

Mediation 2013

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Qatar

Domitille Baizeau, Catherine A Kunz and Ramy Saleh

Lalive in Qatar LLC

Law and institutions

1 Treaties

Is your country a signatory to any treaties that refer to mediation? Is your domestic mediation law based on a treaty?

Qatar is not a signatory to any treaty concerning mediation. In 2011, however, Qatar ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention), which makes provision for conciliation proceedings.

Qatari law generally does not distinguish between mediation and conciliation. There are very few provisions of Qatari domestic law relating to domestic or foreign mediation or conciliation and such provisions are not based on any treaty such as the UNCITRAL Model Law on International Commercial Conciliation (2002) (the UNCITRAL Model Law).

In the context of the ongoing reform of the provisions governing arbitration, as contained in the Commercial and Civil Procedure Code (Law No. 13 of 1990), the latest bill dated 13 June 2012 (the Bill) contains provisions concerning 'reconciliation' which are to a large extent inspired by the UNCITRAL Model Law. The term 'reconciliation' covers any proceedings in which the parties are assisted by a neutral to settle their dispute, including mediation. To the best of the authors' knowledge, the date on which the Bill will be enacted into law is not yet known.

2 Domestic mediation law

What are the primary domestic sources of law relating to domestic and foreign mediation? Are there any differences for the mediation of international cases?

There are two separate legal jurisdictions in Qatar: the State of Qatar and the Qatar Financial Centre (QFC).

Laws of the State of Qatar

The legal system of the State of Qatar combines aspects of Islamic shariah law and codified civil law. The judiciary is divided into two corresponding court systems: the shariah courts and the civil, commercial and criminal courts. While shariah law governs family law, inheritance law and certain criminal offences, other matters of civil law as well as commercial disputes are primarily governed by Qatari civil law. Although shariah law finds its way into the law applicable in the State of Qatar, only the codified civil law is, in principle, applicable to mediation proceedings unless the parties specifically agree that shariah law must be taken into account. The present chapter focuses on the applicable provisions of civil law to the exclusion of shariah law.

To date, there are no general provisions of Qatari law concerning mediation, whether domestic or foreign, and mediation is first and foremost governed by the contractual provisions agreed by the parties. Hence, the primary domestic source of law is the Civil Code (Law No. 22 of 2004), which acknowledges the principle of freedom of contract and grants the parties the absolute right to agree on the terms and conditions of their agreement as long as it is not contrary to public policy or bonos mores.

This position may change as a result of the ongoing legislative reform, since the Bill contains a whole section dedicated to 'reconciliation' in civil and commercial matters, whether local or international.

Statutory provisions referring to mediation can, however, be found in certain laws governing specific matters, for example in the Labour Law (Law No. 14 of 2004) (see question 5). The possibility for the parties to refer their dispute to mediation has also recently been introduced with respect to disputes concerning exchange related transactions by the Ministerial Decree No. 4 of 2010, which reflects the encouragement of alternative dispute resolution mechanisms discussed as part of the reform of the Commercial and Civil Procedure Code.

QFC laws

The QFC was established by the government of Qatar as a free zone for financial services operating according to international business and legal standards; it was formally opened in 2005. The QFC is a separate jurisdiction with its own laws and dispute resolution mechanisms within the State of Qatar.

The Qatar Financial Centre Civil and Commercial Court (the QFC Court) Regulations and Procedural Rules (the QFC Court Rules) include a mechanism for alternative dispute resolution. Pursuant to the QFC Court Rules, the QFC Court will encourage the parties to resolve their dispute by resorting to mediation or other forms of alternative dispute resolution when appropriate (article 5.1) and may offer its assistance for the parties to do so (article 25.2). The QFC Court may also require the parties to take steps to settle their dispute by means of an alternative dispute resolution process (article 10.2.2). The QFC Court may at any time adjourn or stay the proceedings so that the parties can attempt to settle their differences by mediation or another form of dispute resolution (article 25.1). Mediation services are available prior to and after the commencement of proceedings before the QFC Court.

