration the provisions of the applicable international treaties, the provisions of this law shall be applied on each arbitration among parties of the individuals of the public or private law, regardless to the nature of the legal relationship subject of the dispute, if the arbitration is applied in the country, or it is a commercial arbitration applied abroad, after its parties have agreed about subjecting it to the provisions of this law. The agreement about the arbitration of the disputes of the administrative contracts shall be subjected to the approval of the Minister of Justice. The persons of the public law are not allowed, by any way, to resort to arbitration to settle the disputes arising among them.

2- The Arbitration shall be commercial in applying the provisions of this law, if dispute arises about a legal relationship of economic, commercial, investment, financial, insurance, industrial, touristic, banking or any of the other commercial transactions, nature, whether they are contractual or non-contractual.

3- Apart from the provisions of the Articles (8), (9), (35) and (36) the application of the provisions of this law, in the case, where the legal place of the arbitration is located in the territory of the state, unless it is an outside commercial arbitration, about which its parties have agreed on subjecting it to the provisions of this law.

4- The arbitration shall be international, in applying the provisions of this law, if it has the following international elements:

a) If the business headquarters of the work of the parties of arbitration agreement, when this agreement was signed, was located in two different countries.

b) If one of the following places is located outside the countries, where the headquarters of the two parties are located:

(1) The Arbitration place is mentioned in the arbitration agreement or it mentioned how to determine it.

(2) Any place, where a fundamental part of the obligations regarding the parties' relationship are met or the place closely relevant to the dispute subject.

If one of the parties has more than one headquarter, it has to be the Headquarter, which is closely relevant to the arbitration agreement. If any of the parties does not have any headquarter, then its usual residence is considered.

c) If the two parties have expressly agreed that the arbitration agreement is related to more than one country.

d) If the two parties have agreed about resorting to a permanent arbitration body or arbitration centre, which its headquarter is located inside or outside the country.

**Article No. (3)**

**Handling the Written Notifications and Correspondences**

1. Unless otherwise the two parties have agreed about, the written notifications and correspondences shall be delivered as follows:

a) Personally to the person addressed to, to its work headquarter or to its usual residence or to its postal address, known to the parties or defined in the arbitration agreement or the document regulating the relationship deliberated by the arbitration.

b) In case of the failure of recognizing any of the addresses set forth in the above mentioned paragraph after making the necessary search, the written notification or correspondence is considered received, if it was sent to the last working headquarter or to his usual residence or to his postal address or to his E-mail address or to a fax number known for the addressee as per a registered message or any of the other methods, which provides written evidence of delivery.

c) The written notification or correspondence sent by fax or E-mail shall be considered delivered on the date, when it was sent, unless the sender receives an automatic message notifying the existence of an error in transmission.

d) In all cases, the message or the written notification are considered delivered, if it is received or sent before 6:00 p.m. according to the destination State timing, otherwise, it would be considered received on the following day.

e) For the purpose of calculating the periods set forth in this Article, the period calculation starts from the following day of receiving the correspondence. If the last day of this period corresponds to an official holiday or an off day at the headquarter of work place of the addressee, this period shall be prolonged till the next working day, whereas the days of official holidays or the off days during this period shall be included in this calculation.

2. The provisions of this Article shall not be applied on the judicial notifications before the courts.

## Article No. (4)
## Waiving the Right of Opposition

If any of the two parties knows the occurrence of a violation of any of the provisions of this law, which may be violated by the parties, or of any of the arbitration agreement conditions and if he continues the arbitration procedures without opposing about this violation at the agreed time or with non-justified delay, upon agreement, this shall be considered a waive to the right to oppose.

## Article No. (5)
## The Competent Court and the Competent Judge

1. The competent court and the competent Judge shall apply the provisions of this law as per the extent which these provisions allow.

2. In the court of appeal a special department will be established by a decision from supreme judiciary council in coordination with the minister for the disputes of the commercial arbitration.

3. The minister of justice has the right, in coordination with the supreme judiciary council, to nominate another entity to be in charge of the jurisdictions set forth in the Item No. (1) of this Article.

## Article No. (6)
## The Interference of Other Authority or the Competent Court

The other authority or the competent court, as the case may be, shall be in charge of performing the functions set forth in the Articles (11 items 5,6), (13 items 2,3) and (14 item 1) of this law.

## The 2nd Chapter

## Arbitration Agreement

### Article No. (7)

### Arbitration Agreement Definition & Form

1. The arbitration agreement is the parties' agreement, whether they are of the Natural or Legal persons of legal capacity to sign the contract of resorting some or all of the disputes limited, which arose or may arise between them regarding a limited legal relationship, whether this relationship is contractual or non-contractual. The arbitration agreement may be separated or in the form of an arbitration condition mentioned in a contract.

2. Arbitration is not allowed in the matters, in which the legal reconciliation is not allowed.

3. The Arbitration agreement shall be in writing, or else it will be nullified. The Arbitration agreement is deemed in writing, if it is mentioned in an instrument signed between the two parties, or in the form of electronic or paper correspondences or any of the other communication means, which its delivery is proved.

4. The arbitration agreement is considered that it had fulfilled the condition of writing, if any of the two parties claims the existence of the agreement in the memorandum of the claim or the memorandum of the reply and the 2nd party did not deny this in his defense.

5. The indication, in any contract, to an instrument including arbitration shall be deemed arbitration agreement, provided that the contract is in writing and this indication had to be mentioned, by the way which makes this condition an integral part of the contract.

6. Without prejudice any legislative stipulation stipulating the termination of the objective rights or commitments due to death, unless otherwise is agreed between

the two parties. The arbitration agreement shall not be terminated with the death of any of the two parties and its execution shall be done by and against the persons, who represent this party, as the case may be.

**Article No. (8)**
**Arbitration Agreement and the Subjective Claim before the Court**

1. The court, to which the dispute was referred to, about which there is an arbitration agreement, should adjudicate not to accept the claim, if the defendant submits this before submitting any defense memorandum regarding the subject of the claim, unless the court decides that the agreement is invalid, cancelled, not effective or cannot be executed.

2. Filing the claim mentioned in the pre-mentioned item of this Article never prevents starting or continuing the arbitration procedures or issuing a judgment regarding it.

**Article No. (9)**
**Arbitration Agreement and Taking Temporary Procedures by the Competent Magistrate**

1. In case the arbitration board, or any other person authorized by the parties in this regard, is not able or not competent to act actively timely, the competent magistrate shall demand, as per the demand of any of the two parties, taking temporary or precautionary procedures including the procedures stipulated in the Article No. 17 the item No. 1 of this law either before the start of the arbitration procedures or during the arbitration procedures. This demand shall not be considered a waiver from the applicant to his adherence to the arbitration agreement.

2. The competent magistrate shall not consider any demand submitted by virtue of this Article, if the arbitration board or any other party authorized in this regard is able and competent to act actively timely.

## The 3rd Chapter
## Formation of the Arbitration Board
### Article No. (10)
### Number of the Arbitrators

The arbitration board shall be formed of one or more of arbitrators as agreed between the two parties, but if they do not agree, the number shall be three. If the arbitrators increase, their number shall be odd (uneven), otherwise the arbitration will be nullified.

### Article No. (11)
### Arbitrators Nomination

1. The nomination of arbitrators should be from the accredited and registered arbitrators at the national register of the arbitrators at the Ministry. Any person shall be nominated as an arbitrator, in case of the availability of the following conditions:

    a) If he enjoys full competency

    b) if he was not convicted with a final judgment of a crime/felony involving a breach/violation of honour/the public trust, even if there is rehabilitation or restoration of good repute.

    c) if he is of good conduct and good repute.

2. It is not stipulated that the arbitrator shall have a certain nationality, unless otherwise is agreed between the two parties or stipulated by the law.

3. The arbitrator shall be accepted for nomination in writing or via following up any of the means stipulated in the Article 7 item 4.

4. Without prejudice to the provisions of the items (4) and (5) of this Article, the parties shall agree about the procedures to be followed up in nominating the arbitrator or the arbitrators.

5. In case of the lack of an agreement, the following procedures shall be followed:

    a) If the arbitration board consists of only one arbitrator, if the parties did not agree about the arbitrator within thirty days from the date of the written notification by the plaintiff to the other parties to do this, any of the two parties may ask its nomination from the other authority or the competent court, as applicable.

    b) If the arbitration court consists of three arbitrators, each party shall nominate an arbitrator, then the two nominated arbitrators shall agree about the nomination of the third arbitrator. If any of the parties never nominate his arbitrator within thirty days since the date of receiving the demand regarding this from the other party, if the two nominated parties do not agree on nominating the third arbitrator within thirty days from the nomination date of the last one of them, the other authority or the competent court shall, as applicable, nominate upon the demand of any of the two parties.

6. In case of the existence of nomination procedures agreed between the parties, any of the parties shall ask the other authority or the competent court, as applicable, to take the necessary procedures, unless the nomination procedures agreement stipulates the other means of accomplishing these procedures in any of the following cases:

    a) Unless any one takes a procedure, according to the requirement of these procedures.

    b) Unless the parties or the arbitrators reach to the agreement required from them as per these procedures.

    c) If the others fail, including the arbitration institution to accomplish any task assigned to them according to these procedures.

