Global Arbitration Review

The Guide to Challenging and Enforcing Arbitration Awards

General Editor
J William Rowley QC

Editors
Emmanuel Gaillard and Gordon E Kaiser

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Publisher's Note

Global Arbitration Review is delighted to publish this new volume, *The Guide to Challenging and Enforcing Arbitration Awards*.

For those unfamiliar with Global Arbitration Review, we are the online home for international arbitration specialists, telling them everything they need to know about all the developments that matter. We provide daily news and analysis, and a series of more in-depth books and reviews, and also organise conferences and build work-flow tools. Visit us at www.globalarbitrationreview.com.

As the unofficial journal of international arbitration, sometimes we spot gaps in the literature earlier than other publishers. Recently, as J William Rowley QC observes in his excellent preface, it became obvious that the time spent on post-award matters has increased vastly compared with, say, 10 years ago, and it was high time someone published a reference work focused on this phase.

The Guide to Challenging and Enforcing Arbitration Awards is that book. It is a practical know-how text covering both sides of the coin – challenging and enforcing – first at thematic level, and then country by country. We are delighted to have worked with so many leading firms and individuals to produce it.

If you find it useful, you may also like the other books in the GAR Guides series. They cover energy, construction, M&A and mining disputes in the same unique, practical way. We also have books on advocacy in international arbitration and the assessment of damages.

My thanks to the editors for their vision and energy in pursuing this project and to my colleagues in production for achieving such a polished work.

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Editor's Preface

During the past two decades, the explosive and continuous growth in cross-border trade and investments that began after World War II has jet-propelled the growth of international arbitration. Today, arbitration (whether *ad hoc* or institutional) is the universal first choice over transnational litigation for the resolution of cross-border business disputes.

Why parties choose arbitration for international disputes

During the same period, forests have been destroyed to print the thousands of papers, pamphlets, scholarly treatises and texts that have analysed every aspect of arbitration as a dispute resolution tool. The eight or 10 reasons usually given for why arbitration is the best way to resolve cross-border disputes have remained pretty constant, but their comparative rankings have changed somewhat. At present, two reasons probably outweigh all others.

The first must be the widespread disinclination of those doing business internationally to entrust the resolution of prospective disputes to the national court systems of their foreign counterparties. This unwillingness to trust foreign courts (whether based on knowledge or simply uncertainty as to whether the counterparty's court system is worthy – i.e., efficient, experienced and impartial) leaves international arbitration as the only realistic alternative, assuming the parties have equal bargaining power.

The second is that, unlike court judgments, arbitral awards benefit from a series of international treaties that provide robust and effective means of enforcement. Unquestionably, the most important of these is the 1958 New York Convention, which enables the straightforward enforcement of arbitral awards in approximately 160 countries. When enforcement against a sovereign state is at issue, the ICSID Convention of 1966 requires that ICSID awards are to be treated as final judgments of the courts of the relevant contracting state, of which there are currently 161.

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Awards used to be honoured

A decade ago, international corporate counsel who responded to the 2008 Queen Mary/PricewaterhouseCoopers Survey on Corporate Attitudes and Practices in Relation to Investment Arbitration (the 2008 Queen Mary Survey) reported positive outcomes on the use of international arbitration to resolve disputes. A very high percentage (84 per cent) indicated that, in more than 76 per cent of arbitration proceedings, the non-prevailing party voluntarily complied with the arbitral award. Where enforcement was required, 57 per cent said that it took less than a year for awards to be recognised and enforced, 44 per cent received the full value of the award and 84 per cent received more than three-quarters of the award. Of those who experienced problems in enforcement, most described them as complications rather than insurmountable difficulties. The survey results amounted to a stunning endorsement of international arbitration for the resolution of cross-border disputes.

Is the situation changing?

As an arbitrator, my job is done with the delivery of a timely and enforceable award. When the award is issued, my attention invariably turns to other cases, rather than to whether the award produces results. The question of enforcing the award (or challenging it) is for others. This has meant that, until relatively recently, I have not given much thought to whether the recipient of an award would be as sanguine today about its enforceability and payment as those who responded to the 2008 Queen Mary Survey.

My interest in the question of whether international business disputes are still being resolved effectively by the delivery of an award perked up a few years ago. This was a result of the frequency of media reports – pretty well daily - of awards being challenged (either on appeal or by applications to vacate) and of prevailing parties being required to bring enforcement proceedings (often in multiple jurisdictions).