3 Mandatory provisions

Are there provisions of domestic mediation law that must be considered in mediation?

There are no mandatory provisions of Qatari substantive law that must be considered in mediation.

4 Obligation to mediate

Is mediation in your country obligatory? Can mediation be ordered by courts in your country?

As mediation is a voluntary process, there is in principle no obligation to mediate under Qatari laws. This principle can also be found in the Bill, which expressly provides that the reconciliation proceedings shall start on the date on which both parties to the dispute agree to take part in such proceedings.

The QFC Court Rules include a provision under which the QFC Court may require the parties to use an alternative dispute resolution process (article 10.2.2); the rules, however, do not set out the criteria for the exercise of this power and the authors are not aware of any case in which this power has been exercised.

5 Mediation-arbitration

Is mediation often combined with arbitral proceedings? May a mediator act later in the same dispute as an arbitrator, conciliator or judge?

There is some evidence of the use of multi-tiered arbitration clauses providing that the parties must first seek to settle their dispute through alternative dispute resolution mechanisms, such as negotiation, mediation or conciliation, prior to commencing arbitration, especially in infrastructure and construction contracts in Qatar. Since mediation as an alternative dispute resolution process remains in a development phase, there is no established practice yet of combining mediation with arbitral proceedings. For the same reasons, to date, there is little evidence on the use of hybrid clauses such as med-arb or arb-med clauses, where the same neutral would typically act as both mediator and arbitrator.

However, a multi-tiered dispute resolution mechanism is expressly provided for in the Labour Law (Law No. 14 of 2004) for collective labour disputes between an employer and all or some of its workers or between a group of employers and their workers in relation to a subject matter that is of common interest to a group of workers or a specific professional sector (article 129 et seq). The dispute resolution mechanism adopted for such disputes is: negotiation followed by mediation, and where no settlement agreement is reached through mediation the dispute is subject to conciliation before a conciliation committee, whose decision is only binding if the parties agreed in writing to refer their dispute to the conciliation committee; in the absence of such an agreement, the dispute is finally referred to mandatory arbitration before a committee composed of a representative of the Ministry, a representative of the Qatar Chamber of Commerce and Industry (the Qatar Chamber) and a representative of the workers nominated by the General Union of the Workers of Qatar.

In 2012 the Qatar International Centre for Conciliation and Arbitration (QICCA) issued Rules of Conciliation (the QICCA Conciliation Rules) in which it is specifically provided that a conciliator cannot act as arbitrator in a dispute that was or is the subject of the conciliation or in respect of another dispute that has arisen from the same or a related contract or legal relationship, unless the parties expressly agree otherwise (article 19). It should be noted that under the QICCA Conciliation Rules, as under the UNCITRAL Model Law, the term 'conciliation' refers to a process whereby parties request a neutral to assist them in their attempt to reach an amicable settlement of their dispute, including mediation.

6 Confidentiality and disclosure

Is mediation a confidential proceeding in your country? In which cases can disclosure of confidential information by the mediator or the parties be permitted or compelled? Are there any sanctions for breach of confidentiality?

There is no Qatari statutory provision dealing with the confidentiality of mediation; hence, under Qatari law, mediation proceedings can only be confidential by (express or implied) agreement of the parties. Such an agreement can be made by reference to mediation rules that provide for the confidentiality of the mediation, such as the QICCA Conciliation Rules, or international rules such as the ICC ADR rules or the UNCITRAL Conciliation Rules.

Pursuant to the QICCA Conciliation Rules, all matters relating to the conciliation (thus including mediation) proceedings must be kept confidential by the conciliator (or mediator) and by the parties (article 16). This confidentiality obligation also extends to the settlement agreement that may be reached, unless its disclosure is required for its implementation or enforcement. Moreover, the QICCA Conciliation Rules expressly provide that it is prohibited for the parties to rely on or introduce as evidence in any subsequent judicial or arbitral proceedings the following:

- the invitation sent by a party to participate in conciliation/mediation proceedings;
- the views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;
- any admissions made by the other party during the course of the conciliation/mediation proceedings;
- proposals made by the conciliator or the other party's indication of its willingness to accept such proposals; and
- any document prepared for the conciliation/mediation purposes (article 18).

