

Client Alert

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December 2017 Overview | Qatar Diplomatic Crisis - Where are we now?

The political and economic boycott of Qatar, which began on 5 June 2017 when Saudi Arabia, the United Arab Emirates, Bahrain and Egypt cut diplomatic ties with the State of Qatar and imposed restrictions on the movement of goods and individuals to and from Qatar, continues to have a significant impact on trade in the Middle East and has caused significant disruption to supply chains.

Currently, as at 17 December 2017:

1. The Qatar embargo continues without the enactment of any laws or regulations by any of the boycotting quarter of Gulf states. Although the UAE and Saudi authorities have issued Cabinet level resolutions and official statements by their respective central banking authorities in relation to other aspects of the embargo (for example updating lists of individuals and organizations that are suspected of being involved in terrorist-related activities and introducing limits on dealings with certain Qatari banks), the restrictions imposed on the movement of goods, vessels or aircraft between the countries have largely been introduced in the form of circulars issued by port authorities or statements made by federal transportation and civil aviation authorities.
2. **International relations:** In August 2017, Qatar restored diplomatic ties with Iran by sending an ambassador to Tehran. Qatar also asked the World Trade Organization (WTO) to set up a dispute panel to adjudicate on its row with the UAE.
3. **Economy:** According to BMI Research Qatar's gross domestic product will slow to 1.9% this year from 2.2% last year. Qatar has been forced to repatriate significant sums from its sovereign wealth fund to shore up its struggling economy. The research firm said that Qatar's economy would grow 2.5% in 2018. The IMF has forecasted that Qatar's non-oil economy will slow to 4.6% this year from 5.6% last year as a result of the country's continued isolation. Moody's estimates that Qatar spent US\$38.5 billion, or 23% of its GDP, to support its economy in the first two months of the sanctions. Qatar's finance minister told the *Financial Times* in October 2017 that the Qatar Investment Authority, the country's sovereign wealth fund, repatriated more than US\$20 billion into the country since the stand-off with its neighbors began in June.
4. **Business:** There are still no publicly released restrictions on investment between Qatar and the boycotting countries, but Qatar has been

experiencing economic slowdown and challenges in attracting investors and tourists. The government has offered to subsidize private companies in a bid to prevent them from leaving, reducing rent in the country's southern logistics zones for the next two years. Moreover, new investors in the zones will be completely exempt from paying rent for a year if they obtain building permits by certain deadlines.

5. **Banking:** Under mounting pressure, Qatar's central bank relaxed banking and foreign exchange regulations for expatriates living in Qatar, ordering conventional and Islamic banks in the State to allow residents with expiring visas to conduct all their banking operations throughout the official three-month period for renewing their residency after the visa expiry. This order also applies to foreign exchange companies that are in possession of central bank licenses and conduct activities including foreign exchange, and transfer and receipt of money. The central bank said this procedure is aimed at facilitating the transactions of residents in Qatar and to guarantee the smooth functioning of their financial affairs.
6. **Shipping:** The shipping ban by the boycotting countries remains in place. Qatar inaugurated a new US\$7.4 billion deep sea port along its Gulf coast in September 2017 as a regional transport hub to help shield its economy against the sanctions. The Hamad port, 40 km south of Doha, is one of the largest such facilities in the Middle East. The port has been receiving large quantities of food and building materials for construction projects since the boycott began, and allows Qatar to import goods directly from countries such as China and Oman instead of through a major re-export hub in Dubai. Qatar has expanded shipping routes to India, Oman, Turkey and Pakistan and announced plans to raise its liquefied natural gas (LNG) output by 30% in an apparent effort to prepare for greater economic independence in the long term.
7. **Supply of goods:** The restriction on the shipment of goods to and from Qatar by air, sea and land corridors are still in place, with no direct shipments of goods to and from Qatar. However, there is now a clear practice by the Qatar authorities to prohibit the import of goods of Saudi, UAE, Bahraini or Egyptian origin, including indirect shipments, although, as far as we are aware, the relevant Qatari authorities have not published or officially confirmed this position.
8. **Movement of people:** To attract investors, Qatar opened up its visa regime in September 2017, offering visa-free entry for citizens of 80 countries and becoming the first GCC country to create a permanent resident status for expatriate workers who have "given service to Qatar" or possess "skills that can benefit the country." Although there are no restrictions issued by the Qatar authorities prohibiting travel to Qatar by nationals and residence visa holders of the boycotting countries, the ability of Qatar nationals and Qatar residence visa holders to enter or

travel through the boycotting countries has been significantly restricted in practice.

9. **Updated Terrorist Watch Lists:** The UAE, Saudi Arabia, Bahrain and Egypt further extended their terrorist watch lists on 22 November 2017, adding two organizations and 11 individuals. The latest additions bring the list to 79 individuals and 23 organizations, including from nine Arab countries, suspected of sponsoring terrorism and linked to Qatar.

