

THE QATARI RESTRICTIONS: IMPLICATIONS FOR ARBITRATION



Much has been written about recent events in the Middle East and how the restrictions imposed on Qatar may impact specific industry sectors. In this briefing, we consider the effect of the current restrictions on a topic relevant to all sectors, but one that has not attracted much commentary to date – arbitration.

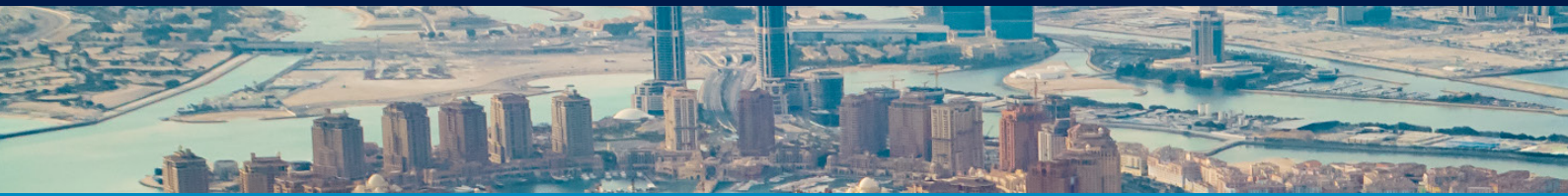
What is happening?

Several of Qatar's neighbouring states, including Saudi Arabia, the UAE, Egypt and Bahrain (Restricted Countries), have cut diplomatic ties with Qatar and restricted their borders, ports and airspace to Qatari-linked travel and traffic.

Why is this important?

As well as the immediate impact on various sectors, such as construction, shipping and aviation, the restrictions have broader consequences for contracting parties in the region, notably in how they resolve disputes arising under their agreements in light of the current situation.

Arbitration remains a common choice of forum for the resolution of disputes in Qatar, particularly in the construction sector. Some contracts provide for arbitration seated outside Qatar, but, as both parties will often be based in Qatar, many of these proceedings are seated in Qatar with the



venue of arbitration – where hearings actually take place regardless of the seat – also being within the state for convenience. The recent restrictions raise certain considerations for both current domestic and international proceedings, as well as for parties contemplating arbitration as their means of resolving disputes.

The biggest issues are likely to be caused by travel restrictions and associated disruption. Nationals from some Restricted Countries are currently barred from remaining in or travelling to Qatar. However, while not all non-national residents are subject to the same ban, they are nevertheless still likely to be affected by severe disruption to travel routes in and out of Qatar. In particular:

- Nationals from the Restricted Countries who sit as arbitrators, act as counsel or experts, or are to provide factual witness evidence may be prevented from attending meetings or hearings in Qatar at all.
- For those that can still travel to Qatar, the time and costs involved in doing so may increase significantly if coming from the Restricted Countries, as limited and more indirect routes must be used.

Of course, the restrictions operate both ways, and Qatari parties, nationals and residents are likely to encounter similar difficulties if their arbitration is seated in one of the Restricted Countries.

What are we likely to see as a result?

We expect to see some or all of the following:

- A reluctance or inability on the part of arbitrators, counsel and experts based in Restricted Countries to accept or continue appointments for Qatar-seated arbitrations, and vice versa.

- A corresponding increase in the use of Qatar-based arbitrators and experts for Qatar-seated proceedings, or arbitrators and experts from further afield, outside the Restricted Countries, who are not subject to the current travel restrictions.
- Parties at pre-contract stage choosing to seat their arbitrations outside of Qatar and the Restricted Countries.
- The venue of Qatar-seated arbitrations being specified or moved outside of Qatar and the Restricted Countries.
- An increase in the use of technology in arbitration, such as the giving and hearing of evidence and conduct of procedural hearings by video conference, to allow arbitrations to be conducted remotely.
- Where parties do not avail themselves of technological solutions, costs and durations of proceedings increasing as parties have to factor in travel time and costs for arbitrators, counsel, witnesses and experts.

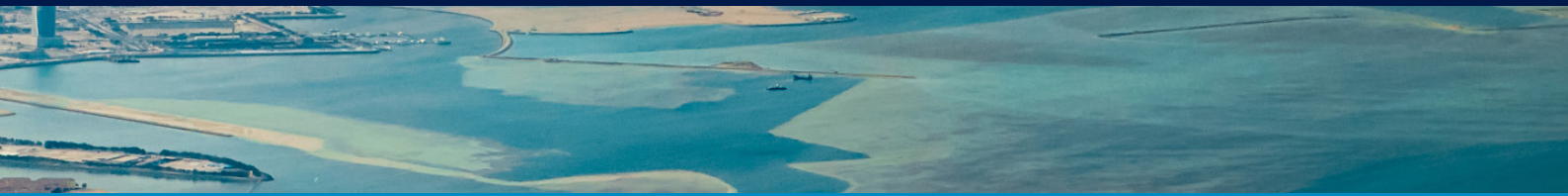
Parties and tribunals in Qatari-linked proceedings may also be able to take advantage of the provisions of the new Qatar Law No. 2 of 2017, promulgating the Civil and Commercial Arbitration Law (the Arbitration Law), which applies to both current and future arbitration proceedings in Qatar. For example:

- Under Article 31.3 of the Arbitration Law, an award is deemed to be issued in the seat of arbitration. Even if the seat is Qatar, there is no express requirement in the Arbitration Law for a tribunal to sign its award in Qatar. This provision is yet to be fully tested in the Qatari

courts. However, tribunals may seek to take advantage of this provision to avoid travelling to Qatar or mitigate any applicable travel restrictions.