Similar provisions regarding confidentiality have been included in the Bill. The Bill also specifies that no arbitration board, court or competent authority can order the disclosure of such confidential information and that if such information is submitted as evidence it must be considered inadmissible, unless it is used for the purposes of the implementation or enforcement of the settlement agreement reached.

The parties and conciliator/mediator can be held contractually liable in case of breach of their confidentiality obligations.

7 Limitation period

Does a mediation proceeding suspend the limitation period for a court claim?

Under current Qatari law, mediation does not interrupt any statutory limitation period. Therefore, absent any other specific step, claims may become time-barred during the mediation process.

The Bill, however, introduces a provision pursuant to which reconciliation proceedings shall interrupt the period of statutory limitation until such time as they are concluded without any settlement agreement having been reached.

8 Settlement

What is the legal character of the final (settlement) agreement? What are the legal requirements for the enforceability or the content of the agreement? Is it possible to revise, withdraw or challenge the final settlement agreement?

In Qatar, the final settlement agreement reached through mediation typically takes the form of a binding contract, which can be a detailed agreement settling all issues in dispute, an agreement in principle on the main issues or even a promise to enter into a

contract if it covers the essential points of the contemplated contract (in which case, under Qatari law, the promise to contract is binding on the parties). Although the written form is not required under Qatari law, the QICCA Conciliation Rules for instance provide that settlement agreements must be in writing and signed by the parties, which reflects the common practice.

If one of the parties is in breach of its obligations of the settlement agreement, the other party may seek remedies for breach of contract before the competent court or arbitral tribunal.

Pursuant to the Rules of Arbitration issued by the QICCA in 2012 (the QICCA Arbitration Rules), in cases where the mediation was conducted in relation to a dispute pending arbitration or following arbitration, the parties may request that the arbitral tribunal record the settlement agreement reached through mediation in the form of an arbitral award on agreed terms (article 37.1).

The Bill introduces an important provision: under the new law, the parties will be able to submit their agreement in writing to the chief judge of the Court of Appeal or to the delegated judge for ratification within 90 days of the date of the settlement; the settlement agreement so ratified will have the same binding effect and legal force as an arbitral award for enforcement purposes.

9 Mediation institutions

What are the most prominent mediation institutions in your country?

There are two main Qatari institutions offering alternative dispute resolution services:

- the Qatar International Centre for Conciliation and Arbitration (QICCA), a non-governmental institution established in 2006 under the auspices of the Qatar Chamber of Commerce and Industry (QCCI) (www.qatarchamber.com). It offers arbitration and conciliation services; and
- the Qatar International Court and Dispute Resolution Centre (QICDRC) (<http://qicdrc.com.qa>) of the Qatar Financial Centre (QFC). It offers a full range of dispute resolution services such as (1) a civil and commercial court (referred to as the Qatar International Court), which hears disputes between parties from anywhere around the world if they have referred their dispute to its jurisdiction, and has mandatory jurisdiction to hear disputes between QFC entities; and (2) alternative dispute resolution services such as early neutral evaluation, mediation and arbitration. Since 2010 the QICDRC has provided mediation services in partnership with the Centre for Effective Dispute Resolution (CEDR), which is a non-profit organisation providing alternative dispute resolution services based in the United Kingdom.

Foreign institutions offering mediation services with a presence in Qatar include:

- the International Chamber of Commerce (ICC), ICC Qatar National Committee; and
- the Talal Abu-Ghazaleh Dispute Resolution Centre (TAG-Resolution, www.tagresolution.org).

Mediation procedure

10 Background

Describe the development of mediation in your country.

Qatar has recently emerged as a successful mediator of political conflicts and controversies in other Arab nations, such as between the various factions in Lebanon in 2008; between the two main Palestinian factions, Hamas and Fatah, in 2006 and in 2012; for the successful release of the imprisoned Bulgarian nurses in Libya in 2007; and in relation to the peace agreement between the Yemeni government and rebels in 2007.

