



Doha

Why Arbitration-Mediation-Arbitration is an appropriate dispute resolution mechanism for the settlement of construction, infrastructure and energy disputes in Qatar.

In Qatar, public investment in infrastructure projects has driven considerable growth over the past 10 years (e.g. World Cup 2022). Contractors were challenged with executing more complex contracts for iconic stadiums, coupled with headwinds caused by the Covid19 pandemic, and the inflation and supply chain issues that followed. As employers and contractors count the cost, and as there is a slowdown in construction activity, the expectation is that the number of disputes in Qatar will increase considerably.

As such, contractors and employers are looking for faster and cost efficient methods of resolving their disputes.

In recent years, negotiation has been the most common form of dispute resolution in Qatar. It may be cheaper than arbitration or litigation, but it is often a slow process especially where multiple revisions and reformulations of claim documents are required before decision makers will engage in the negotiation. A further potential barrier to resolution is that employers (particularly public employers) often need a neutral third party evaluation to reach a negotiated resolution to a dispute. Enforceability, speed, preservation of relationships and costs are common drivers behind the choice of dispute resolution mechanism. Concerns over the costs and delays of arbitration is contributing to the increasing interest in mediation (in a market where cashflow is key).

The attractiveness of amicable settlement however is strongly dependent on enforceability. What if a party does not honour its side of the bargain?

Arbitration-mediation-arbitration (“AMA”) is a potential solution. It is a hybrid, three-stage process that is appropriate for resolving international construction, infrastructure and energy disputes. Agreement can be reached before or after a dispute has arisen.

The process is as follows:

- 1.The Claimant commences an arbitration.
- 2.An arbitrator/tribunal is appointed, and the arbitration is immediately stayed.
- 3.The parties mediate.

4. If successful, the arbitrator/tribunal will make an enforceable arbitral award on agreed terms.

5. In the event mediation does not result in a negotiated settlement, the parties revert to arbitration.

The perception that a combined process will generate a resolution (one way or the other) may likely facilitate the negotiation. It provides parties with an affordable and potentially quick resolution to their disputes (which is key in the current market).

Mediation may be facilitative or evaluative. In the latter case, the mediator can, if needed, provide a non-binding view of the merits. This may facilitate a negotiated settlement with employers who require a third party evaluation.

Even if unsuccessful, mediation should narrow down the issues for arbitration. The process switches to arbitration in order to resolve outstanding issues only. This may be a significant help in controlling the time and costs of the arbitration.

Consent arbitral awards are capable of being enforced under the New York Convention (to which Qatar is a signatory). By having an arbitral award, parties should be able to proceed to enforcement without having to commence fresh proceedings to enforce the settlement agreement. Qatar is also a signatory to Singapore Convention on Mediation, a multilateral treaty and framework for the enforcement of settlement agreements resulting from mediation. This Convention has however considerably less signatories than the New York Convention, and will do little to facilitate enforcement in jurisdictions which are not a signatory.

However, there are nuances to AMA, and in specific circumstances the enforcement of a consent award may be open to challenge in Qatar. If, for example, the settlement included matters which fell outside the scope of the arbitration agreement the award may not be recognised. Thought and careful drafting is required.

Time and cost can be saved if the mediator and arbitrator are the same. However, there is potential for arguments around apparent bias and challenges to the arbitration process (and award) where a mediator 'switches hats' and becomes the arbitrator. This risk needs to be managed at the outset.

Parties may not fully engage in mediation if sharing confidential information with the mediator may undermine its position in a subsequent arbitration.

The rules of some arbitral institutions do not allow AMA and would require amendment. It is open to parties to amend dispute resolution provisions agreed at the outset of the Contract particularly if it is in the parties' mutual interests to do so. The Singapore International Arbitration Centre and the Singapore International Mediation Centre have a joint AMA Protocol which caters for Arb-Med-Arb.

In conclusion, parties often see a linear choice between negotiation and mediation on the one hand, and arbitration on the other.

However, arbitration may, in appropriate circumstances, be leveraged with mediation to create conducive conditions for binding settlements capable of being enforced.

For any further practical support in relation to arbitrations in the Middle East, please contact:

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