Increasing press reports of awards under attack

During 2018, *Global Arbitration Review*'s daily news reports contained literally hundreds of headlines that suggest that a repeat of the 2008 Queen Mary Survey today could well lead to a significantly different view as to the state of voluntary compliance with awards or the need to seek enforcement.

A sprinkling of last year's headlines on the subject are illustrative:

- 'Well known' arbitrator sees award set aside in London
- Gazprom challenges gas pricing award in Sweden
- ICC award set aside in Paris in Russia–Ukrainian dispute
- Yukos bankruptcy denied recognition in the Netherlands
- Award against Zimbabwe upheld after eight years
- Malaysia to challenge multibillion-dollar 1MBD settlement
- Uzbekistan escapes Swiss enforcement bid
- India wins leave to challenge award on home turf

Regrettably, no source of reliable data is available as yet to test the question of whether challenges to awards are on the increase or the ease of enforcement has changed materially

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since 2008. However, given the importance of the subject (without effective enforcement, there really is no effective resolution) and my anecdote-based perception of increasing concerns, last summer I raised the possibility of doing a book on the subject with David Samuels (*Global Arbitration Review*'s publisher). Ultimately, we became convinced that a practical, 'know-how' text that covered both sides of the coin – challenges and enforcement – would be a useful addition to the bookshelves of those who more frequently than in the past may have to deal with challenges to, and enforcement of, international arbitration awards. Being well equipped (and up to date) on how to deal with a client's post-award options is essential for counsel in today's increasingly disputatious environment.

David and I were obviously delighted when Emmanuel Gaillard and Gordon Kaiser agreed to become partners in the project.

Editorial approach

As editors, we have not approached our work with a particular view on whether parties are currently making inappropriate use of mechanisms to challenge or resist the enforcement of awards. Any consideration of that question should be made against an understanding that not every tribunal delivers a flawless award. As Pierre Lalive said in a report 35 years ago:

> *an arbitral award is not always worthy of being respected and enforced; in consequence, appeals against awards [where permitted] or the refusal of enforcement can, in certain cases, be justified both in the general interest and in that of a better quality of arbitration.*

Nevertheless, the 2008 Queen Mary Survey, and the statistics kept by a number of the leading arbitral institutions, suggest that the great majority of awards come to conclusions that should normally be upheld and enforced.

Structure of the guide

This guide is structured to include, in Part I, coverage of general matters that will always need to be considered by parties, wherever situated, when faced with the need to enforce or to challenge an award. In this first edition, the 13 chapters in Part I deal with subjects that include (1) initial strategic considerations in relation to prospective proceedings, (2) how best to achieve an enforceable award, (3) challenges generally, (4) a variety of specific types of challenges, (5) enforcement generally, (6) the enforcement of interim measures, (7) how to prevent asset stripping, (8) grounds to refuse enforcement, and (9) the special case of ICSID awards.

Part II of the book is designed to provide answers to more specific questions that practitioners will need to consider when reaching decisions concerning the use (or avoidance) of a particular national jurisdiction – whether this concerns the choice of that jurisdiction as a seat of an arbitration, as a physical venue for the hearing, as a place for enforcement, or as a place in which to challenge an award. This first edition includes reports on 29 national jurisdictions. The author, or authors, of each chapter have been asked to address the same 35 questions. All relate to essential, practical information on the local approach and requirements relating to challenging or seeking to enforce awards in each jurisdiction. Obviously, the answers to a common set of questions will provide readers

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with a straightforward way in which to assess the comparative advantages and disadvantages of competing jurisdictions.

Through this approach, we have tried to produce a coherent and comprehensive coverage of many of the most obvious, recurring or new issues that are now faced by parties who find that they will need to take steps to enforce these awards or, conversely, find themselves with an award that ought not to have been made and should not be enforced.

Quality control and future editions

Having taken on the task, my aim as general editor has been to achieve a substantive quality consistent with *The Guide to Challenging and Enforcing Arbitration Awards* being seen as an essential desktop reference work in our field. To ensure content of high quality, I agreed to go forward only if we could attract as contributors, colleagues who were some of the internationally recognised leaders in the field. Emmanuel, Gordon and I feel blessed to have been able to enlist the support of such an extraordinarily capable list of contributors.

In future editions, we hope to fill in important omissions. In Part I, these could include chapters on successful cross-border asset tracing, the new role played by funders at the enforcement stage, and the special skill sets required by successful enforcement counsel. In Part II, we plan to expand the geographical reach with chapters on China, Saudi Arabia, Turkey and Venezuela.