A. SUPPLY OF GOODS

1. How strict is the Qatari prohibition on importing goods from the boycotting countries, either directly or indirectly?

It is our understanding that as early as September 2017 Qatar authorities informed local business entities that they would not allow any imports into Qatar of goods of Egyptian, Saudi, UAE or Bahraini origin, and that this prohibition would apply to both direct and indirect shipments through non-embargoing third countries.

Although to the best of our knowledge the position of the Qatar Chamber of Commerce has never been published or officially confirmed, we understand the restriction is in place and is currently being applied routinely by the Qatar authorities. On that basis products originating from embargoing countries will be denied entry to Qatar, even if transported via third (non-embargoing) countries. Parties should also anticipate delays, requests for clarification and possible rejection of goods shipped from third countries (even if not of Saudi, UAE, Bahraini or Egyptian origin) in circumstances where commercial invoices or other shipping documents reflect the involvement of UAE, Saudi, Egyptian or Bahraini entities or where importers, distributors or other parties integral to the supply chain are owned or controlled by UAE, Saudi, Bahraini or Egyptian nationals or companies.

On that basis, from the Qatari perspective, it is our understanding that goods that are merely loaded in the ports of one of the countries participating in the embargo, but that are not of Egyptian, Saudi, UAE and Bahraini origin, should not be refused entry into Qatar. That said, one should expect delays in the clearing of such goods, due to enhanced scrutiny by the Qatari customs officials to confirm that the products are not of UAE, Saudi, Egyptian or Bahraini origin. Moreover, it is important to consider that, based on the position asserted by the boycotting countries, no goods (regardless of their origin) can be loaded in Saudi, the UAE, Bahrain or Egypt that are destined for Qatar as the next port of destination (see our prior alerts on the Qatar Embargo).

It is also our understanding that the public works authority in Qatar (Ashghal), responsible for all infrastructure works in the country, has recently updated its approved vendor list to remove any companies that have been incorporated in an embargoing country. Ashghal now requires approved vendors (and vendors seeking approval) to provide evidence “*verify[ing] [the] company’s independent establishment from the countries imposing the illegal embargo towards the State of Qatar*”.

2. What will be the penalties by Qatar if my company is found to be in breach of the prohibition?

We have no information to suggest that any administrative fines or sanctions have been imposed by Qatar authorities against an importer of an embargoing countries’ origin goods. Our understanding is that Qatari authorities have to date simply rejected the goods without attempting to confiscate them or take other measures. To date, therefore, the risk appears to be limited to the business / commercial risk of having the goods seized or returned and the concurrent risk of a potential breach of contract in relation to the orders placed by Qatari customers/distributors due to delays in performance / non-performance, with little ability to rely on ‘force majeure’ clauses.

3. Can my UAE-based company sell products to a distributor in Qatar and invoice the distributor in Qatar directly?

The embargo does not impose a general restriction on doing business in Qatar or with Qatari entities or their affiliates (wherever they may be located), provided that such persons are not on the terrorist watch list issued by Resolution No. 18 / 2017 of the UAE Council of Ministers on 9 June 2017 (the same list has been adopted by the other Gulf states participating in the embargo) and as updated from time to time. The primary restrictions imposed by the embargo (in addition to severing diplomatic ties with Qatar and an expulsion of Qatari nationals from the UAE and closing UAE air corridors to Qatari owned or flagged aircraft) relate to a prohibition on the shipment of goods loaded in UAE, Saudi, Egyptian or Bahraini ports to Qatar and the offloading of goods of Qatari origin in the ports of the quartet imposing the embargo.

That said, while doing business with Qatar, as such, is not prohibited, supply chains have been severely disrupted and recent practices and developments have made it more difficult to engage in business with Qatar. We refer to the response to Question 1 above summarizing the Qatar restriction on the import of goods of Saudi, UAE, Bahraini and Egyptian origin, whether directly or indirectly by transiting through the ports of third countries.

B. MOVEMENT OF PEOPLE

4. Are there any restrictions on foreigners with Qatari residency visas from travelling to and from the boycotting countries?

The ability of Qatar nationals and holders of Qatar residence visas to enter or travel through the boycotting countries has been significantly restricted. Since the beginning of the boycott Qatari nationals have been prohibited from entering the boycotting countries as a result of restrictions issued by the boycotting countries (although Qatar has never imposed restrictions prohibiting such travel by its nationals). However, recently it has come to our attention that Qatar residence visa holders (regardless of their nationality) are being denied entry into Saudi Arabia and the UAE, although there has been no official statements issued by either country to confirm this position. Further, Bahrain has also recently imposed new visa restrictions, the effect of which means that Qatar residents are likely to find it very difficult (if not impossible) to enter Bahrain.