7. Any decision issued by the other authority or the competent court, as applicable, regarding an affair stipulated in the items No. (3) and (4) of this Article final and unchallengeable.

8. The other authority or the competent court, as applicable, upon nominating the arbitrators, shall consider the nature and the conditions of the dispute and the qualifications, which the arbitrators should have as per the agreement of the parties and to the considerations, which may guarantee the nomination of an independent and neutral arbitrator and in case of nominating an individual arbitrator or a third arbitrator, the other authority or the competent court shall consider the nationality of the arbitrator in view of the nationalities of the other parties.

9. All parties including any arbitration institution or arbitrators nomination board or any arbitrator nominated previously should be notified with any request to the other authorities or competent court as applicable to nominate an arbitrator. This request should include a brief about the nature of the dispute and the specified conditions of the arbitration agreement and all the steps taken to nominate any remaining member in the arbitration board.
10. Upon nominating an arbitrator according to aforementioned, the other authority or the competent court, as applicable, upon nominating an arbitrator, shall choose him from the register of arbitrators of the ministry of justice or from the arbitrators lists available at the other arbitration centres or entities or from any other lists they think suitable and it shall do the necessary checking for nominating the arbitrator suitable for the dispute circumstances. Any expenditure regarding doing these procedures, including the nomination fees related to the arbitration institution, shall be considered of the arbitration expenses.

11. The arbitrator shall not be asked about his practice of the arbitration tasks, except if his practice results from the bad faith, conspiracy or gross negligence.

## Article No. (12)
## Refusal Reasons of the Arbitrator

1. Any one requested to be assigned to be an arbitrator shall disclose in writing to the arbitration parties or the concerned, any matters or conditions, which may arise justified doubts about his independence and neutralism. The arbitrator should abide by, after his nomination, immediately automatically, disclosing any such matters or circumstances mentioned before, which may occur at any time during the arbitration procedures.

2. Any arbitrator shall not be refused, except if there are some justified doubts about his independence and neutralism or the non-presence of the qualifications agreed on by the parties. Any of the disputes parties shall not have the right to refuse the arbitrator nominated by him or whom he participated in his nomination, except for the reasons which may appear after this nomination.

## Article No. (13)
## Refusal Procedures

1. By virtue of the stipulations of the Item No. (2) of this Article, the parties shall agree about the procedures of refusing the arbitrator.
2. If there is no such agreement, the refusal demand shall be submitted to the arbitration board in writing showing the reasons for refusing the arbitrator with in fifteen days from the date of the refusing party knowing about the formation of this board or the circumstances justifying this refusal, if the arbitrator to be refused doesn’t relinquish , or if the other party doesn’t approve the demand of refusal, the demand of refusal shall be referred to the other authority or the competent court, as applicable. The decision issued by it shall be unchallengeable by any way. The arbitration board shall suspend the arbitration procedures till the settlement of the refusal demand.

3. The other authority or the competent court shall, as applicable, upon the judgment of the refusal of the arbitrator, decide the dues and fees, or to reimburse expenses or fees paid to him.

4. The demand of refusal shall not be accepted from whom have submitted demand of refusal of the same arbitrator in the same arbitration, except if a new reason for refusing it again has come out, which differs from the 1st reason, or which he became aware of it after submitting the 1st demand of refusal.

**Article No. (14)**
**Abstention or Impossibility**

If the arbitrator failed to meet his obligations or he did not commence it or he discontinued performing it; the matter, which may lead to unjustified delay in the arbitration procedures without relinquishing by himself, and if the two parties did not agree about his refusal, the other authority or the competent court, as applicable, shall terminate his mission as per a demand issued by one of the parties, and its decision in this regard, shall be final and unchallengeable, by any way. The relinquishment of the arbitrator or the termination of his mission by the parties shall not be deemed an acknowledgment of the authenticity of any of the reasons set forth in the Article No. 12 item No. 2 of this law.

**Article No. (15)**
**Nomination of an Alternate Arbitrator**

1. A new alternative arbitrator shall be nominated instead of the arbitrator, whose mission was ended due to refusal, relinquishment, segregation or any other reason and upon nominating him, the applicable procedures should be applied in nominating the alternate arbitrator.

2. The parties, after the nomination of the alternative arbitrator, shall agree about the validity period of the above mentioned replacement procedures, otherwise the reformed arbitration board shall decide, what is appropriate, in this regard.

## The 4th Chapter

## Arbitration Board Jurisdiction

### Article No. (16)

### Arbitration Board Jurisdiction regarding Adjudicating in its Specialization

1. The arbitration board shall decide in the defenses related to its incompetence including the defenses mentioned regarding the lack of an arbitration agreement, its authentication, its abatement, its annulment its non-inclusion of the dispute subject. The arbitration agreement is considered an independent condition from the other contract conditions and the contract, expiry, nullification or termination shall not effect on the arbitration condition, which it includes, as this condition is valid and true.

2. We shall adhere to the defenses set forth in the above mentioned item, within a period not exceeding the period of submitting the defense statement of the defendant stipulated in the Article No. (23) of this law and this right shall not be abated, if any of the two parties nominated or participated in nomination of an arbitrator. The defense statement claiming that the arbitration board has exceeded its jurisdiction scope during reviewing the litigation, it should be expressed immediately at the time of its occurrence during the arbitration procedures. In all cases, the arbitration board may accept defense statement of the defined date, should it see that the delay was justifiable.

3. The arbitration board shall adjudicate in any of the defenses set forth in this Article before adjudicating in this subject or within the arbitration award issued regarding the litigation subject. If the court judged of the refusal of the defense, then the one who's defense was refused, and during thirty days from the judgment notification date, has the right to challenge it before the other authority or the competent court, as applicable, and the judgment, issued by the other authority or the competent

court, shall be deemed unchallengeable by any means. Not expressing the mentioned demand shall not prevent the arbitration board from carrying out the arbitration procedures and issuing an award.

**Article No. (17)**
**Arbitration Board Jurisdiction regarding Taking Temporary Procedures or Provisional Judgment**

1. Unless otherwise is agreed between the two parties, the arbitration board has the right, as per a demand issued by any of the two parties, to issue temporary procedures or provisional judgments required as per the litigation nature or with the purpose of avoiding an unrepairable damage including any of the following:

    a) Keeping the situation as it is or restoring it to its previous status till the adjudication in the litigation.

    b) Taking any procedure that prevents the occurrence of any current or forthcoming damage or any prejudice to the arbitration process itself or that preventing taking any procedure, which may cause damage or prejudice.

    c) Providing a mean to protect the assets, by which we can carry out any subsequent decision.

    d) Maintaining of the evidences, which may be considered important or essential in settling out this dispute.

The arbitration board shall demand from the party, which requests taking these procedures, the submission of a sufficient warranty to cover the expenses of the procedures or the judgment, which it orders.

2. The Arbitration board shall modify, suspend or annul any temporary procedure or provisional judgment ordered by it by a virtue of a demand submitted by any of the two parties or automatically, if necessary after notifying the other parties.

3. The party, in favor of whom, a procedure or a judgment was issued, after getting a written permission from the arbitration board, shall request from the competent magistrate to issue the order to execute the order issued by the arbitration board or any part of it. A copy of any demand related to getting permission or for execution by virtue of this Article shall be sent to the other parties. The competent magistrate shall order the execution of the mentioned order, if it does not violate the law or the public order.

4. The party, requesting these procedures shall bear the costs and compensations for any damages caused by these procedures or the judgment to any party, if the arbitration board decides, at a subsequent time, that it was not required to issue this order or this order in these circumstances. The arbitration board shall obligate this party to pay the costs and the compensations at any time during these procedures.

## The 5th Chapter

## Arbitration Procedures

### Article No. (18)

### Equality among Parties

Arbitration board shall abide by the principles of equality and neutralism among the parties with giving them full and enough chance to view his claim, defense and submissions.

The arbitration board shall avoid any delay or unnecessary expenses with the purpose of achieving an urgent and a fair method for settling the dispute.

## Article No. (19)
## Procedures Determination

1. By virtue of the stipulations of this law, the parties shall agree about the procedures including the proofing rules, which the arbitration board has to follow up, they also have the right to subdue these procedures to the applicable rules in any institution or arbitration board inside or outside the country.

2. The arbitration board, incompliance to the stipulations of this law, shall apply the procedures, which it sees appropriate including the authority of accepting the submitted evidences and estimating its relation limit to the litigation subject besides its feasibility and its significance, unless there is an agreement among the parties regarding determining the arbitration procedures.

## Article No. (20)
## Arbitration Place

1. The parties shall agree about the arbitration place inside or outside the state and if there is no agreement, the arbitration board shall determine this place with taking the claim circumstances and the appropriateness of the place to its parties into its consideration.

2. This never breaches the authority of arbitration board regarding meeting in any place, which it sees appropriate for taking any of the arbitration procedures as listening to the depositions of the litigation parties, the witnesses, the experts, reviewing the documents, examining things or funds or organizing a deliberation among the members, unless otherwise is agreed between the two parties.

**Article No. (21)**

**Arbitration Procedures Commencement**

The arbitration procedures commence on the day, when the defendant receives the referral request of the dispute to the arbitration, unless otherwise is agreed between the two parties.