Without the tireless efforts of the Global Arbitration Review team at Law Business Research, this work never would have been completed within the very tight schedule we allowed ourselves; David Samuels and I are greatly indebted to them. Finally, I am enormously grateful to Doris Hutton Smith (my long-suffering PA), who has managed endless correspondence with our contributors with skill, grace and patience.

I hope that all my friends and colleagues who have helped with this project have saved us from error – but it is I alone who should be charged with the responsibility for such errors as may appear.

Although it should go without saying, this first edition of this publication will obviously benefit from the thoughts and suggestions of our readers on how we might be able to improve the next edition, for which we will be extremely grateful.

J William Rowley QC

April 2019
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Part II

Challenging and Enforcing Arbitration Awards: Jurisdictional Know-How

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Qatar

Matthew R M Walker, Marieke Witkamp and Claudia El Hage[1]

Applicable requirements as to the form of arbitral awards

Applicable legislation as to the form of awards

1 Must an award take any particular form (e.g., in writing, signed, dated, place, the need for reasons, delivery)?

Arbitration and post-arbitration proceedings in Qatar are governed by:

- the Law of Arbitration in Civil and Commercial Matters (entered into force via Law No. 2 of 2017 Promulgating the Civil and Commercial Arbitration Law – Issuing the Law of Arbitration Civil and Commercial Matters) (the Qatari Arbitration Law) – based primarily on the UNCITRAL Model Law;
- the respective provisions of the Civil and Commercial Procedures Law (CCPL) that are applicable to arbitration and post-arbitration proceedings, and are not repealed by Law No. 2 of 2017 (Articles 190 to 210 of the CCPL were repealed by Law No. 2 of 2017), and that do not contravene the provisions of the Qatari Arbitration Law; and
- the New York Convention.

The formal procedure requires that the award shall be issued in writing and shall be signed by the arbitrator or, if more than one arbitrator, by the majority of the arbitrators, unless agreed otherwise by the parties, provided that the reason for any omitted signatures is stated in the award (awards on procedural matters may be issued by the president of the tribunal if authorised to do so by the parties or all members of the arbitral tribunal).

The award must state the reasons upon which the decision is based, unless the parties agree otherwise or if the applicable legal rules do not require it, or if the award is made

1 Matthew R M Walker is a partner and Marieke Witkamp is an associate at K&L Gates LLP. Claudia El Hage is managing partner at Rashed R al Marri Law Office.

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upon the parties' settlement. It must also state the name of the parties and their addresses; the nationalities, names, addresses and capacity of the arbitrators; a copy of the arbitration agreement; the date of the issuance of the award; and the seat of arbitration. The award must include a summary of the requests, statements and documents submitted by the parties and the award ruling and its reasons, if it is required that they be stated. Finally, the award shall state the costs and fees of the arbitration, the party responsible for paying costs, and the procedures for payment, unless agreed otherwise by the parties.

Although there is no explicit legal requirement under the abolished arbitration law or any other law, or in the constitution of Qatar, there have been several court decisions, given under the now-repealed parts of the 'old' arbitration law, which ruled that Qatar-seated arbitral awards must be issued in the name of His Royal Highness, the Emir of the State of Qatar. Since those judgments also cited Article 69 of the Procedural Code, which was not expressly repealed by the new arbitration law, it remains to be seen how prevalent the practice of seeking domestic awards being issued in the name of His Highness the Emir will continue to be.

Each party to an arbitral award shall be given a copy within 15 days of the date of the issuance of the award, and the tribunal is required to send an electronic copy thereof to the administrative department in the ministry concerned with arbitration affairs, within two weeks of issuance. In practice, we are aware that arbitral tribunals appear to be complying with this requirement, and that the arbitration department at the Ministry of Justice is handling this particular requirement as set down in Article 31(11) of the Law.

Although it does not, technically, relate to the form of arbitral awards, it should be noted that 'interest' as a form of compensation for damages is recoverable under Qatari law only if mutually agreed by the parties. Additionally, unless mutually agreed by the parties, costs are a matter reserved solely to the tribunal's discretion.

Applicable procedural law for recourse against an award

Applicable legislation governing recourse against an award

2 Are there provisions governing modification, clarification or correction of an award?

Unless the parties agree otherwise, any party may, within seven days of receipt of an arbitral award, or within the period agreed by the parties, provided that it notifies the other parties, request the arbitral tribunal to correct any material computation or typographical errors that may have occurred in the arbitral award, or give an interpretation of a specific point or part of the arbitral award, if so agreed by the parties.

If the arbitral tribunal considers the request to be justified, it shall make the correction in writing or give the interpretation within seven days of the date of receipt of the request. The interpretation or correction shall form part of the final arbitral award.

