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The Legal 500 Country Comparative Guides United Arab Emirates **INTERNATIONAL ARBITRATION**

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This country-specific Q&A provides an overview of international arbitration laws and regulations applicable in United Arab Emirates.

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UNITED ARAB EMIRATES INTERNATIONAL ARBITRATION



1. What legislation applies to arbitration in your country? Are there any mandatory laws?

The legislation which applies to arbitration depends on whether the arbitral process (i.e., the *lex arbitri*) is subject to the Federal Civil Law system of the United Arab Emirates (“**UAE**”), or by the laws of two distinct jurisdictions i.e., the Dubai International Financial Centre (“**DIFC**”) or the Abu Dhabi Global Market (“**ADGM**”), generally understood as “**Common Law Jurisdictions**”), both of which have their own arbitration laws/regulations:

UAE - Federal Jurisdiction

Federal Law No. 6 / 2018 on arbitration (the “UAE Arbitration Law”) replaced Articles 203 to 218 of the UAE Civil Code Federal Law No. 11/1992 (the “UAE CPC”). Articles 203 to 218 of the UAE CPC were those provisions which were relevant to arbitration.

The UAE Arbitration Law applies to all arbitral proceedings carried out in the UAE, unless the parties agree to apply a different arbitration law. However, should the parties agree to apply a different arbitration law, that arbitration law must comply with the requirements of public order and morality in the UAE.

UAE - Common Law Jurisdictions

Dubai

DIFC Law (No. 1 of 2008, as amended by DIFC Law no. 6 of 2013) (the “**DIFC Arbitration Law**”), governs arbitral disputes which are subject to the jurisdiction of the DIFC. The amendment clarified the DIFC Court’s authority to dismiss or stay an action brought before the court (which is also subject to an arbitration agreement) unless it finds ‘*that the arbitration agreement is null and void, inoperative or incapable of being performed*’ even where the seat of the arbitration is one other than the DIFC and where no seat has been designated or determined.

Abu Dhabi

The ADGM has established an arbitration hearing centre (the “**ADGM Arbitration Centre**”) on Al Maryah Island. The ADGM Arbitration Centre became fully operational on 17 October 2018 as a venue for arbitration.

The ADGM Arbitration Regulations 2015 (“**ADGM Regulations**”), based on the UNCITRAL Model Law will govern arbitrations where the:

- seat of the arbitration is the ADGM; or
- arbitration agreement applies the ADGM Regulations.

The Judicial Tribunal for the Dubai Courts and the DIFC Courts

Decree no. 19 of 2016 established the Judicial Tribunal for the Dubai Courts and the DIFC Courts (the “**Judicial Tribunal**”). The Judicial Tribunal was established to deal with issues including conflicts of jurisdiction between the DIFC and Dubai Courts.

A limited number of decisions have been issued by the Judicial Tribunal to date. These decisions generally indicate that for arbitration proceedings that are seated in mainland Dubai, the Dubai (Federal) Courts would have curial jurisdiction, whereas the curial jurisdiction of the DIFC Courts would be limited to those arbitration proceedings seated in the DIFC.

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Yes, the UAE acceded to the New York Convention on 21 Aug 2006 with no reservations.

3. What other arbitration-related treaties and conventions is your country a party to?

The UAE has signed approximately 90 Bilateral Investment Treaties (not all of which are currently in

force) most of which are subject to Investor-State Dispute Settlement (ISDS) arbitration.

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

UAE Arbitration Law has significant similarities to the UNCITRAL Model Law. However, as regards to issues of authority to enter an arbitration agreement, the position under the UAE Arbitration Law has not been clear and was subject to debate within the UAE.

However, recent decisions of the Dubai Court of Cassation have established that with respect to managers of a limited liability company, have the power to agree on arbitration agreement, unless there was a provision to the contrary under the company's article of association. Therefore, for managers of limited liability companies to be restricted from having such power, an explicit limitation on their power must be set out under the articles of association.

The position is slightly different with respect to joint stock companies, where a restrictive approach has been adopted within the UAE Courts. In accordance with certain provisions of the UAE Companies Law, the UAE Courts have established a restrictive approach providing that the authority to arbitrate on behalf of joint stock companies must be granted explicitly to the board of directors by a provision in the articles of association or a decision by the general assembly. However, as public joint stock companies are not commonly used in the UAE, it is unclear whether the UAE Courts will deviate from applying such restrictive approach.

Both the DIFC Arbitration Law and the ADGM Arbitration Regulations are largely based on the UNCITRAL Model Law with no significant differences.

5. Are there any impending plans to reform the arbitration laws in your country?

Further to the introduction of the new UAE Arbitration Law in 2018, Dubai has recently reformed its arbitration landscape through enactment of Decree 34 of 2021 concerning the Dubai International Arbitration Centre ("DIAC") on 14 September 2021 (the "Decree").

The Decree abolished with immediate effect, the Dubai International Financial Centre (DIFC) Arbitration Institute ("DAI") including its DIFC-LCIA ("DIFC-LCIA") Arbitration Centre, and the Emirates Maritime Arbitration Centre ("EMAC") and their arbitration rules. It further provided

for the transfer of all rights and obligations in respect of those centres to the onshore Dubai International Arbitration Centre (DIAC).

Soon after the enactment of the Decree, DIAC implemented the new Arbitration Rules in March 2022 (the "2022 DIAC Rules"), which replaced the old rules issued in 2007. The DIAC Rules introduced key provisions similar to those under the LCIA and the International Chamber of Commerce Rules ("ICC Rules") and replaced the Executive Committee with an Arbitration Court.

