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a. Parties’ Right to a Physical Hearing in the *Lex Arbitri*

1. Does the lex arbitri of your jurisdiction expressly provide for a right to a physical hearing in arbitration? If so, what are its requirements (e.g., can witness testimony be given remotely, etc.)?

Short answer: No.

The Law No. 2 of 2017 ("the Arbitration Law") governs both domestic and international arbitrations seated in Qatar. It adopted much of the UNCITRAL Model Law. Article 24(1) of the Arbitration Law provides that a tribunal is required to conduct a hearing, unless it considers that the arbitration can be concluded on the basis of written submissions or if the parties have agreed otherwise. However, the Arbitration Law does not draw a distinction between physical and remote hearings. Therefore, while the Arbitration Law expressly provides for a right to a hearing, it does not require such hearing to be physical. Further, the Arbitration Law does not expressly address the process of collecting witness evidence, other than providing that swearing an oath is not required of witnesses: see Article 24(2).

2. If not, can a right to a physical hearing in arbitration be inferred or excluded by way of interpretation of other procedural rules of your jurisdiction’s lex arbitri (e.g., a rule providing for the arbitration hearings to be “oral”; a rule

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2 Article 24(1) of the Arbitration Law: “The Arbitral Tribunal shall hold hearings in order to enable each Party to explain the subject-matter of the case and present its arguments and evidence or in order to hear their oral submissions, unless the Arbitral Tribunal considers written documents and statements as sufficient, or the Parties agree otherwise”.
3 Article 24(2) of the Arbitration Law: “The Arbitral Tribunal shall hear the witnesses and experts without swearing an oath”.

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allowing the tribunal to decide the case solely on the documents submitted by the parties)?

Short answer: It can be excluded.

Article 18 of the Arbitration Law requires the arbitral tribunal to conduct proceedings in a manner that avoids delays and unnecessary expenses. As mentioned in sub-paragraph a.1, and by way of exception to the tribunal’s general obligation to conduct hearings, a tribunal may decide a case on the basis of written submissions and documents only.

b. Parties’ Right to a Physical Hearing in Litigation and its Potential Application to Arbitration

3. In case the lex arbitri does not offer a conclusive answer to the question whether a right to a physical hearing in arbitration exists or can be excluded, does your jurisdiction, either expressly or by inference, provide for a right to a physical hearing in the general rules of civil procedure?

Short answer: No.

There is no express provision in Qatar’s civil procedures law (Law No. 13 of 1990) that mandates courts to conduct physical hearings. Customarily, court proceedings in Qatar have always been conducted in person. However, due to the COVID-19 pandemic, Qatar introduced measures to allow courts to conduct hearings remotely.5

4. If yes, does such right extend to arbitration? To what extent (e.g., does it also bar witness testimony from being given remotely)?

Short answer: No.

Arbitrations are conducted further to the Arbitration Law. Please see sub-paragraph a.1 above.

c. Mandatory v. Default Rule and Inherent Powers of the Arbitral Tribunal

4 Article 18 of the Arbitration Law: “[…] The Arbitral Tribunal shall also avoid any delays and unnecessary expenses to ensure a fair and swift means of resolution”.

5. To the extent that a right to a physical hearing in arbitration does exist in your jurisdiction, could the parties waive such right (including by adopting institutional rules that allow remote hearings) and can they do so in advance of the dispute?

Short answer: Yes.

As stated above, although the Arbitration Law requires a tribunal to conduct a hearing, it does not distinguish between physical and remote hearings. In any event, parties have the right to waive the need to conduct a hearing (whether physical or otherwise), further to Article 24(1) of the Arbitration Law.

6. To the extent that a right to a physical hearing in arbitration is not mandatory or does not exist in your jurisdiction, could the arbitral tribunal decide to hold a remote hearing even if the parties had agreed to a physical hearing? What would be the legal consequences of such an order?

Short answer: Yes.

As previously mentioned, a tribunal has the duty to avoid delays or unnecessary expenses so as to ensure that the arbitration is conducted fairly and expeditiously. Therefore, if the tribunal thinks that a virtual hearing will be cost-effective, and will not impede the fairness or expeditiousness of the arbitral process and the parties’ ability equally to present their case, the tribunal may decide to hold a remote hearing even if the parties have agreed to a physical hearing.

One of the grounds for challenging an arbitral award is that the arbitral proceedings were not conducted in accordance with the parties’ agreement, further to Article 33(2)(d) of the Arbitration Law. However, this ground is qualified: no challenge can be made on this basis if the parties’ agreement is contrary to a provision of the Arbitration Law. Therefore, if the parties’ agreement to conduct a physical hearing contravenes the tribunal’s duty to avoid unnecessary delay or expense and to conduct the hearing in a fair and expeditious manner, it is unlikely that an award would be set aside for the reason that the tribunal held a virtual hearing instead of a physical hearing, or that it violates public policy.

d. Setting Aside Proceedings

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6 See fn. 4 above.
7 Article 33(2)(d) of the Arbitration Law: “An application for annulment of an arbitral award shall be admitted only if the applicant provides a proof of any of the following: […] (d) The composition of the Arbitral Tribunal, the appointment of arbitrators or the Arbitration proceedings have not occurred in accordance with what the Parties agreed to, unless such agreement is in conflict with any provision of this Law, or, in case there is no such agreement of the Parties, where the proceedings were carried out in violation of this Law”.
7. If a party fails to raise a breach of the abovementioned right to a physical hearing during the arbitral proceeding, does that failure prevent that party from using it as a ground for challenging the award in your jurisdiction?

Short answer: Yes.