The arbitral tribunal may, provided that it notifies the parties, correct on its own motion any material computation or typographical errors that may have occurred in the arbitral award within seven days of the date of issuance.

Unless the parties agree otherwise, any party, provided that it notifies the other party, may request the arbitral tribunal, within seven days of the date of receipt of the arbitral award, to issue an additional arbitral award as to the requests submitted during the arbitral

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proceedings but which were omitted from the award. If the tribunal considers the request to be justified, it shall issue the additional award within seven days of the date of the petition submission.

In the event that it is proven that it is impossible for the arbitral tribunal that has issued the award to reconvene to reconsider the request to correct, clarify or decide on the omitted requests, the matter can be raised with the competent court to decide thereon, unless otherwise agreed by the parties.

Appeals from an award

3 May an award be appealed to or set aside by the courts? If so, on what grounds and what procedures? What are the differences between appeals and applications for set-aside?

An arbitral award may not be appealed by any method of appeal except by way of setting aside before the competent court.

The competent court for setting aside an award is by default the Civil and Commercial Arbitration Disputes Circuit of the Court of Appeals (i.e., local courts) or the Court of First Instance of the Civil and Commercial Court of the Qatar Financial Centre (i.e., the QFC courts) as designated in the agreement by the parties.

The Qatari Arbitration Law sets out limited grounds for setting aside an arbitral award. An application for setting aside an award shall not be accepted unless the applicant furnishes proof of the following:

- any party to the agreement was, at the time of concluding it, incompetent or under some incapacity, or the arbitration agreement is invalid under the Law chosen by the parties or according to the Qatari Arbitration Law by default;
- the party making the application to set aside was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was unable to present its defence for any other reasons beyond its control;
- the award has decided matters outside the scope of the arbitration agreement or in excess thereof (if it is possible to separate the parts of the award that are related to arbitration from the parts unrelated to arbitration, only the latter parts shall be set aside); or
- the composition of the arbitral tribunal, the appointment of the arbitrators or the arbitral proceedings was not in accordance with the agreement of the parties unless that agreement was in conflict with a provision of the Law, from which the parties cannot derogate, or failing such agreement, was not in accordance with the Law.

Grounds that a court may consider of its own initiative to set aside an award are non-arbitrability of the subject matter of the dispute or violation of public policy, which is to be understood as a serious departure from fundamental notions of procedural justice although it may be construed more widely.

Any such challenge must be made within one month of the date (1) of receiving the award, (2) on which the party making the application is notified of the award, or (3) of issuing a correction, interpretation or additional award, unless the parties agree in writing to extend the time limit for filing the application to set aside.

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Unless otherwise agreed between the parties, the competent court may stay the proceedings before it upon the request of one of the parties, for such period that the court will determine if it finds it convenient to grant the arbitral tribunal the chance to complete the arbitration proceedings or to take any other procedure that the arbitral tribunal deems necessary to eliminate the grounds for annulment.

Applicable procedural law for recognition and enforcement of arbitral awards

Applicable legislation for recognition and enforcement

4 What is the applicable procedural law for recognition and enforcement of an arbitral award in your jurisdiction? Is your jurisdiction party to treaties facilitating recognition and enforcement of arbitral awards?

The Qatari Arbitration Law, with the New York Convention, provides for the procedural rules for recognition and enforcement of arbitral awards in Qatar.

Qatar is a party to the New York Convention and the ICSID Convention, as well as 55 bilateral investment treaties (of which 23 are in force), and an additional 12 treaties with investment provisions (of which six are in force). Qatar is also a party to the Convention on Judicial Cooperation between States of the Arab League (Riyadh Convention) of 1983 and the GCC Convention for the Execution of Judgments, Delegations and Judicial Notifications of 1996.

The New York Convention

5 Is the state a party to the 1958 New York Convention? If yes, what is the date of entry into force of the Convention? Was there any reservation made under Article I(3) of the Convention?

Qatar acceded to the New York Convention on 30 December 2002. The Convention entered into force by ratification via Emiri Decree No. 29 of 2003 on 15 March 2003, which was published in the Official Gazette on 20 July 2003. No reservation was made under Article I(3).

Recognition proceedings

Competent court

6 Which court has jurisdiction over an application for recognition and enforcement of arbitral awards?

The competent judge is the enforcement judge in the First Instance Circuit of the Plenary Civil Court by default, or the enforcement judge in the Civil and Commercial Court of the Qatar Financial Centre pursuant to the agreement of the parties. In the Grand Civil Court, the enforcement judge sits in a different court (and branch of the courts) from the judges in the first instance addressing civil claims.