**Article No. (22)**

**Language**

1. The parties shall agree about the language or the languages used in arbitration procedures and if they do not agree about this, the arbitration board shall determine the language or languages to be used. This agreement on this determination shall be applied on the data, the written memorandums and the verbal pleadings submitted by any of the two parties and also in any decision, correspondence, notification or judgment issued by the arbitration board, unless otherwise is stipulated in the agreement of the parties or the decision of language determination.

2. The arbitration board shall ask attaching a translation into the language or the languages used in arbitration for all or some of the documents submitted in the claim. If there are several languages, the translation shall be limited to only some of them.

**Article No. (23)**

**Defense and Claiming Memorandums**

1. The plaintiff, within the appointment agreed among the parties or determined by the arbitration board, shall submit written memorandum for his claim including his name, his address, his explanation of the claim recitals in addition to defining the issues' subject of the dispute and his demands.

2. The defendant, within the appointment agreed among the parties or determined by the arbitration board, shall submit a written memorandum for his defense in response to what was submitted in the plaintiff memorandum and he has the right to enclose to this memorandum any casual demands related to the litigation subject with adhering to any arising right for the purpose of paying by clearing house.

3. The parties shall agree about the data mentioned in the memorandums set forth in the items (1) and (2) of this Article.

4. Without any prejudice to the right of the arbitration board requesting the parties to submit documents at any of the arbitration stages, the parties shall attach to their memorandums all the documents related to the subject and they also have the right to indicate to the other documents and evidences they intend to submit.

5. Unless otherwise is agreed among the parties, any party shall modify his demands, his defense or completing them within the course of the arbitration procedures, unless the arbitration board decides not accepting this to prevent the interruption of settling the litigation.

**Article No. (24)**
**Verbal and Written Procedures**

1. The arbitration board shall hold pleading sessions to enable the parties to demonstrate the claim subject, to show their evidences and proofs in addition to listening to their depositions, unless the arbitration board is satisfied with the submission of the written documents and memorandums or unless otherwise is agreed between the two parties.

2. The arbitration board shall hear to the witnesses and the experts without taking an oath.

3. The arbitration board shall notify the parties of the appointments of the pleading sessions, hearing to depositions, previewing or checking the documents, which it decides to convene, enough period of time estimated by the arbitration board prior to its sessions, unless another appointments for this notification is agreed by the parties.

4. Unless otherwise is agreed among the two parties, the facts of the sessions, meetings and previewing held by the arbitration board shall be written in a minutes of meeting, a copy of which to be delivered to each of the parties. In addition to writing, it may record these facts using the other appropriate means as per the procedures determined by the arbitration board or agreed by the two parties.

5. A copy of the submittals of any party to the arbitration board such as memos and documents, should be sent to the other party, also a copy of all the submittals to the board of arbitration such as experts reports, documents and other evidences on which it depend in taking its decisions should be copied to all parties.

6. Each of the litigation parties shall assign one or more attorneys to represent him or requests the assistance of experts or translators. The arbitration board, at any time, may ask any of the parties to submit what proves the authentication of the capacity assigned to his representative by virtue of what is required by the law or what is determined by the arbitration board.

**Article No. (25)**

**Non-Appearance of the Parties before the Arbitration Board**

Unless otherwise is agreed between the two parties:

(a) The arbitration board ends the arbitration procedures, if the plaintiff did not submit the claim memorandum by virtue of the item No. 1 of the Article No. 23 of this law, and did not submit an acceptable excuse.

(b) The arbitration board shall continue its arbitration procedures, if the defendant did not submit his defense memorandum by virtue of the item No. 1 of the Article No. 23

of this law, without regarding this an acknowledgement from the defendant of the plaintiff demands.

(c) The arbitration board shall continue its arbitration procedures and adjudicate in the litigation as per the available evidences and proof elements, if any of the two parties fails to attend any of the sessions or submits what is required from him of evidences, documents or information.

**Article No. (26)**

**Nominating Experts by the Arbitration Board**

1. The arbitration board, shall, unless otherwise is agreed by the two parties:

    a) Nominate an expert or more to submit reports, written or verbal, concerning certain issues defined by the board and to notify each party with a copy of its decision determining the mission assigned to the expert and the time determined for depositing the report.

    b) Ask any of the parties to submit to the expert any information related to the litigation and enabling him to look at any documents related to the subject or examining them or to view the materials or the funds.

2. The arbitration board shall send a copy of the expert report to all the parties with giving them the chance to express their opinions about it and each of the two parties has the right to preview the documents and the papers checked by the expert and on which he depended on writing his report.

3. The arbitration board, may after submitting the expert report automatically or as per the demand of any of the two parties, hold a pleading session to listen to the deposition of the expert, in which the parties shall get chance to listen to him and discuss with him what is mentioned in his report. Each of the two parties, in this session, shall ask the assistance of an expert or more from his side to express their opinions in the matters deliberated in the expert report, unless otherwise is agreed by the two parties.

4. The fees and the expenses of the expert nominated by the arbitration board shall be paid by the parties as per what is decided by the arbitration board.

5. The arbitration board shall adjudicate in any dispute arising between the expert and any of the parties in this regard.

### Article No. (27)
### Assistance Submitted by the Court for getting the Evidences

1. The arbitration board or any of the parties shall, after the approval of the arbitration board, ask the assistance from the competent court for obtaining the evidences related to the litigation subject including the technical experience works and evidences examination. If the arbitration board sees the required assistance necessary for the adjudication in the litigation subject, it shall suspend the arbitration procedures till getting the assistance and this leads to the suspension of the validity of the appointment determined for the issuance of the arbitration award.

2. The competent court shall carry out the assistance request within the limits of its jurisdiction, as per the rules applicable for getting evidences including the judicial delegation or the judgment on the witnesses, who fail to come or refuse to answer with the sanctions set forth in the Articles 278 and 279 of the Code of civil and commercial procedures.

## The 6th Chapter
## Arbitration Award Issuance and Ending the Procedures

### Article No. (28)
### The Rules Applicable on the Litigation Subject

1. The arbitration board shall adjudicate in the litigation as per the legal rules agreed between the two parties. If they agree about applying a law or a legal system of a certain country, the subjective rules shall be followed and not the rules of the conflict of laws, unless otherwise is explicitly agreed between the parties.

2. Unless the parties agree about the applicable legal rules, the arbitration board shall apply the law decided by the applicable rules of the conflict of laws.

3. The arbitration board shall not adjudicate in the litigation on the basis of the principles of justice and fairness, without compliance with the provisions of the law, unless the parties are explicitly allowed.

4. In all cases, the arbitration board shall adjudicate in the litigation, as per the contract conditions, and takes the commercial habits and traditions applicable in this type of transactions into account.

**Article No. (29)**

**Taking Decisions and Awards by the Arbitration Board**

The decisions and the judgments of the arbitration board formed of more than one arbitrator shall be issued with the majority of the opinions after a deliberation done in the manner defined by the arbitration board, unless otherwise is agreed among the parties. The decisions may be issued in the procedural affairs by the arbitrator, who heads the board, if the consent is given to him by the parties or all the members of the arbitration board.

**Article No. (30)**

**Litigation Settlement**

1. If the parties agree, during the arbitration procedures, about settling the litigation among them, the arbitration board shall end the procedures. If the parties ask him to prove the settlement and its conditions without any opposition from the arbitration board, the board proves the settlement in the form of conventional arbitration award.

2. The arbitration conventional award shall be issued by virtue of the provisions of the Article No. 31 of this law, which stipulates that it is an arbitration award and this award shall have the capacity, effect and executional force same as other arbitration awards.

**Article No. (31)**

**Arbitration Award Form & Contents**

1. The arbitration award shall be issued in writing and shall be signed by the arbitrator or the arbitrators, if the arbitration board consists of more than one arbitrator, the signature of the majority of the arbitrators shall be sufficient, provided that the judgment proves the reason for the lack of signatures of the other arbitrators.

2. The arbitration award shall be causative, unless otherwise is agreed between the two parties or if the legal rules applicable on the arbitration procedures never impose mentioning the reasons as a condition or if the arbitration award is conventional by virtue of the Article No. 30 of this law.

3. The arbitration award shall include the parties' names and addresses, arbitrators' names, addresses, nationalities and capacities, a copy of the arbitration agreement, the issuance date of the award and the arbitration place by virtue of what is stipulated in the item No. 1 of the Article No. 20 of this law, the arbitration award is deemed as if it is issued in this place. The award shall include a brief of the parties' demands, depositions and documents in addition to the pronouncement and the reasons of the award, if obligatory.

4. The award shall include the amount of the costs of arbitration of fees, expenses and the party obliged to pay and payment procedures, unless otherwise is agreed by the parties.

5. After the issuance of the arbitration award, a copy signed by the arbitrators shall be submitted to each party by virtue of the item No. 1 of this Article within 15 days from its issuance date. The parties may agree about non-publishing the arbitration award or parts of it.

## Article No. (32)
## Arbitration Procedures Termination

1. The arbitration procedures shall be terminated as a result of the issuance of the arbitration award ending the litigation completely or by virtue of a decree issued by the arbitration board in the following cases:

    a) If the parties agree about ending the procedures

    b) If the plaintiff leaves the litigation of the arbitration, unless the board decides, as per the demand of the defendant, that he has a serious and legitimate interest in proceeding with the procedures till the adjudication in the litigation.

    c) If the board finds that the continuance of the procedures becomes unfruitful or impossible for any other reason.