- Under Article 20.1, where an arbitration clause is silent as to the seat of arbitration, the tribunal may determine the seat (which may be outside Qatar), provided that due consideration is given to the “*circumstances of the case and the convenience of the seat to the parties*”.
- Article 20.2 expressly provides that, subject to the parties’ agreement, the tribunal may hold hearings outside the seat of arbitration, including hearings of witness or expert evidence, where appropriate.
- Article 19.1 allows the tribunal to determine the procedures applicable to the arbitration, again subject to any agreement of the parties to the contrary. Tribunals may exercise this authority, for example, in allowing witness or expert evidence to be given remotely. (In this regard, Article 24.2 of the Arbitration Law permits a tribunal to hear witnesses and experts without requiring they provide their evidence under oath – previously a common reason to hold hearings in person.)

Similar or additional relief may be found under the rules of arbitration applicable to the proceedings. For example, Article 29.4 of the Rules of Arbitration of the Qatar International Center for Conciliation and Arbitration allow a tribunal to “*direct that witnesses, including expert witnesses, be examined through modern means of both audio and video telecommunication that do not require their physical presence at the hearing*”.



For parties and tribunals in existing arbitrations, or with a Qatar or Restricted Country seat specified in your contract, consider carefully whether and how you may be affected by the current restrictions. Seek advice on any relief or other measures available under your contract, the applicable arbitration rules and Arbitration Law, such as the use of technology or changing the venue of your hearings.

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However, the likely overall impact of the current restrictions is that the duration and costs of Qatar-seated proceedings (or both) will increase, notably as the additional travel-related and associated administrative time and costs increase. Still, arbitrators must bear in mind their obligations under Article 18 the Arbitration Law to “*avoid unnecessary delay and expense, and to provide a fair and efficient process for resolving the dispute*”.

What should you be doing?

For parties and tribunals in existing arbitrations, or with a Qatar or Restricted Country seat specified in your contract, consider carefully whether and how you may be affected by the current restrictions. Seek advice on any relief or other measures available under your contract, the applicable arbitration rules and Arbitration Law, such as the use of technology or changing the venue of your hearings.

At the same time, bear in mind any specific requirements in your arbitration agreement – for example, certain arbitration clauses may require the appointment of an arbitrator of a specific nationality, which may cause an issue if that arbitrator is from a Restricted Country. Similarly, the arbitration clause may prevent certain relief or measures under the applicable rules or Arbitration Law. In all cases, early and open dialogue between the tribunal and parties is essential.

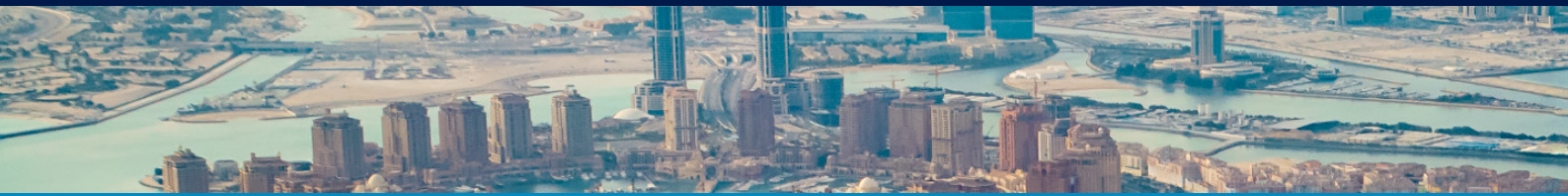
For arbitrators, consider your obligations under the applicable rules of arbitration and the Arbitration Law with regard to time-limits – for example, under Article 31.8 of the Arbitration Law, the tribunal must ensure that the parties receive a signed copy of the final award within 15 days of its signature. With travel and delivery routes in and out of Qatar disrupted, arbitrators should ensure they allow plenty of time to comply with that obligation.

Arbitrators should also take positive and proactive steps to engage with the parties to mitigate or reduce the time and cost impact on proceedings or, where no agreement is possible, make such directions as are within their power to achieve this goal.

For parties at pre-contract stage, bear in mind the potential future impact of the current restrictions on your dispute and seek advice as to the seat, venue and arbitration rules suitable for you and your contract, or indeed whether arbitration is right for you at all.

The situation in Qatar remains fluid and we shall provide further updates as more information becomes available.

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