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Jurisdictional issues

7 What are the requirements for the court to have jurisdiction over an application for recognition and enforcement of arbitral awards? Must the applicant identify assets within the jurisdiction of the court that will be the subject of enforcement for the purpose of recognition proceedings?

There is no mandatory requirement under the laws of Qatar for an applicant to identify assets within Qatar. Instead, on enforcement, the execution judge automatically notifies the commercial register at the Ministry of Industry and Commerce, the banks (through the Qatar Central Bank), the real estate register and the traffic department, unless the applicant seeks an attachment on specific assets (such as funds in the hands of third parties), in which case the party must identify such assets.

Form of the recognition proceedings

8 Are the recognition proceedings in your jurisdiction adversarial or *ex parte*?

Whereas arbitration law makes a distinction between a refusal to recognise an award based on grounds submitted by the other party and grounds to be examined *ex officio*, recognition proceedings in Qatar are currently by means of an application submitted by the successful party to the enforcement judge for the recognition and granting the *exequatur*. The judge, after examining *ex officio* that all conditions are met *prima facie*, will recognise the award and grant it *exequatur*.

Form of application and required documentation

9 What documentation is required to obtain the recognition of an arbitral award?

An application for recognition and enforcement of the arbitral award shall be submitted in writing to the competent judge, with a copy of the arbitration agreement, and the original award or a copy of it in the language in which it was issued, with a certified Arabic translation if it was issued in a foreign language, unless the parties agreed on alternative methods to enforce the arbitral award.

An application for enforcement of the arbitral award shall not be accepted until expiry of the time limit of one month set for submission of the application for setting aside the arbitral award.

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Translation of required documentation

10 If the required documentation is drafted in a language other than the official language of your jurisdiction, is it necessary to submit a translation with an application to obtain recognition of an arbitral award? If yes, in what form must the translation be?

By law all documents submitted to the court must be in Arabic or translated into Arabic by a licensed translator. There are no sworn translators in Qatar; however, there are translation companies licensed to operate by the Ministry of Commerce and Industry.

Other practical requirements

11 What are the other practical requirements relating to recognition and enforcement of arbitral awards?

The court fee for submission of an application for recognition and enforcement is 100 riyals, in addition to any translation costs. Once the enforcement is granted, a fee of 750 riyals has also to be paid. Any request submitted to the court is subject to a fee of 10 riyals. On a practical level, our experience is that recognition and enforcement of awards is currently taking much longer than many might have hoped for or envisaged under the new Arbitration Law.

Recognition of interim or partial awards

12 Do courts recognise and enforce partial or interim awards?

A party in whose favour an order for provisional measures or an interim award is issued may, after obtaining written permission from the tribunal, request the competent judge to order the enforcement of the order or award issued by the tribunal. The competent judge shall then enforce the order or award, unless the order contradicts the law of public policy.

Additionally, the tribunal, or any of the parties, may, with the approval of the tribunal, request the assistance of the competent court in taking evidence relating to the subject matter of the dispute, including technical expertise services and examination of evidence. The tribunal may stay the proceedings until it has obtained such assistance. The competent court may then enforce this request for assistance by, *inter alia*, sentencing hostile witnesses who fail to appear before the court to give evidence or who fail to respond to any of the questions put to them.

There is no specific distinction regarding partial awards. However, the Qatari Arbitration Law – mirroring the New York Convention – allows partial recognition or enforcement of arbitral awards. By way of analogy and in light of the fact that the recognition of partial awards is not prohibited under the laws of Qatar, it is safe to assert that the Qatari courts would recognise and enforce partial awards.

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Grounds for refusing recognition of an award

13 What are the grounds on which an award may be refused recognition? Are the grounds applied by the courts different from the ones provided under Article V of the Convention?