2. The arbitration board shall, automatically or as per the demand of any of the parties, reopen the pleading prior to the issuance of the arbitration award, if there is a reason for this.

3. The arbitration board shall issue the award regarding ending the litigation within the period agreed among the parties, and if there is no agreement, the award shall be issued within one month from closing the pleading door. In all cases, the arbitration board may decide to extend the period for not more than one month, unless otherwise is agreed or approved by the parties.

4. The jurisdiction of the arbitration board shall end by the end of the arbitration procedures with prejudice to the stipulations of the Articles 33 and 34 item No. 5.

**Article No. (33)**

**The Correction of the Arbitration Award and its Interpretation and in Additional Arbitration**

1. Unless otherwise is agreed by the parties, any of the two parties, within 7 days from the date of delivering the arbitration award or the period agreed by the parties, provided notification of the other parties, shall ask the arbitration board to:

    a) Correct the arithmetical, writing or typing mistakes or any other similar materialistic mistakes that may have occurred in the arbitration award.

    b) A certain point in the arbitration award or any of its certain parts shall be explained, if the parties agreed about this and if the arbitration board finds reasons justifying the demands, shall decide in writing the correction or will judge the interpretation of the judgment within 7 days from the date of receiving the demand and this interpretation or correction shall be deemed an integral part of the final arbitration award.

2. The arbitration board, provided that it notifies the parties, may correct by itself any of the mistakes mentioned in the item 1/A of this Article within seven days from the date of the arbitration award issuance.

3. Unless otherwise agreed by the parties, any of the parties may, provided that notifying the other parties, request the arbitration board within seven days from receiving the arbitration award to issue a supplementary arbitration regarding the demands submitted during the arbitration procedures neglected by the arbitration award and if the arbitration board finds justifications for this request, it should issue a supplementary arbitration award within seven days from the date of submitting the request.

4. The arbitration board may, if required, extend the period, during which the arbitration award should be corrected, or issue an interpretation for it or issue a supplementary arbitration award, for a period similar to the original period.

5. The Correction is made on the original copy of the award and to be signed by the arbitration board, the provisions of the Article No. 31 of this law shall be applied on the interpretation of the arbitration award and the supplementary arbitration award. And the other parties should be notified.

6. If it was proven that it is impossible for the arbitration award which issued this award to convene in order to discuss the correction or the interpretation or a judgment regarding neglected demands, then the issue may be referred to the competent court for settlement, unless otherwise is agreed by the two parties.

## The 7th Chapter

## Challenging the Arbitration Award

### Article No. (34)

### Requesting the Nullification of the Arbitration Award

1. The arbitration award may not be challenged by any challenging methods except by the challenge of the nullification methods according to the provisions of this law and in front of the competent court.

2. The claim of arbitration award nullification shall not be accepted, except if the applicant of the nullification submits an evidence proving any of the following cases:

    a) If any of the two parties of the arbitration agreement was on the time of signing or making the agreement was incapacitated, or if the arbitration agreement was incorrect, as in accordance with the applicable law, which the parties agreed on to be applicable on the arbitration agreement or by virtue of this law, if they did not agree about that.

    b) If the nullification applicant did not announce properly the nomination of any of the arbitrators or the arbitration procedures, and if the nullification applicant fails to submit his defense for any other reasons not under his control.

c) If the arbitration award adjudicates in matters not mentioned in the arbitration agreement or if it exceeds the limits of this agreement. However, if it is possible to separate the parts related to the affairs subject to arbitration from its parts regarding the affairs not subject to arbitration, the nullification shall not be in force except on the last parts solely.

d) If the formation of the arbitration board, arbitrator's nomination or the arbitration procedures were done in violation with what was agreed upon between the parties, and this agreement is not contradicting with the provisions of this law; and which the parties may not agree on its violation or in the case of the absence of an agreement, this means that this was done in a manner violating the law.

3. The competent court shall incidentally issue the nullification judgement of the arbitration award, if the litigation subject may not be settled via arbitration according to the law of the state, or if the arbitration award violates the state public order.

4. A claim of nullifying the arbitration award shall be filed before the competent court within one month from the date of delivering the parties copy of the award or from the date of the: notification of the applicant requesting the nullification of the arbitration award, the issuance of the correction decision, the interpretation judgment or the supplementary arbitration stipulated in Article No. (33) of this law, unless the parties have agreed in writing about extending the period of filing the nullification claim.

5. Unless otherwise is agreed by the parties, the competent court shall suspend the procedures of considering the claim upon the request of one of the parties, if it sees that this is suitable, and for the period which it defines in order to give the arbitration board the chance to complete the arbitration procedures or for taking any procedures the arbitration board sees suitable for eliminating the nullification reasons.

## The 8th Chapter

## Acknowledgment and Enforcement of Arbitration Agreements

### Article No. (35)

### Acknowledgment and Enforcement of Arbitration Agreements

1. The arbitrators' judgments shall have the peculiarity of settled litigations, and its execution is mandatory by virtue of the provisions of this law regardless of the country, where it was issued.

2. Unless otherwise is agreed by the parties, a written application for execution of the judgment should be submitted to the competent judge attached to it a copy of the arbitration agreement, the original copy of the judgment or a copy of it signed in the language it was issued, in addition to a translation of the award in Arabic from an accredited entity, if the judgment was issued in a foreign language.

3. With exception from item No. 2 of this Article, the parties may agree about the alternative and suitable means and procedures for acknowledging and executing the arbitration award and they may submit or deposit the suitable guarantees for the execution of the arbitration award before the competent entity or what it sees suitable.

4. The arbitration award execution request may not be accepted except after the expiry of the appointment of filing the judgment nullification claim.

### Article No. (36)

### Refusal Reasons of Acknowledgement or Execution

It is not allowed to refuse the acknowledgment of any arbitration award or to refuse its execution regardless the state where it was issued, except in the two following cases:

1. Upon the request of the party, against which the judgment should be executed, if this party submits to the competent judge, to whom he has submitted the acknowledgment & execution request, an evidence proving any of the following cases:

a) If any of the two parties of the arbitration agreement was on the time of signing or making the agreement was incapacitated, or if the arbitration agreement was incorrect, as in accordance with the applicable law, which the parties agreed on to be applicable on the arbitration agreement or by the virtue of the law of the state where it was issued, if they did not agree about that.

b) If the nullification applicant did not announce properly the nomination of any of the arbitrators or the arbitration procedures, and if the nullification applicant fails to submit his defense for any other reasons not under his control.

c) If the arbitration award adjudicates in matters not mentioned in the arbitration agreement or it exceeds the limits of this agreement. However, if it is possible to separate the parts of the award relating to the issues subject to arbitration, from the parts related to the issues not subject to arbitration. Acknowledging or executing the parts of arbitration award, which adjudicate in the issues which are included in the arbitration agreement or the issues not exceeding this agreement.

d) If the formation of the arbitration board, the nomination of the arbitrators or the arbitration procedures were done in contradiction with what was agreed on by the parties or in the case of a nonexistence of an agreement, which was done in violation with the law of the state, where the arbitration was done.

e) If the arbitration award has no longer become binding on the parties, or it was nullified or its execution was suspended by any of the courts of the state, where the judgment was issued or as per its laws.

2. If the competent judge refuses the acknowledgment or the execution of the arbitration award incidentally in the following two cases:

a) If the litigation subject was not permissible to be adjudicated via arbitration according to the state law.

b) If the acknowledgment or the execution of the judgment contradicts with the public order of the state.

If the competent judge finds out that the arbitration award, which is required to be acknowledged or executed, is challenged by nullification before the court of the state, where it was issued. The competent judge may postpone the order of execution as he may see suitable, and he may, upon the request of the party requesting the execution, order the other party to submit the guarantee which he see suitable.

3. The complaint against the issued order to refuse the execution of the arbitration award should be submitted to the competent court during thirty days from the date of the issuance of the order. It is not allowed to complaint against the order issued for the executing of the arbitration award.

## The 9th Chapter

## Arbitration Centres & Entities and the Accreditation of the Arbitrators

### Article No. (37)

### Establishing Arbitration Centres and Entities

The permission of establishing arbitration centres and entities and foreign arbitration centres branches inside the state shall be issued by a Ministerial decree. The executive regulation determines the rules and the conditions of granting or annulling the permissions and the fees specified in this regard.

## Article No. (38)
## Arbitrators Register

The register for listing the arbitrators will be established in the Ministry; their accreditation shall be issued by a ministerial decree. The executive regulation shall define the rules and conditions of registering and annulling the arbitrators in the abovementioned register, in addition to the specified fees in this regard.

## Article No. (39)
## Arbitration Affairs Department

**The 1st Option:-** The Department of the arbitration affairs should be established in the Ministry for the supervision on the arbitration works, and the executive regulations shall define its jurisdictions.

**The 2nd Option:-** The Department of the arbitration affairs should be established in the Ministry for the supervision on the arbitration works, and the executive regulations shall define its jurisdictions including the following:

1. Receiving and examining the applications for issuing licenses for: establishing arbitration centres, arbitration entities and branches of the foreign arbitration centres inside the state and to express its opinions regarding them.