Mediation as an alternative process for the resolution of civil and commercial disputes is still in its infancy. The QFC Court, which also offers mediation services, in partnership with the CEDR, was only established in 2009.

However, new developments in the field of mediation are to be expected in the context of the ongoing reform of the Commercial and Civil Procedure Code and the enactment of the Bill, which specifically provides for mediation of commercial disputes (see question 1).

11 Areas of disputes for mediation

In which areas of disputes is mediation preliminarily applied? Are there any disputes that cannot be mediated?

Mediation is not yet commonly used in Qatar as an alternative dispute resolution process, although its use has increased in recent years in relation to disputes involving large infrastructure and construction projects in Qatar (with contractual provisions included to that effect). For instance, several mediations have been conducted or are still ongoing in relation to the construction of the New Doha International Airport. It is also contemplated as a possible dispute resolution mechanism for the major infrastructure and construction projects envisaged for the 2022 FIFA World Cup.

Mediation is also used in the context of collective labour disputes (see question 5).

There is no Qatari statutory provision specifically prohibiting the use of mediation in specific areas.

12 Procedural requirements

Are there procedural requirements for mediation proceedings in your country? Must the parties prepare for the mediation?

There are no procedural requirements for mediation proceedings in Qatar and the parties are as a rule free to agree on the mediation procedure.

In mediations conducted under QICCA Conciliation Rules, the mediation is generally commenced by the filing of a 'conciliation request' by the party wishing to have recourse to conciliation/mediation, which shall include a summary of the dispute. However, the conciliation/mediation shall only commence upon receipt by the QICCA of the other party's written acceptance to participate in the conciliation/mediation. The conciliator may request the parties to provide evidence, but there are no other specific provisions in the rules regarding the procedure.

13 Structure and process of mediation

Describe the most common steps for the mediator's preparation of a mediation proceeding. Describe the most common structure of mediation proceedings. What is the typical time frame for a mediation proceeding? Are there any special considerations for international mediation proceedings?

There is as yet no established mediation practice in Qatar and thus no typical structure, process or time frame is followed in mediations in Qatar.

The parties are in principle free to choose the language of the proceedings, although for practical reasons (eg, the choice of the mediator) they will most often be conducted in English.

14 Mediation style

What is the primary mediation style in your country for commercial mediation: facilitative mediation, evaluative mediation or transformative mediation? Are private sessions (caucuses) or joint sessions, or both commonly used in mediation?

There is no specific local practice in Qatar regarding the mediation style or the use of private sessions in addition to joint sessions, but the QICCA Conciliation Rules expressly provide for the possibility for the conciliator to meet or communicate with the parties jointly or with each of them separately (article 10.2). The same principle is provided for in the Bill.

Both the QICCA Conciliation Rules and the Bill also allow the conciliator to make proposals for a settlement of the dispute (article 9.3 of the QICCA Conciliation Rules).

15 Co-mediation

What form does team mediation typically take in your country? Is co-mediation regularly used in your country? In which kind of cases?

There is no local practice in Qatar regarding the use of co-mediation, but the QICCA Conciliation Rules expressly provide for the possibility of the parties to bring their dispute before several conciliators (or mediators) (article 5). The Bill also provides for such a possibility.

16 Party representatives and third parties

What is the practice in your country with respect to the inclusion of party representatives in mediation proceedings? What is the practice with respect to experts and witnesses?

There is no local practice in Qatar regarding the inclusion of party representatives or the use of experts and witnesses in the mediation proceedings, but the QICCA Conciliation Rules expressly provide for the possibility of the parties to be represented or assisted by one or more persons (article 7).

17 Specific mediation procedures/conflict or dispute management systems

Have companies set up their own dispute management systems in your country? Are there any special routes for consumers to use mediation for small claims? Are there any institutions that offer mediation for their customers, users, etc? Is online mediation available in your country?