The grounds for refusal of recognition mirror those provided under Article V:

- Upon a request made by a party against whom an award is invoked, if it is brought before the competent judge to whom the application of recognition or enforcement has been submitted, proof of one of the following grounds:
  - one party to the arbitration agreement, at the time of the conclusion of that agreement, was incompetent or under some incapacity under the law governing its capacity, or the arbitration agreement is invalid under the law to which the parties have agreed to apply to the arbitration agreement or under the law of the country where the award was made if the parties fail to agree on that;
  - the party against whom the enforcement is sought was not duly notified of the appointment of the arbitrator or of the arbitral proceedings, or was unable to present its defence for any reason beyond its control;
  - the award has decided matters that fall outside the scope of the arbitration agreement, or in excess of the arbitration agreement. However, if it is possible to separate parts of the awards relating to the arbitration from the parts not relating to the arbitration, it is allowed to recognise or enforce the award deciding matters within the scope of the arbitration agreement or the matters that did not exceed the agreement;
  - the composition of the arbitral tribunal, appointment of arbitrators, or the arbitral proceedings was in contradiction of the law or the agreement of the parties, or, in the absence of an agreement, was in contradiction of the law of the country where the arbitration took place; or
  - the arbitral award is no longer binding to the parties or has been set aside, or enforcement of the award has been stayed by a court of the country in which the award was issued or in accordance with the law thereof; or
- the competent judge on his or her own motion refuses to recognise or enforce the arbitral award in the following two cases:
  - if the subject matter of the dispute cannot be settled by arbitration under the law of the state; or
  - recognition or enforcement would be contrary to the public policy of the state.

Effect of a decision recognising an award

14 What is the effect of a decision recognising an award in your jurisdiction? Is it immediately enforceable? What challenges are available against a decision recognising an arbitral award in your jurisdiction?

The award becomes enforceable immediately through an enforcement lawsuit. A recognition order is subject to a grievance before the competent judge within 30 days of the date of issuance of the execution order.

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Decisions refusing to recognise an award

15 What challenges are available against a decision refusing to recognise an arbitral award in your jurisdiction?

A grievance against a decision to refuse or enforce an arbitral award may be brought before the competent court within 30 days of the date the decision is issued.

Stay of recognition or enforcement proceedings pending annulment proceedings

16 Will the courts adjourn the recognition or enforcement proceedings pending the outcome of annulment proceedings at the seat of the arbitration? What trends, if any, are suggested by recent decisions? What are the factors considered by courts to adjourn recognition or enforcement?

If the competent judge becomes aware that an arbitral award for which recognition or enforcement is sought is subject to setting aside before the court of the country where the award was issued, he or she may adjourn the order of enforcement as he or she deems fit. In addition, the competent judge may, upon the request of the party seeking recognition or enforcement, require the other party to provide suitable security.

Security

17 If the courts adjourn the recognition or enforcement proceedings pending the annulment proceedings, will the defendant to the recognition or enforcement proceedings be ordered to post security? What are the factors considered by courts to order security? Based on recent case law, what are the form and amount of the security to be posted by the party resisting enforcement?

See question 16.

Recognition or enforcement of an award set aside at the seat

18 Is it possible to obtain the recognition and enforcement of an award that has been fully or partly set aside at the seat of the arbitration? If an award is set aside after the decision recognising the award has been issued, what challenges are available against this decision?

The Qatari Arbitration Law provides that an enforcement application can only be accepted after the time limit for annulment has expired; however, it does not provide for any stay of proceedings for any other reason apart from what is discussed in question 16. Articles 380 and 381 of the CCPL provide that a foreign arbitration award can be enforced after checking that Qatari courts are not the sole courts that have jurisdiction over the matter; that the foreign courts have jurisdiction in accordance with international judicial jurisdiction as stated in their own laws; that the parties to the arbitration have been duly summoned to appear and were duly represented; that the award is final in accordance with the law of the

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court that issued it; that the award does not contradict another judgment previously issued by a Qatari court; and that it does not contravene the public policy or morals of Qatar.

For partially annulled awards, see question 12.

Service

Service in your jurisdiction

19 What is the applicable procedure for service of extrajudicial and judicial documents to a defendant in your jurisdiction?

Under the Qatari Arbitration Law, unless the parties agree otherwise, written notices or correspondence shall be served for arbitration proceeding purposes as follows:

- personal service to the addressee, or service to the addressee's place of business, habitual residence or mailing address that is known to the parties or specified in the arbitration agreement, or in the document regulating the relationship under the arbitration;
- if none of the aforementioned addresses can be found after making a reasonable enquiry, a written notice or correspondence is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address, email address or fax known to the addressee, by registered mail or by any other means that provides written proof of receipt;
- written notice or correspondence sent by fax or email is deemed to have been received on the date on which it is sent if no automatic error message is received by the sender;
- in any situation, written notice or correspondence is deemed to have been received if it is received or sent before 6pm in the country where it is received; otherwise, receipt will be deemed to have occurred on the following day; or
- for the purposes of calculating the periods stipulated in the Law, the calculation of a time limit shall begin on the day following the day on which it is received. If the last day of that period falls on an official holiday or a business holiday at the main office or the place of business of the recipient, the time limit shall be extended until the next working day. However, official holidays or business holidays that fall during the established time limit shall be taken into account.