2. Receiving and examining the applications of accrediting and registering the arbitrators in the national register for arbitrators and to express its opinions regarding them.

3. Issuing arbitrators registration certificates in the national register.

4. Suggesting the standards and the conditions necessary for accrediting and registering the arbitrators in coordination with arbitration centres and entities.

5. Suggesting the rules and the conditions necessary for licensing establishing arbitration centres and entities in the state.

6. Receiving and examining the complaints pertaining arbitration and arbitration centres and entities, and working on solving and taking suitable decisions regarding them.

7. Preparing guidance modules for the arbitration agreements.

8. Encouraging resorting to arbitration and enhancing its role in dispute settlement.

9. Seeking the development of the legislation tools in the field of arbitration.

10. Cooperating and forming partnerships with the organizations and the establishments concerned with arbitration internally and externally.

11. Preparing researches and studies and submitting recommendations in the field of developing the arbitration and advancing the arbitrators performance.

12. Following up the conferences, the seminars and both the national and international meetings in the field of arbitration.

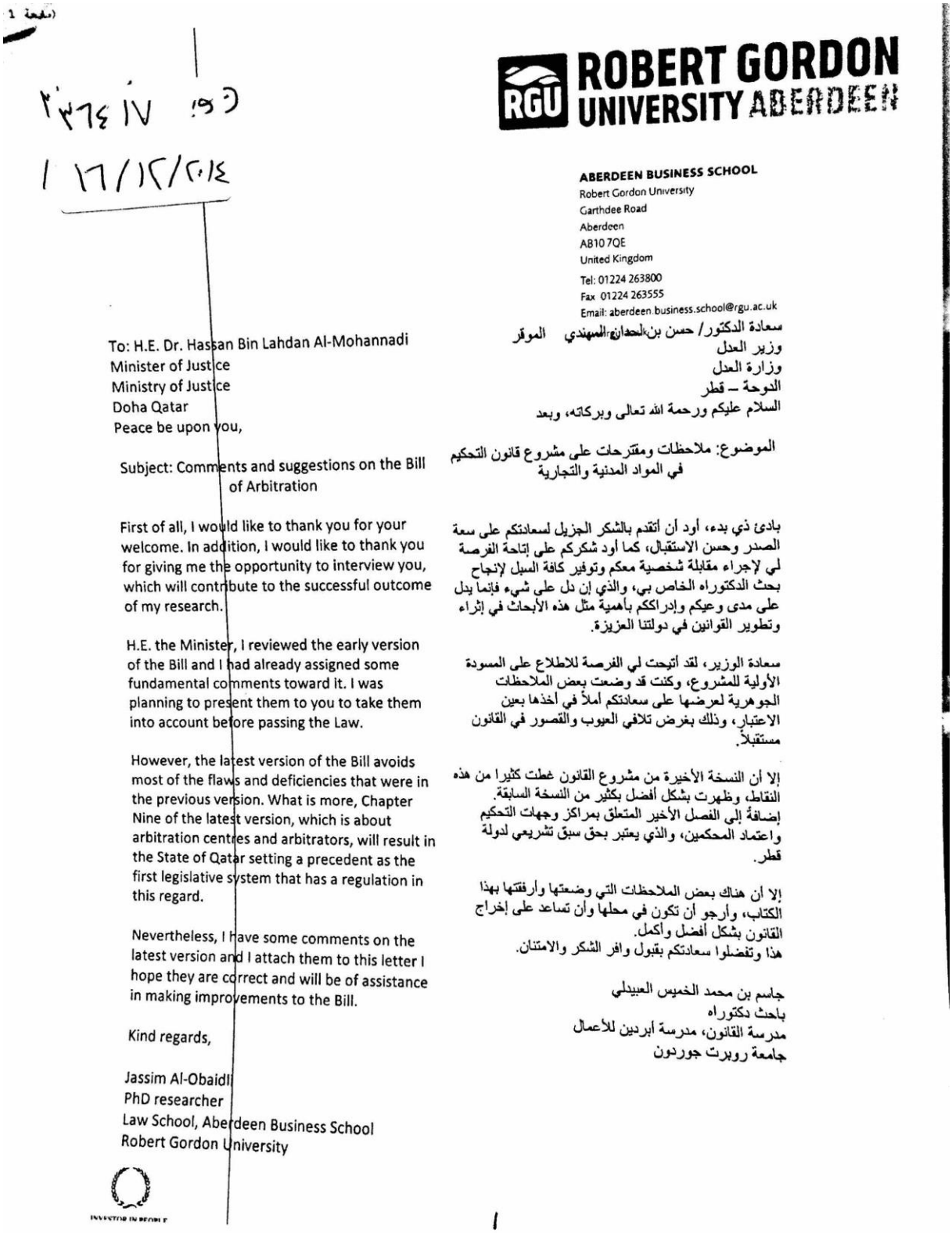
**Article No. (40)**

**The Current Affairs Reconciliation**

The existing arbitration centres and entities shall, at the time of enforcing this law, to adjust its situation in accordance with its provisions and the decisions issued in this regard, within 6 months from its enforcement date. This grace period shall be

prolonged for another similar periods by a decision from the counsel of the Ministers upon the Minister’s proposal.

# Letter of comments and suggestions on the Bill of Arbitration



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To: H.E. Dr. Hassan Bin Lahdan Al-Mohannadi
Minister of Justice
Ministry of Justice
Doha Qatar
Peace be upon you,

Subject: Comments and suggestions on the Bill of Arbitration

First of all, I would like to thank you for your welcome. In addition, I would like to thank you for giving me the opportunity to interview you, which will contribute to the successful outcome of my research.

H.E. the Minister, I reviewed the early version of the Bill and I had already assigned some fundamental comments toward it. I was planning to present them to you to take them into account before passing the Law.

However, the latest version of the Bill avoids most of the flaws and deficiencies that were in the previous version. What is more, Chapter Nine of the latest version, which is about arbitration centres and arbitrators, will result in the State of Qatar setting a precedent as the first legislative system that has a regulation in this regard.

Nevertheless, I have some comments on the latest version and I attach them to this letter I hope they are correct and will be of assistance in making improvements to the Bill.

Kind regards,

Jassim Al-Obaidli
PhD researcher
Law School, Aberdeen Business School
Robert Gordon University

INVESTOR IN PEOPLE

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الموضوع: ملاحظات ومقترحات على مشروع قانون التحكيم في المواد المدنية والتجارية

بادئ ذي بدء، أود أن أتقدم بالشكر الجزيل لسعادتكم على سعة الصدر وحسن الاستقبال، كما أود شكركم على إتاحة الفرصة لي لإجراء مقابلة شخصية معكم وتوفير كافة السبل لإنجاح بحث الدكتوراه الخاص بي، والذي إن دل على شيء فإنما يدل على مدى وعيكم وإدراككم بأهمية مثل هذه الأبحاث في إثراء وتطوير القوانين في دولتنا العزيزة.

سعادة الوزير، لقد أتيحت لي الفرصة للاطلاع على المسودة الأولية للمشروع، وكنت قد وضعت بعض الملاحظات الجوهرية لعرضها على سعادتكم أملاً في أخذها بعين الاعتبار، وذلك بغرض تلافي العيوب والقصور في القانون مستقبلاً.

إلا أن النسخة الأخيرة من مشروع القانون غطت كثيرا من هذه النقاط، وظهرت بشكل أفضل بكثير من النسخة السابقة. إضافةً إلى الفصل الأخير المتعلق بمراكز وجهات التحكيم واعتماد المحكمين، والذي يعتبر بحق سبق تشريعي لدولة قطر.

إلا أن هناك بعض الملاحظات التي وضعتها وأرفقتها بهذا الكتاب، وأرجو أن تكون في محلها وأن تساعد على إخراج القانون بشكل أفضل وأكمل.
هذا وتفضلوا سعادتكم بقبول وافر الشكر والامتنان.