There is no evidence available of companies that have set up their own dispute management systems in Qatar or of institutions that offer mediation for their customers or users except for the specific dispute resolution centres referred to above (see question 9).

To the best of the authors' knowledge, there are to date no online mediation platforms based in Qatar.

Mediation agreement

18 Conclusion and content

Is there any obligation to conclude an agreement between the mediator and the parties or between the parties before or at the beginning of the proceeding? Are there any legal requirements regarding the content of the agreement between the mediator and the parties? What are the common provisions for such mediation agreement? Must the agreement be in writing?

As mediation is a voluntary process all of the parties involved must agree to mediate their dispute. There is no statutory requirement

for the mediation agreement to be in writing. The written form is, however, required for mediations conducted under the QICCA Conciliation Rules.

There is no requirement under Qatari law regarding the content of the mediation agreement between the parties or of the agreement between the parties and the mediators, and there is no established practice in this regard.

19 Costs for mediation

Are there any legal provisions on mediators' fees? What is the average mediator's fee in mediations involving companies? Is there any legal aid or other financial support for mediation proceedings if parties cannot afford to pay the mediator?

There are no statutory provisions governing mediators' fees in Qatar.

In mediation proceedings conducted under the QCCIA Conciliation Rules, the administrative fees and fees of the conciliator (or mediator) are calculated on the basis of the fees applied in arbitrations conducted under the QCCIA Arbitration Rules and are calculated as a percentage of the amount in dispute according to the scale annexed to the QCCIA Arbitration Rules (article 20 of the QCCIA Conciliation Rules). Specifically, as of October 2012, the conciliator's fees are calculated as one-third of an arbitrator's fee and range from 5,000 Qatari riyals (for an amount in dispute up to 500,000 riyals) to 89,167 riyals (for an amount in dispute equal to or in excess of 50,000,001 riyals). The administrative fees are calculated as one-quarter of the fees applicable in arbitration proceedings and range from 1,250 riyals (for an amount in dispute up to 500,000 riyals) to 93,750 riyals (for an amount in dispute equal to or in excess of 50,000,001 riyals). In addition, a registration fee of 1,000 riyals must be paid by each party.

The mediator's fees are as a rule borne by the parties in equal shares (see, for example, mediations conducted pursuant to the QCCIA Conciliation Rules, article 20(e)).

There is to the best of the authors' knowledge no legal aid or financial support for mediation proceedings available in Qatar.

Professional matters for mediators

20 Regulation

Is there any specific regulation of mediators in your jurisdiction? Give details. Are there any regulations on immigration or tax issues or regarding the right to work for foreign mediators?

The professional title 'mediator' is not protected in Qatar and there is no specific regulation of mediators.

Foreign mediators require a business visa to provide mediation services in Qatar.

The services provided by foreign mediators are generally subject to a 5 per cent withholding tax, whereas local mediators established in Qatar are taxed on their net profits at a flat rate of 10 per cent.

21 Training

Are there any requirements regarding training for mediators?

There are no statutory requirements regarding the training of mediators in Qatar.

Since 2010 the QICDRC has been working closely with the CEDR for training accredited mediators (CEDR mediator accreditation) in English, and recently also in Arabic. The training consists in a five-day programme of comprehensive tuition in mediation, which also addresses practical aspects of the mediation process, followed by an assessment of the participants for CEDR mediator accreditation.

Update and trends

The efforts of the QFC to develop mediation in Qatar and training for mediators should encourage the use of mediation in international contracts performed in Qatar in the next few years. It is expected that the QFC Court will soon establish a list of qualified and multicultural mediators.

The enactment of provisions dealing directly with the mediation of civil and commercial disputes as currently contained in the Bill as part of the reform of the Commercial and Civil Procedure Code (see question 1) will represent a major development in the field of mediation in Qatar.

Another impulse to the development of mediation in Qatar will come from the increase of the use of mediation as a possible form of dispute resolution mechanism in major construction projects envisaged for the 2022 FIFA World Cup (see question 11).