This procedure does not apply to judicial notices before the courts.

Service out of your jurisdiction

20 What is the applicable procedure for service of extrajudicial and judicial documents to a defendant out of your jurisdiction?

See question 19.

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Identification of assets

Asset databases

21 Are there any databases or publicly available registers allowing the identification of an award debtor's assets within your jurisdiction?

Registers are held at various government departments, such as the commercial register at the Ministry of Commerce and Industry, the traffic department, the real estate register, banks, and the intellectual property register. However, in practice, data from these registers can only be obtained through a court order.

Information available through judicial proceedings

22 Are there any proceedings allowing for the disclosure of information about an award debtor within your jurisdiction?

See question 21.

Enforcement proceedings

Availability of interim measures

23 Are interim measures against assets available in your jurisdiction? May award creditors apply such interim measures against assets owned by a sovereign state?

Interim measures are available against movables, including funds in the hands of third parties. The same legal provisions apply to disputes relating to public services and public works contracts, supply contracts and any other administrative contracts. The CCPL provides for the right to ban an award debtor from leaving the country if there are genuine concerns that the debtor may smuggle its assets or flee the country to avoid enforcement of the dispute.

The authors are aware of at least one case in which interim measures were granted against the assets of a quasi-state entity and the assets of that entity were attached and the assets in that entity's account were seized and transferred to the court treasury.

Procedure for interim measures

24 What is the procedure to apply interim measures against assets in your jurisdiction? Is it a requirement to obtain prior court authorisation before applying interim measures? If yes, are such proceedings *ex parte*?

The procedure is filing an adversarial application to the execution judge, who will issue an order for attachment, or an *ex parte* application to seize the assets in the hands of third parties.

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Interim measures against immovable property

25 What is the procedure for interim measures against immovable property within your jurisdiction?

Only execution measures are allowed against immovable property.

Interim measures against movable property

26 What is the procedure for interim measures against movable property within your jurisdiction?

See question 24.

Interim measures against intangible property

27 What is the procedure for interim measures against intangible property within your jurisdiction?

See question 24.

Attachment proceedings

28 What is the procedure to attach assets in your jurisdiction? Is it a requirement to obtain prior court authorisation before attaching assets? If yes, are such proceedings *ex parte*?

See questions 29 and 30.

Attachment against immovable property

29 What is the procedure for enforcement measures against immovable property within your jurisdiction?

After filing an adversarial application to the execution judge, a debtor is summoned to defend himself or herself and to settle. A request to seize property includes the name of the applicant, its capacity and (elected) domicile, the name of the debtor and his or her domicile, the type of execution deed and its date, the date of notification of the debtor and the summon to settle, the debt value, a description of the immovable property, its location, dimension, borders, and all information enabling it to be identified.

The enforcement judge will issue an order to seize the property within two weeks at most of the request date. Upon seizing the property, the real estate registry is informed so as to register the attachment on the property's register. Minutes of the attachment are drawn up and submitted to the judge, who will issue within seven days, *inter alia*, a list of sale conditions and the auction price. Within the following 15 days, the debtor, creditors and right holders are informed of the sale auction procedure.

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Attachment against movable property

30 What is the procedure for enforcement measures against movable property within your jurisdiction?

After filing an adversarial application to the enforcement judge, the debtor is summoned to defend and to settle. A request to seize the property includes the name of the applicant, his or her capacity and (elected) domicile, the name of the debtor and his or her domicile, the type of execution deed and its date, the date of notification of the debtor and the summons to settle, the debt value, and a detailed description of the property at the location. The minutes will be signed by the court clerk and the debtor if present (without prejudice). The property will have to be sold within three months of the attachment date, although this can be extended by mutual agreement of the parties for another three months, by court order or by law.

Attachment against intangible property

31 What is the procedure for enforcement measures against intangible property within your jurisdiction?

See question 30.

Enforcement against foreign states

Applicable law

32 Are there any rules in your jurisdiction that specifically govern recognition and enforcement of arbitral awards against foreign states?

No. The same rules apply, save for any international treaties and reciprocity of recognition and enforcement.

Service of documents to a foreign state

33 What is the applicable procedure for service of extrajudicial and judicial documents to a foreign state?

Service is through diplomatic channels.

Immunity from enforcement

34 Are assets belonging to a foreign state immune from enforcement in your jurisdiction? If yes, are there exceptions to such immunity?