As explained above, although the Arbitration Law requires a tribunal to conduct a hearing (unless it considers that the arbitration can be undertaken on the basis of written submissions or if the parties have agreed otherwise), it does not distinguish between physical and virtual hearings.

Having said that, Article 5 of the Arbitration Law addresses the issue of waiver of the right to object to a breach of the Arbitration Law or the parties’ agreement: if a party becomes aware of such a breach but continues to participate in the arbitration without objecting to the breach within the agreed time frame (or, in the absence of an agreed deadline, without undue delay), that party would be deemed to have waived its right to object.\(^8\)

8. To the extent that your jurisdiction recognizes a right to a physical hearing, does a breach thereof constitute per se a ground for setting aside (e.g., does it constitute per se a violation of public policy or of the due process principle) or must the party prove that such breach has translated into a material violation of the public policy/due process principle, or has otherwise caused actual prejudice?

Short answer: N/A

9. In case a right to a physical hearing in arbitration is not provided for in your jurisdiction, could the failure to conduct a physical hearing by the arbitral tribunal nevertheless constitute a basis for setting aside the award?

Short answer: Unlikely.

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\(^8\) Article 5 of the Arbitration Law: “Should a violation of a provision of this Law come to the knowledge of a Party, whether in respect of a matter which the Parties are permitted to agree to the contrary or of a provision of the Arbitration Agreement, if such Party continues with Arbitration proceedings without taking immediate action to object to such violation within the period agreed to by the Parties, or delay for an unjustified period objecting to such violation where no period has been agreed, such failure to object shall be deemed a waiver of such party’s right to objection”.
Subject to the response in sub-paragraph c.6 above, the grounds for annulling an arbitral award under Article 33 of the Arbitration Law do not recognise the failure to conduct a physical hearing as a basis for such annulment.

If a remote hearing were held, notwithstanding the objection of one of the parties, such a party could potentially challenge the award on the basis that the failure to conduct a physical hearing hindered its ability to present its defence, further to Article 33(2)(b) of the Arbitration Law.\(^9\) However, it is unlikely that a Qatari court would set aside an arbitral award on this ground.

e. Recognition/Enforcement

10. Would a breach of a right to a physical hearing (irrespective of whether the breach is assessed pursuant to the law of your jurisdiction or otherwise) constitute in your jurisdiction a ground for refusing recognition and enforcement of a foreign award under Articles V(1)(b) (right of the party to present its case), V(1)(d) (irregularity in the procedure) and/or V(2)(b) (violation of public policy of the country where enforcement is sought) of the New York Convention?

Short answer: Yes, but unlikely.

Qatar has incorporated Article V of the New York Convention in Article 35 of the Arbitration Law.

We are not aware of any reported judgments of the Qatari courts whereby recognition and enforcement was refused on the basis of the grounds set out in Articles 35(1)(b) and (d) and 35(2)(b) of the Arbitration Law.\(^10\)

However, as to the right to a physical hearing, it is likely that the court will look at the law of the seat to determine whether (i) such a right exists; and (ii) the tribunal’s

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\(^9\) Article 33(2)(b) of the Arbitration Law: “An application for setting aside shall not be accepted unless the applicant provides proof of any of the following: […] (b) The Party making the application to set aside […] was unable to present its defence for any other reasons beyond its control”.

\(^10\) Article 35(1)(b) of the Arbitration Law: “Recognition of arbitral awards shall not be declined, nor shall the enforcement thereof be refused, regardless of the State of issuance save in the following two cases: (1) Upon request of the Party against whom the enforcement is sought, should that Party present to the Competent Judge, to whom the recognition or enforcement application is presented, proof of any of the following: […] (b) The Party against whom the enforcement is sought was not duly notified of appointing an arbitrator or of the Arbitration proceedings, or failed to submit a defense for any reasons falling beyond such Party’s control”; Article 35(2)(b) of the Arbitration Law: “(2) The Competent Judge may, acting on his own discretion, refuse to recognize or enforce an arbitral award in the following cases: […] (b) If such recognition and/or enforcement violates the public order of the State of Qatar”. 

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decision not to conduct a physical hearing violates its duties under that law. This is because, further to Article 35(1)(d), recognition and enforcement can be refused if the arbitral proceedings were conducted in contravention of the law of the seat. In the absence of precedents, it is difficult to determine whether a court would treat such a breach as an ipso facto violation or if the court would approach the matter by assessing if the breach caused prejudice to the party resisting enforcement. In our experience, the Qatari courts have a pro-enforcement approach, and it is unlikely that recognition and enforcement of an award would be refused merely because the tribunal directed virtual hearings where a right to a physical hearing existed.

f. COVID-Specific Initiatives

11. To the extent not otherwise addressed above, how has your jurisdiction addressed the challenges presented to holding physical hearings during the COVID pandemic? Are there any interesting initiatives or innovations in the legal order that stand out?

Short answer: Yes.

As mentioned above in sub-paragraph b.3, Qatar introduced measures to allow courts to conduct hearings remotely.\(^\text{11}\)

Since June 2020, physical court hearings have resumed but are limited to urgent cases. Only personnel with a confirmed green status on the national COVID-19 contact tracing application are allowed to attend the hearings, subject to wearing a face mask, temperature check and maintaining social distance.

Furthermore, in March 2020, the Qatar International Centre for Conciliation and Arbitration (“QICCA”) issued circulars notifying that QICCA officials would be working remotely and urged tribunals to direct parties to use electronic means for filings and other communication.\(^\text{12}\) Where this was impossible, parties could submit their pleadings in soft copy using a portable storage device, such as a USB flash drive. Tribunals and parties were also advised to conduct hearings remotely, whether procedural or evidentiary.

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\(^{11}\) See fn. 5 above.