Nationals of the boycotting countries are not permitted to enter or travel through Qatar due to restrictions imposed by their own countries. This has been the case since the beginning of the crisis. However it now appears that this restriction may be extended to foreign nationals who are residents of the boycotting countries – at least in the case of Bahrain. Although nothing official has been issued by the Bahraini authorities, restrictions prohibiting non national residents of Bahrain from travelling to Qatar have been reported in the press. We have also been informed that Bahrain immigration is now actively monitoring the final destination of passengers arriving in Bahrain in order to prevent travel to Qatar via a third country such as Kuwait and Oman. It is not clear whether Saudi Arabia and the UAE intend to prohibit foreign national residents of the UAE and Saudi Arabia from travelling to Qatar. We have no information to suggest that this is the case or that there is any intention to do so.

Qatar does not prohibit nationals and residents of the boycotting countries from entering Qatar (provided that they hold a visa which allows entry to Qatar other than their GCC residence visa). In fact, as stated above, Qatar seems to be taking measures to facilitate visitor access and recently announced that it had opened up its visa policy in that it now allows visa free entry for citizens of 80 countries.

5. As a company based in the UAE mainland, can we continue to retain our Qatari director? Will we have any problems renewing our commercial license in the UAE?

Based on our experience, existing Qatari managers, directors and shareholders can continue to retain their positions on the licenses of entities incorporated in the UAE mainland. However, it is difficult to appoint a new Qatari manager or to set up an entity with a Qatari legal or natural person since the embargo. As mentioned in our prior alerts on the Qatar embargo the situation is broadly similar

in Saudi Arabia, where company registration authorities have temporarily suspended any administrative actions, including company registrations, in relation to companies with Qatari ownership.

C. FINANCE

6. What is the continuing impact on Qatar's reserves and liquidity?

Triggered by withdrawals of foreign deposits from Qatari banks, banking and finance activity in Qatar slowed considerably in the first two months of the political and economic boycott of Qatar, with Moody's Investors Service estimating that around US\$30 billion were withdrawn from Qatar's banking system in June and July.

More recently, the threat to Qatari banks funding and liquidity appears to have faded, which bankers in the region believe is principally due to the government using money from Qatar's sovereign wealth fund to replenish the reserves of the Qatar Central Bank. Notwithstanding recent capital injections in the Qatari banking sector, banks in Qatar are generally in capital raising mode and new money lending is still very rare.

According to the publication GlobalCapital, Qatar Islamic Bank, Doha Bank, Ahli Bank and Commercial Bank of Qatar have all recently been meeting fixed income investors with a view to issuing bonds. However, any new bond issuance by Qatari banks will most likely be on hold until the sovereign issues a new bond on the international capital markets. Speculation is rife that the State of Qatar is looking to go to market very soon with a US\$9 billion bond issuance, which is expected to assist domestic Qatari banks wishing to follow suit by, amongst other things, repricing bond yield curves.

D. CONTRACTUAL DISPUTES

7. Have any claims been brought for breach of contract due to delays or non-performance?

Although we are not aware of any claims, it is also clear that the cost of adapting to the embargo caused by disruptions to the movement of people and supply chains are not sustainable in the long term. As companies finding it increasingly challenging to meet their contractual obligations, disputes are inevitable. Companies will need to draft contractual provisions with care to ensure a fair and balanced risk allocation in light these kinds of disruptions. We have seen that commonly drafted force majeure clauses will not provide adequate protection or a sufficient basis to avoid performance or shield a party from potential liability for breach of contract under these circumstances.

E. US ANTI-BOYCOTT LAWS AND INTERNATIONAL CLAIMS

8. Do US Anti-boycott laws apply?

Our understanding is that neither the US Commerce Department nor the Department of Treasury has reached a formal position as to whether the Qatar embargo is an unsanctioned foreign boycott subject to the US anti-boycott rules. However, the Office of Anti-boycott Compliance in the US Commerce Department has indicated that they are not treating the Qatari diplomatic crisis as involving an unsanctioned foreign boycott that would be targeted by US anti-boycott laws. This relates in part to the nature of the so-called boycott and, moreover, to the fact that US anti-boycott laws only target boycotts that are against US policy. We understand that the US State Department has not issued any policy guidance in this respect.

9. Has Qatar brought any international claims or sought international support in relation to the dispute?

During the October 23, 2017 meeting of the Dispute Settlement Body of the WTO, the UAE rejected Qatar's request for the establishment of a dispute resolution panel to consider the UAE measures applied against Qatar. This position was supported by the US. The US argued that national security issues should not be resolved at the WTO level and that parties should seek assistance from the Director-General or other WTO members. The UAE position was backed by Bahrain, Saudi Arabia and Egypt.

LOOKING FORWARD

The dispute between Qatar and the quartet of Arab states is unlikely to be resolved anytime soon and we expect that business disruption will continue and become more problematic as businesses acknowledge that measures implemented since June 2017 to adjust to the embargo are not sustainable in the long term. Businesses with a nexus to Qatar will have to take a commercial decision on whether their operations are viable as they stand and are sustainable going forward.

The situation is dynamic and continues to evolve, and we will continue to monitor developments and provide updates from time to time.

This client alert does not constitute legal advice. It is based on our understanding of the situation and reflects our observations and the experiences of our clients. The situation is dynamic and continues to evolve. Specific advice should be sought before taking business decisions

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