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| المادة (2)<br>نطاق التطبيق<br>1-مع مراعاة احكام الاتفاقيات الدولية النافذة، تسري احكام هذا القانون على كل تحكيم، بين أطراف من اشخاص القانون العام أو القانون الخاص، أيا كانت طبيعة العلاقة القانونية موضوع النزاع. إذا كان التحكيم يجري في الدولة، او كان تحكيما تجاريا يجري في الخارج واتفق اطرافه على اخضاعه لأحكام هذا القانون. ويكون الاتفاق على التحكيم في منازعات العقود الادارية بموافقة وزير العدل. | التعديل المقترح: ويكون الاتفاق على التحكيم في منازعات العقود الادارية بموافقة رئيس مجلس الوزراء او من يفوضه. |
| 3-فيما عدا احكام المواد 36،35،9،8 تطبيق احكام هذا القانون في الحالة التي يكون فيها المكان القانوني للتحكيم واقعا في اقليم الدولة ما لم يكن تحكيما تجاريا خارجيا اتفق اطرافه على اخضاعه لأحكام هذا القانون. | التعديل المقترح: تطبق بدلا من تطبيق تعديل صياغي فقط |
| 4-يكون التحكيم دوليا، في تطبيق احكام هذا القانون، اذا توافرت فيه اي من العناصر الدولية التالية:<br>ا) اذا كان مقر عمل اطراف اتفاق التحكيم، وقت ابرام ذلك الاتفاق، واقعا في دولتين مختلفتين.<br>ب) اذا كان احد الاماكن التالية واقعا خارج الدولة التي يقع فيها مقر عمل الأطراف:<br>1)مكان التحكيم اذا كان محددا في اتفاق التحكيم او اشير فيه الى كيفية تحديده.<br>2)اي مكان ينفذ فيه جزء جوهري من الالتزامات عن علاقة الاطراف. او المكان الاوثق صلة بموضوع النزاع.<br>واذا كان لأحد الاطراف اكثر من مقر عمل، تكون العبرة بمقر العمل الأوثق صلة باتفاق التحكيم. واذا لم يكن لأحد الأطراف مقر عمل فتكون العبرة بمحل اقامته المعتاد.<br>ج) اذا اتفق الأطراف صراحة على ان موضوع اتفاق التحكيم متعلق بأكثر من دولة واحدة.<br>د) اذا اتفق الأطراف على اللجوء الى مؤسسة تحكيم دائمة او مركز للتحكيم يوجد مقره داخل الدولة او خارجها | التعليق:<br>بناءا على هذه العناصر : التحكيم المؤسسي داخل دولة قطر يعتبر تحكيما دولياً، بينما اي تحكيم فردي، حتى وإن وقع خارج دولة قطر، يعتبر غير دولي، اذا كان مقر عمل اطراف التحكيم وقت ابرام اتفاق التحكيم، واقعا في دولة واحدة؛ ومكان التحكيم ومكان تنفيذ الالتزامات الناشئة عن علاقة الاطراف واقعة جميعها في ذلك البلد؛ وكان اتفاق الاطراف صراحة على ان موضوع اتفاق التحكيم متعلق فقط بهذه الدولة. لذلك هذه المادة بحاجة الى تعديل يمكّن من اعتبار التحكيم المؤسسي داخل دولة قطر غير دولي: إذا كان بين أطراف قطريين، وموضوع النزاع متعلق بدولة قطر فقط. كما يجب أن يتم التعديل فيما يخص التحكيم الفردي خارج دولة قطر |
| المادة ٣<br>تسليم الاعلانات الكتابية او المخاطبات<br>ب) إذا تعذر معرفة اي من العناوين المشار إليها في الفقرة السابقة بعد اجراء التقصي اللازم، تعد المخاطبة او الاعلان الكتابي في حكم المستلم إذا تم ارساله الى اخر مقر عمل، ا محل اقامة معتاد، او عنوان بريدي او عنوان بريد الكتروني او رقم فاكس معروف للمرسل اليه، بموجب رسالة مسجلة او بأية وسيلة اخرى تقدم اثباتا كتابيا بالتسليم | التعديل المقترح: تقديم عبارة رقم فاكس على عبارة عنوان بريد الكتروني وذلك لإعطاء الفاكس الأولوية على البريد الإلكتروني. |
| ج) تسلم المخاطبة او الاعلان الكتابي المرسل بالفاكس او | التعديل المقترح: تعتبر المخاطبة او الاعلان الكتابي المرسل |

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| البريد الالكتروني في التاريخ الذي أرسل فيه، ما لم يتلقى الراسل رسالة تلقائية تفيد بحدوث خطأ في الإرسال | بالفاكس او البريد الالكتروني في حكم المستلم في التاريخ الذي أرسل فيه، مالم يتلقى الراسل رسالة تفيد بحدوث خطأ في الارسال.<br>وهذا التعديل صياغي بغرض توضيح الفقرة |
| د) في جميع الاحوال، تعتبر المخاطبة او الاعلان الكتابي قد استلم، إذا تم استلامه او ارساله قبل السادسة مساء في الدولة التي استلم فيها، وبخلاف ذلك يعد الاستلام قد تم في اليوم التالي | التعديل المقترح: في جميع الاحوال تعتبر المخاطبة او الاعلان الكتابي قد استلم بتاريخ اليوم الذي تم فيه الاستلام او الارسال، إذا تم استلامه او ارساله قبل السادسة مساء في الدولة التي استلم فيها، وبخلاف ذلك يعد الاستلام قد تم في اليوم التالي.<br>وهذا التعديل صياغي بغرض توضيح الفقرة |
| ه) لأغراض حساب المدد المنصوص عليها في هذه المادة، يبدأ احتساب المدة من اليوم التالي لليوم الذي تم فيها استلام الاتصال، فإذا صادف اخر يوم لتلك المدة عطلة رسمية او يوم عطلة عمل في مقر او مكان عمل المرسل اليه، تمتد المدة حتى اول يوم عمل تال. اما ايام العطلات الرسمية او عطل العمل التي تقع اثناء تلك المدة فتدخل في حسابها | التعديل المقترح: لأغراض حساب المدد المنصوص عليها في هذه المادة، يبدأ احتساب المدة من اليوم التالي لليوم الذي تم فيه استلام المخاطبة او الاعلان، فإذا صادف اخر يوم لتلك المدة عطلة رسمية او يوم عطلة عمل في مقر او مكان عمل المرسل اليه، تمتد المدة حتى اول يوم عمل تال. اما ايام العطلات الرسمية او عطل العمل التي تقع ضمن تلك المدة فتدخل في حسابها.<br>وهذا التعديل صياغي بغرض توضيح الفقرة |
| المادة ٤<br>النزول عن حق الاعتراض<br>إذا علم أحد الاطراف بوقوع مخالفة لحكم من احكام هذا القانون مما يجوز للأطراف مخالفته، او لشرط من شروط اتفاق التحكيم، واستمر مع ذلك في اجراءات التحكيم دون ان يبادر الى الاعتراض على هذه المخالفة في الميعاد المتفق عليه، او بدون تأخير غير مبرر عند عدم الاتفاق، اعتبر ذلك نزولا منه عن حقه في الاعتراض | التعديل المقترح: إذا علم أحد الاطراف بوقوع مخالفة لحكم من احكام هذا القانون مما يجوز للأطراف مخالفته، او لشرط من شروط اتفاق التحكيم، واستمر مع ذلك في اجراءات التحكيم دون ان يبادر الى الاعتراض على هذه المخالفة في الميعاد المتفق عليها أو كان التأخير غير مبرر عند عدم الاتفاق، اعتبر ذلك نزولا منه عن حقه في الاعتراض.<br>وهذا التعديل صياغي بغرض توضيح الفقرة |
| المادة ٥<br>المحكمة المختصة والقاضي المختص<br>3-يجوز لوزير العدل بالتنسيق مع المجلس الأعلى للقضاء تحديد جهة اخرى تتولى الاختصاصات المنصوص عليها في البند (١) من هذه المادة | التعديل المقترح: يجوز لوزير العدل بالتنسيق مع المجلس الأعلى للقضاء تحديد جهة اخرى تتولى الاختصاصات المنصوص عليها في البند (١) من هذه المادة.<br>وهذا التعديل صياغي بغرض توضيح الفقرة |
| الماده ١١<br>تعيين المحكمين<br>3-يتم قبول المحكم للتعيين كتابة او من خلال اتباع احدى الوسائل المنصوص عليها في المادة ٧ بند ٤ | التعديل المقترح: يتم قبول المحكم للتعيين كتابة او من خلال اتباع احدى الوسائل المنصوص عليها في المادة ٧ بند ٣ يوجد خطأ في تعيين رقم البند الواجب الاتباع |
| 4-مع عدم الإخلال بأحكام البندين ~~(٤)~~ و~~(٥)~~ من هذه المادة، للأطراف الاتفاق على الإجراء الواجب اتباعه في تعيين المحكم او المحكمين | التعديل المقترح: مع عدم الإخلال بأحكام البندين (١)، (٣) من هذه المادة، للأطراف الاتفاق على الإجراء الواجب اتباعه في تعيين المحكم او المحكمين. |
| 7-يكون أي قرار، صادر من السلطة الأخرى أو المحكمة المختصة بحسب الأحوال. في مسألة منصوص عليها في البندين ~~(٣)~~ و~~(٤)~~ من هذه المادة، نهائيا وغير قابل للطعن | التعديل المقترح: يكون أي قرار، صادر من السلطة الأخرى أو المحكمة المختصة بحسب الأحوال. في مسألة منصوص عليها في البندين (٥) و (٦) من هذه المادة، نهائيا وغير قابل للطعن. |
| 11-لا يجوز مساءلة المحكم عن ممارسته لمهام التحكيم، إلا إذا كانت ممارسته لها عن سوء نية أو تواطؤ أو إهمال جسيم. | التعديل المقترح: لا يجوز مساءلة المحكم عن الأخطاء الناجمة عن ممارسته لمهام التحكيم، إلا إذا كانت هذه الأخطاء ناجمة عن ممارسته لها عن سوء نية أو تواطؤ أو إهمال جسيم.<br>كما نقترح وضع إجراءات وعقوبات على المحكمين الذين ينطبق عليهم نص هذه المادة ومن هي الجهة المسؤولة عن النظر في هذه الممارسات الخاطئة وتطبيق العقوبات اللازمة. |