As regards the immunity of foreign states and foreign state entities, Qatar acceded to the Vienna Convention on Diplomatic Relations (the Vienna Convention) on 6 June 1986 and entered three reservations: (1) the right for the State of Qatar to open a diplomatic bag if it has strong suspicions that it is being used for purposes that are unlawful and incompatible with the aims of the relevant rule of immunity; (2) the non-applicability to the State of Qatar of Article 37(2) of the Vienna Convention (concerning the immunity

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granted to the administrative and technical staff of the mission and members of their families; and (3) the fact that the Qatar does not recognise the State of Israel as a result of its accession to the Vienna Convention.

Apart from these reservations, Qatar is bound to enforce all other provisions of the Vienna Convention, including those dealing with judicial immunity of assets pertaining to foreign states located on its territory. In particular, the judicial authorities in Qatar will be precluded from enforcing any domestic or foreign judgment or arbitral award against any assets belonging to the diplomatic mission of a foreign state. Indeed, pursuant to the provisions of Article 22(3) of the Vienna Convention, 'the premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution'.

Waiver of immunity from enforcement

35 Is it possible for a foreign state to waive immunity from enforcement in your jurisdiction? If yes, what are the requirements of such waiver?

It would not appear that a foreign state (defined in the Vienna Convention as the Sending State) could waive its immunity from enforcement as far as the premises, properties and means of transport belonging to its diplomatic mission in Qatar are concerned. However, the foreign state could validly waive the immunity from jurisdiction and enforcement enjoyed by its diplomatic officers pursuant to the provisions of Article 32 of the Convention. For this waiver to be valid, it should always be express. Note that in respect of civil or administrative proceedings involving diplomatic officers, a waiver of immunity from jurisdiction shall not be deemed to imply waiver of immunity in respect of the execution of a judgment, for which a separate waiver shall be necessary.

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Appendix 1

About the Authors

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Matthew R M Walker, a partner in the Doha and London offices of K&L Gates, focuses his practice in construction law and dispute resolution. He has acted as advocate and counsel in ICC arbitrations in Qatar, the UAE, Saudi Arabia, Turkey, India and the United Kingdom, as well as in the Qatar International Court, the High Court of England and Wales, and an international adjudication on a gas facility in Tanzania. He has acted as sole arbitrator in a QICCA arbitration, in which he issued a final award, and has been appointed to QICCA's panel of arbitrators. He is a Fellow of the Chartered Institute of Arbitrators, a Fellow of the Chartered Institute of Building and has been accredited as a mediator by the Royal Institute of Chartered Surveyors.

He also gives non-contentious construction advice, particularly in the rail sector. He has undertaken secondments to Qatar Rail and London Underground. He has advised on procurement for Doha Metro and has drafted construction contracts (including FIDIC, NEC, JCT, ACE, RIBA and bespoke forms) on construction projects of varying size and complexity. He has also been listed in *Who's Who Legal* 2015, 2016, 2017 and 2018 as one of the six leading construction lawyers currently working in Qatar.

Marieke Witkamp
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Marieke Witkamp is an associate at K&L Gates. She has more than 15 years of legal experience, focusing her practice on construction law, litigation and dispute resolution. Marieke has acted for a variety of clients in international and domestic commercial and construction disputes and also provides non-contentious legal advice on various matters, including Dutch law. Marieke has served as a judge in the Netherlands since 2003 and continues to sit as a substitute judge for the Court of Rotterdam.

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Claudia El Hage is Lebanese, holds a master's in law from St Joseph University, Beirut-Lebanon and is a member of the Beirut Bar Association. She has more than 20 years of legal experience. She started working in Qatar as senior counsel at Qatar Financial Centre Authority for three years and subsequently worked as managing partner in a private practice. In 2013, she partnered in Qatar with advocate Rashed R Al Marri and has been the managing partner since.

Claudia works mostly in arbitration and litigation and dispute resolution, and gives legal advice in property, real estate, contracting, construction, corporate, and commercial industries. She advises international and local firms regarding their projects and activities and all legal aspects pertaining thereto. She has advised clients and acted for them on major projects in Qatar.

Claudia also advises on all aspects of corporate and commercial matters, setting up with Qatar Financial Centre, regulatory investigations and compliance and all related lawsuits and disputes, provides legal counsel and support to many construction and commercial companies and corporations and in institutional and *ad hoc* arbitration.

Claudia is fluent in Arabic, English and French.

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Enforcement used to be an irrelevance in international arbitration. Most losing parties simply paid. Not so any more. The time spent on post-award matters has increased vastly.

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