Finally, the development of mediation in Qatar may be spurred on by increasing competition in the field of alternative dispute resolution services offered by major institutions in the Gulf, such as the DIFC-LCIA Arbitration Centre, the Dubai International Arbitration Centre (DIAC) and Abu Dhabi's Commercial Conciliation and Arbitration Centre (ADCCAC).

22 Continued education

Must mediators undertake continued professional education? Is there a credit point system for the continued education of mediators?

There is no requirement regarding the continued professional education of mediators.

23 Accreditation of mediators

Outline the system for certification of mediators.

There are no official registers of mediators.

It is currently envisaged that a list of qualified mediators will be established by the QFC Court in the future.

24 Mediator liability and sanctions

What are the duties of mediators in a mediation procedure? What liability do mediators face when offering their services and conducting mediation proceedings? Is professional indemnity insurance for mediators available or obligatory? Are there any further sanctions or other disciplinary measures for mediators in cases of misconduct, poor performance, etc? Are there any regulations referring to the dismissal of mediators?

There are no sanctions or disciplinary measures for mediators, neither are there regulations on the dismissal of mediators under Qatari law. There is no compulsory indemnity insurance for mediators.

The duties of mediators are defined by general contract law. Thus, mediators are required to act in the best interest of their clients

and perform their duties in accordance with best practice standards. Mediators may be held liable in case of breach of their duties under the mediation agreement.

The QICCA Conciliation Rules expressly exclude the conciliator's liability 'based on any act or omission in connection with the conciliation', except for intentional wrongdoing (article 17).

25 Appointment

Is there any regulation regarding the appointment of mediators? Is it common in your country to seek assistance by institutions or official bodies for the appointment of mediators? Are mediators obliged to inform about conflicts of interest in the course of appointment?

There is no regulation regarding the appointment of mediators in Qatar; the appointment is left to the parties.

Under the QCCIA Conciliation Rules, if the parties fail to reach an agreement regarding the appointment of a conciliator, the parties may request the QCCIA to recommend suitable conciliators or to appoint directly one or more conciliators (article 5). A similar rule is provided for in the Bill.

Pursuant to the principle of good faith and loyalty in contractual relations and so as to ensure the integrity of the mediation process, mediators are under a general obligation to disclose any conflict of interest before signing the mediation agreement.

The QFC Conduct of Business Rulebook also contains disclosure obligations for firms authorised within the QFC and requirements to have internal systems and controls in place for the proper management of conflicts of interest.

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The QCCIA Conciliation Rules expressly provide for the obligation of the conciliator to ‘disclose any circumstance likely to give rise to justifiable doubts as to his neutrality or independence’ (article 6). A similar rule is provided for in the Bill.

Cases

26 Notable cases

Briefly give details of any significant recent mediation cases or disputes or judgments involving mediation that have been published in your country?

To the best of the authors’ knowledge, there are no known published mediation cases, disputes or judgments involving mediation in Qatar.

Annual volumes published on:

- Air Transport
- Anti-Corruption Regulation
- Anti-Money Laundering
- Arbitration
- Asset Recovery
- Banking Regulation
- Cartel Regulation
- Climate Regulation
- Construction
- Copyright
- Corporate Governance
- Corporate Immigration
- Data Protection & Privacy
- Dispute Resolution
- Dominance
- e-Commerce
- Electricity Regulation
- Enforcement of Foreign Judgments
- Environment
- Foreign Investment Review
- Franchise
- Gas Regulation
- Insurance & Reinsurance
- Intellectual Property & Antitrust
- Labour & Employment
- Licensing
- Life Sciences
- Mediation
- Merger Control
- Mergers & Acquisitions
- Mining
- Oil Regulation
- Patents
- Pharmaceutical Antitrust
- Private Antitrust Litigation
- Private Equity
- Product Liability
- Product Recall
- Project Finance
- Public Procurement
- Real Estate
- Restructuring & Insolvency
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- Shipbuilding
- Shipping
- Tax on Inbound Investment
- Telecoms and Media
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