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| المادة ١٣<br>إجراءات الرد<br>2-إذا لم يوجد مثل هذا الاتفاق، يقدم طلب الرد المحكم، كتابة، إلى هيئة التحكيم مبينا فيه أسباب الرد. وذلك خلال خمسة عشر يوما من تاريخ علم طالب الرد بتشكيل هذه الهيئة أو بالظروف المبررة للرد، فإذا لم يتنح المحكم المطلوب رده، أو لم يوافق الطرف الأخر على طلب الرد، يحال طلب الرد إلى السلطة الأخرى أو المحكمة المختصة بحسب الأحوال. ويكون القرار الصادر منها غير قابل للطعن عليه بأي طريق. وتوقف هيئة التحكيم إجراءات التحكيم لحين الفصل في طلب الرد. | التعديل المقترح: إذا لم يوجد مثل هذا الاتفاق، يقدم طلب رد المحكم، كتابة إلى هيئة التحكيم مبينا فيه أسباب الرد. وذلك خلال خمسة عشر يوما من تاريخ علم طالب الرد بتشكيل هذه الهيئة أو بالظروف المبررة للرد، فإذا لم يتنح المحكم المطلوب رده، أو لم يوافق الطرف الأخر على طلب الرد، يحال طلب الرد إلى السلطة الأخرى أو المحكمة المختصة بحسب الأحوال. ويكون القرار الصادر منها غير قابل للطعن عليه بأي طريق. وتوقف هيئة التحكيم إجراءات التحكيم لحين الفصل في طلب الرد. |
| المادة ١٥<br>تعيين محكم بديل<br>1-يعين محكم بديل عن المحكم المنتهي مهمته بسبب الرد أو العزل أو التنحي أو لأي سبب آخر، ويتبع في تعيينه الإجراءات واجبة التطبيق في تعيين المحكم للمنتهي مهمته | التعديل المقترح: يعين محكم بديل عن المحكم المنتهية مهمته بسبب الرد أو العزل أو التنحي أو لأي سبب آخر، ويتبع في تعيينه الإجراءات واجبة التطبيق في تعيين المحكم المنتهية مهمته. - التعديل لغوي فقط حيث أن كلمة منتهية تعود للمهمة وليس للمحكم وعليه وجب تأنيثها |
| الفصل الرابع<br>اختصاص هيئة التحكيم | التعديل المقترح: سلطة او سلطات هيئة التحكيم -وذلك تمشيا مع التعديل اللاحق من قبلكم على مصطلح اختصاص وتحويله الى سلطة |
| المادة ١٧<br>سلطة هيئة التحكيم في الأمر بتدابير مؤقتة أو أحكام وقتية<br>ب) اتخاذ أية إجراء يمنع حدوث ضرر حال أو وشيك أو المساس بعملية التحكيم ذاتها، أو لمنع اتخاذ إجراء يحتمل أن يسبب ذلك الضرر أو المساس. | التعديل المقترح: اتخاذ أي إجراء يمنع حدوث ضرر حال أو وشيك او المساس بعملية التحكيم ذاتها، أو يمنع اتخاذ إجراء يحتمل أن يسبب ذلك الضرر أو المساس. |
| الفصل الخامس<br>إجراءات التحكيم<br>المادة ١٨<br>المساواة بين الأطراف<br>يتعين على هيئة التحكيم الالتزام بمبدأي الحياد والمساواة بين الأطراف، وتهيئ لكل منهم فرصة كاملة ومتكافئة لعرض دعواه ودفاعه ودفوعه.<br>كما يتعين على الهيئة أن تتجنب أي تأخير أو مصاريف غير ضرورية، وذلك بغرض تحقيق وسيلة عادلة وعاجلة لحل النزاع. | التعديل المقترح: يتعين على هيئة التحكيم الالتزام بمبدأي الحياد والمساواة بين الأطراف، وتهيئ لكل منهم فرصة كاملة ومتكافئة لعرض دعواه ودفاعه ودفوعه.<br>كما يتعين على الهيئة أن تتجنب اي تأخير أو مصاريف غير ضرورية. وذلك بغرض تحقيق وسيلة عادلة وعاجلة لحل النزاع. |
| المادة ٢٤<br>الإجراءات الشفهية والكتابية<br>5-ترسل صورة مما يقدمه أحد الأطراف إلى هيئة التحكيم من مذكرات أو مستندات أو أوراق أخرى إلى الطرف الآخر، وكذلك ترسل إلى كل من الأطراف صورة من كل ما يقدم إلى هيئة التحكيم من تقارير الخبراء والمستندات وغيرها من الأدلة التي قد تستند إليها في اتخاذ قرارها. | التعديل المقترح: ترسل صورة مما يقدمه أحد الأطراف إلى هيئة التحكيم من مذكرات أو مستندات أو أوراق أخرى إلى الأطراف الأخرى، وكذلك ترسل إلى كل الأطراف صورة من كل ما يقدم إلى هيئة التحكيم من تقارير الخبراء والمستندات وغيرها من الأدلة التي قد تستند إليها في اتخاذ قرارها. |
| 6-يجوز لكل من أطراف النزاع أن يوكل محام أو أكثر لتمثيله، وله الاستعانة بخبراء أو مترجمين. ويجوز لهيئة التحكيم، في أي وقت، أن تطلب من أي طرف ما يثبت الصفة الممنوحة لممثله وفقاً للشكل الذي يتطلبه القانون أو تحدده هيئة التحكيم. | التعديل المقترح: يجوز لأي من أطراف النزاع أن يوكل محام أو أكثر لتمثيله، وله الاستعانة بخبراء أو مترجمين. ويجوز لهيئة التحكيم، في أي وقت، أن تطلب من أي طرف ما يثبت الصفة الممنوحة لممثله وفقاً للشكل الذي يتطلبه القانون أو تحدده هيئة التحكيم. |
| المادة ٢٥<br>عدم لممثلي الأطراف أمام هيئة التحكيم | التعديل المقترح: عدم مثول الأطراف أمام هيئة التحكيم |
| ا) تنهي هيئة التحكيم إجراءات التحكيم، إذا لم يقدم المدعي مذكرة الدعوى وفقا للمادة (٢٣ بند ١) من هذا القانون، مالم يكن قدم عذرا مقبولا. | التعديل المقترح: تنهي هيئة التحكيم إجراءات التحكيم، إذا لم يقدم المدعي مذكرة الدعوى وفقا للمادة (٢٣ بند ١) من هذا القانون، مالم يكن قدم عذرا مقبولا. |

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| ب) تستمر هيئة التحكيم في اجراءات التحكيم، إذا لم يقدم المدعى عليه مذكرة الدفاع وفقا للمادة (٢٣ بند ٤) من هذا القانون، دون أن يعتبر ذلك في حد ذاته إقرارا من المدعى عليه بطلبات المدعي. | التعديل المقترح: تستمر هيئة التحكيم في اجراءات التحكيم، إذا لم يقدم المدعى عليه مذكرة الدفاع وفقا للمادة (٢٣ بند ٢) من هذا القانون، دون أن يعتبر ذلك في حد ذاته إقرارا من المدعى عليه بطلبات المدعي. |
| الفصل السادس<br>إصدار حكم التحكيم وإنهاء الإجراءات | التعديل المقترح: إصدار قرار التحكيم وإنهاء الإجراءات.<br>وذلك لإزالة اللبس الموجود حاليا حول حكم التحكيم ومدى وجوب صدوره باسم سمو الأمير، وبذلك يكون قرار التحكيم مختلفا عن حكم المحكمة. |
| المادة ٢٩<br>اتخاذ القرارات والأحكام من هيئة التحكيم<br>تصدر قرارات ولحكم هيئة التحكيم المشكلة من اكثر من محكم واحد، بأغلبية الأراء بعد مداولة تتم على الوجه الذي تحدده الهيئة، مالم يتفق الأطراف على خلاف ذلك. على أنه يجوز أن تصدر القرارات في المسائل الإجرائية من المحكم الذي يرأس الهيئة إذا أذن له بذلك الأطراف أو جميع أعضاء هيئة التحكيم. | التعديل المقترح: اتخاذ القرارات من هيئة التحكيم<br>تصدر قرارات هيئة التحكيم المشكلة من أكثر من محكم واحد، بأغلبية الأراء بعد مداولة تتم على الوجه الذي تحدده الهيئة، مالم يتفق الأطراف على خلاف ذلك. على أنه يجوز أن تصدر القرارات في المسائل الإجرائية من المحكم الذي يرأس الهيئة إذا أذن له بذلك الأطراف أو جميع أعضاء هيئة التحكيم. |
| المادة ٣٠<br>تسوية النزاع<br>1-إذا اتفق الأطراف خلال إجراءات التحكيم، على تسوية النزاع بينهم، أنهت هيئة التحكيم الإجراءات، وإذا طلب منها الأطراف إثبات التسوية وشروطها ولم يكن لدى هيئة التحكيم اعتراض عليها، تثبت التسوية في صورة حكم تحكيم اتفاقي. | التعديل المقترح: إذا اتفق الأطراف خلال إجراءات التحكيم، على تسوية النزاع بينهم، أنهت هيئة التحكيم الإجراءات، وإذا طلب منها الأطراف إثبات التسوية وشروطها ولم يكن لدى هيئة التحكيم اعتراض عليها، تثبت التسوية في صورة قرار تحكيم اتفاقي. |
| 2-يجب أن يصدر حكم التحكيم الاتفاقي وفقا لأحكام المادة (٣١) من هذا القانون، وأن ينص فيه على أنه حكم تحكيم، ويكون لهذا الحكم ما لأحكام المحكمين من صفة وأثر وقوة تنفيذية. | التعديل المقترح: يجب أن يصدر قرار التحكيم الاتفاقي وفقا لأحكام المادة (٣١) من هذا القانون، وأن ينص فيه على أنه قرار تحكيم، ويكون لهذا القرار ما لقرارات المحكمين من صفة وأثر وقوة تنفيذية. |
| المادة ٣١<br>شكل حكم التحكيم و محتوياته<br>1-يصدر حكم التحكيم كتابة، ويوقعه المحكم أو المحكمون، وإذا كانت هيئة التحكيم مشكلة من أكثر من محكم واحد يكتفى بتوقيعات أغلبية المحكمين، بشرط أن يثبت في الحكم سبب عدم توقيع باقي المحكمين.<br>2-يجب أن يكون حكم التحكيم مسبباً، ما لم يتفق الأطراف على غير ذلك، أو كانت القواعد القانونية الواجبة التطبيق على إجراءات التحكيم لا تشترط ذكر الأسباب، أو إذا كان حكم التحكيم اتفاقيا وفقا للمادة (٣٠) من هذا القانون.<br>3-يجب أن يشتمل حكم التحكيم على أسماء الأطراف وعناوينهم وأسماء المحكمين وعناوينهم وجنسياتهم وصفاتهم، ونسخة من اتفاق التحكيم، وتاريخ صدور الحكم، ومكان التحكيم وفقا لما هو محدد في المادة (٢٠ بند ١) من هذا القانون، ويعتبر حكم التحكيم قد صدر في ذلك المكان.<br>كما يتعين أن يشتمل الحكم على ملخص لطلبات الأطراف وأقوالهم ومستنداتهم ومنطوق الحكم وأسبابه إذا كان ذكرها واجباً.<br>4-يتعين أن يتضمن الحكم، مقدار تكاليف التحكيم من أتعاب ومصاريف، والطرف الملزم بسدادها وإجراءات السداد. مالم يتفق الأطراف على خلاف ذلك.<br>5-بعد صدور حكم التحكيم، يسلم إلى كل طرف نسخة موقعة | التعديل المقترح:<br>شكل قرار التحكيم و محتوياته<br>1-يصدر قرار التحكيم كتابة، ويوقعه المحكم أو المحكمون، وإذا كانت هيئة التحكيم مشكلة من أكثر من محكم واحد يكتفى بتوقيعات أغلبية المحكمين، بشرط أن يثبت في القرار سبب عدم توقيع باقي المحكمين.<br>2-يجب أن يكون قرار التحكيم مسبباً، ما لم يتفق الأطراف على غير ذلك، أو كانت القواعد القانونية الواجبة التطبيق على إجراءات التحكيم لا تشترط ذكر الأسباب، أو إذا كان قرار التحكيم اتفاقيا وفقا للمادة (٣٠) من هذا القانون.<br>3-يجب أن يشتمل قرار التحكيم على أسماء الأطراف وعناوينهم وأسماء المحكمين وعناوينهم وجنسياتهم وصفاتهم، ونسخة من اتفاق التحكيم، وتاريخ صدور القرار، ومكان التحكيم وفقا لما هو محدد في المادة (٢٠ بند ١) من هذا القانون، ويعتبر قرار التحكيم قد صدر في ذلك المكان.<br>كما يتعين أن يشتمل القرار على ملخص لطلبات الأطراف وأقوالهم ومستنداتهم ومنطوق القرار وأسبابه إذا كان ذكرها واجباً.<br>4-يتعين أن يتضمن القرار، مقدار تكاليف التحكيم من أتعاب ومصاريف، والطرف الملزم بسدادها وإجراءات السداد. مالم يتفق الأطراف على خلاف ذلك.<br>5-بعد صدور قرار التحكيم، يسلم إلى كل طرف نسخة |

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| من المحكمين وفقا للبند (١) من هذه المادة، خلال خمسة عشر يوما من تاريخ صدوره. ويجوز للأطراف الاتفاق على عدم نشر حكم التحكيم أو أجزاء منه. | موقعة من المحكمين وفقا للبند (١) من هذه المادة، خلال خمسة عشر يوما من تاريخ صدوره. ويجوز للأطراف الاتفاق على عدم نشر قرار التحكيم أو أجزاء منه. |
| المادة ٣٢<br>إنهاء إجراءات التحكيم<br>1-تنتهي إجراءات التحكيم بصدور حكم التحكيم المنهي للخصومة كلياً أو بموجب قرار صادر عن هيئة التحكيم في الأحوال التالية: | التعديل المقترح: تنتهي إجراءات التحكيم بصدور قرار التحكيم المنهي للخصومة كلياً أو بموجب قرار صادر عن هيئة التحكيم في الأحوال التالية |
| 2-يجوز لهيئة التحكيم من تلقاء نفسها أو بناء على طلب أحد الأطراف، إعادة فتح باب المرافعة قبل صدور حكم التحكيم، إذا رأت وجها لذلك. | التعديل المقترح: يجوز لهيئة التحكيم من تلقاء نفسها أو بناء على طلب أحد الأطراف، إعادة فتح باب المرافعة قبل صدور قرار التحكيم، إذا رأت وجها لذلك. |
| 3-يتعين على هيئة التحكيم إصدار الحكم المنهي للخصومة كلها خلال الميعاد المتفق عليه بين الأطراف، فإذا لم يوجد اتفاق وجب أن يصدر الحكم خلال شهر من تاريخ قفل باب المرافعة. وفي جميع الأحوال يجوز أن تقرر هيئة التحكيم مد هذا الميعاد لفترة لا تزيد عن شهر آخر، مالم يتفق أو يوافق الأطراف على خلاف ذلك. | التعديل المقترح: يتعين على هيئة التحكيم إصدار القرار المنهي للخصومة كلها خلال الميعاد المتفق عليه بين الأطراف، فإذا لم يوجد اتفاق وجب أن يصدر القرار خلال شهر من تاريخ قفل باب المرافعة. وفي جميع الأحوال يجوز أن تقرر هيئة التحكيم مد هذا الميعاد لفترة لا تزيد عن شهر آخر، مالم يتفق أو يوافق الأطراف على خلاف ذلك. |
| المادة ٣٣<br>تصحيح حكم التحكيم وتفسيره والتحكيم الإضافي | التعديل المقترح: إحلال مصطلح قرار مكان مصطلح حكم حيثما ورد |
| الفصل السابع<br>الطعن في حكم التحكيم | التعديل المقترح: الطعن في قرار التحكيم |
| المادة ٣٤<br>طلب إبطال حكم التحكيم | التعديل المقترح: إحلال مصطلح قرار مكان مصطلح حكم حيثما ورد تمشيا مع ما سبق من المواد |
| الفصل الثامن<br>الاعتراف بأحكام التحكيم وتنفيذها | التعديل المقترح: إحلال مصطلح قرار مكان مصطلح حكم حيثما ورد تمشيا مع ما سبق من المواد |
| المادة ٣٥<br>الاعتراف بأحكام التحكيم وتنفيذها | التعديل المقترح: إحلال مصطلح قرار مكان مصطلح حكم حيثما ورد تمشيا مع ما سبق من المواد |
| 2-ما لم يتفق الأطراف على خلاف ذلك، يقدم طلب تنفيذ الحكم كتابة إلى القاضي المختص، مرفقا به صورة من اتفاق التحكيم، وأصل الحكم أو صورة موقعة منه باللغة التي صدر بها، وترجمة الحكم الى اللغة العربية من جهة معتمدة، إذا كان صادرا بلغة اجنبية.<br>3-استثناءً من البند (٢) من هذه المادة، يجوز للأطراف الاتفاق على الإجراءات أو الوسائل البديلة المناسبة للاعتراف وتنفيذ حكم التحكيم، كما يجوز لهم تقديم أو إيداع الضمانات المناسبة لتنفيذ حكم التحكيم لدى الهيئة المختصة أو من تراه مناسبا. | التعليق: عبارة مالم يتفق الأطراف على خلاف ذلك، الواردة في البند (٢) من هذه المادة وكذلك البند (٣) منها تتركان الباب مفتوحا علي مصراعيه للأطراف على الاتفاق على عدم اللجوء إلى القاضي المختص لتنفيذ قرار التحكيم، وهذا قد يؤدي إلى اتفاقهم على عدم اللجوء للقاضي المختص في حال علمهم المسبق أن القرار باطل لمخالفته للنظام العام والآداب العامة للدولة مع اتفاقهم على تنفيذه، لذا نقترح حذف العبارة من البند (٢) وحذف البند (٣) من هذه المادة أو تحديد جهات حكومية اخرى بديلة لقاضي التنفيذ يكون التنفيذ من خلالها بحيث يضمن عدم مخالفة النظام العام والآداب العامة للدولة |
| المادة ٣٦<br>اسباب رفض الاعتراف والتنفيذ | التعديل المقترح: إحلال مصطلح قرار مكان مصطلح حكم حيثما ورد تمشيا مع ما سبق من المواد |