The major reforms recently introduced within the UAE, and particularly in Dubai, aim to create a single world class international arbitration centre similar to those in Paris, London, Singapore and Hong Kong. Furthermore, the introduction of the new DIAC Rules enables the DIAC to claim its position as one of the leading global centres for arbitration, both within the MENA region and internationally.

Further to the Decree, the LCIA Arbitration Centre in London has been assisting in the administration of DIFC-LCIA arbitrations that were commenced prior to 20 September 2021, the date of the Decree, and will continue to do so until their conclusion.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

The main On-Shore arbitral institutions, in order of case volume, are the:

- a. Dubai International Arbitration Centre ("DIAC"), which applies the DIAC Rules (2022) (the "DIAC Rules"); and
- b. Abu Dhabi Commercial Conciliation and Arbitration Centre ("ADCCAC"), which applies the Procedural Regulations of Arbitration (the "ADCCAC Rules").

There exists, within the remaining Emirates, a number of other arbitration centres, for example in:

- a. Ras Al Khaimah: The Ras Al Khaimah Centre of Reconciliation and Commercial Arbitration;
- b. Ajman: The Ajman Centre for Commercial Conciliation and Arbitration; and
- c. Sharjah: The Tahkeem Sharjah International Arbitration Centre.

7. Is there a specialist arbitration court in your country?

UAE- Federal Jurisdiction

Whilst there is no specialist arbitration court as such, all UAE Federal Courts can and often do appoint arbitrators in ad hoc arbitral proceedings where the parties have either specified this in the arbitration agreement/clause or are unable to agree on the authority responsible for the appointment of the tribunal.

UAE - Common Law Jurisdiction

Further to the abolishment of the DIFC Arbitration Institute (DAI) by virtue of the Dubai Decree No 34 of 2021 (the Decree), the DAI's assets and operations were transferred to the DIAC.

Whilst there is no specialist arbitration court as such, the Decree has further established an Arbitration Court to carry out the functions of the Executive Committee (now replaced with the Arbitration Court) including review of awards, decide on issues of appointment of arbitrators, consider initial jurisdictional challenges and applications for joinders and consolidation.

However, as stated above, further to the Decree, the LCIA Arbitration Centre in London ("LCIA") has been assisting in the administration of DIFC-LCIA arbitrations that were commenced prior to 20 September 2021, the date of the Decree, and will continue to do so until their conclusion.

Finally, both the DIFC Courts Rules (Part 43) and the ADGM Court Procedure Rule (Part 27) have broad jurisdiction to hear arbitration claim and decide on appointments of tribunals, validity of arbitration agreements and enforcement of awards.

8. What are the validity requirements for an arbitration agreement under the laws of your country?

The UAE Arbitration Law sets out the express requirements for a valid arbitration agreement.

- Physical Person with Legal Capacity
- The parties entering into this agreement must be physical persons with the legal capacity to act (Article 4(1)).
- The risk of a person, entering into an arbitration agreement, not being deemed to have the required authority to do so, remains very present, as does the consequent risk that arbitral award could be nullified.

- The Matter in dispute must be Capable of 'Conciliation'
- The matter to be arbitrated must be capable of 'conciliation' (Article 4(2)) and, therefore, cannot relate to matters of a criminal nature.
- The Arbitration Agreement must be in Writing
- The requirement for an arbitration agreement to be in writing, is satisfied where the arbitration agreement is:

'contained in a document signed by the Parties or mentioned in an exchange of letters or other means of written communication or made by an electronic communication...' (Article 7(2)(a))

This requirement for a written agreement, is further satisfied where the arbitration agreement makes a clear reference to *'a Model Contract, international agreement or any other document containing an arbitral clause'* which will form part of the contract (Article 7(2)(b)). The requirements for an arbitration agreement to be in writing, may further be satisfied by:

'an exchange of written statements between the Parties during the arbitration proceedings or upon acknowledgement before the Court, where one party requests that the dispute be referred for Arbitration and no objection is made by the other party in the course of his defence.' (Article 7(2)(d))

The above denotes an offer and unconditional acceptance of an arbitration agreement. This is, however, subject to the issuer of such pleadings having the authority to bind the represented party to arbitration, whether by an exchange of pleadings or otherwise.

UAE - Common Law Jurisdictions

The DIFC Arbitration Law (Article 12) and the ADGM Regulations (Regulation 13) broadly require the arbitration agreement to be in writing.

9. Are arbitration clauses considered separable from the main contract?

Article 6 of the UAE Arbitration Law confirms the UAE's acceptance of the principle of severability, that arbitral agreements are distinct from the underlying contract.

An arbitration agreement is, therefore, unaffected by the *'nullity, rescission or termination of the contract'* in which it resides, unless the capacity of the parties is affected.

The DIFC Arbitration Law (Article 23), ADGM Regulations

(Regulation 14), and the DIAC Rules (Article 6) recognise the principle of separating the arbitration agreement/clause from the underlying contract.

10. Do the courts of your country apply a validation principle under which an arbitration agreement should be considered valid and enforceable if it would be so considered under at least one of the national laws potentially applicable to it?

No, primarily due to Article 53 2 a. and 2 b. of the UAE Arbitration Law that reflects the wording of Article V 2 (a) and 2(b) of the 1958 New York Convention relating to arbitrability and public policy.

11. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?

There is no express guidance under the UAE Arbitration Law or the DIFC Arbitration Law which addresses the issue of consolidating multi-contract arbitrations. However, further to the new DIAC Rules, new provisions have been introduced providing for the consolidation of two or more arbitrations into a single arbitration (Article 8). Consolidation and joinder of proceedings are new concepts introduced for the first time under the new DIAC Rules. These provisions (Articles 8 & 9 of the new DIAC Rules) are largely similar to the relevant articles under the ICC Rules.

Furthermore, the ADGM Regulations (Regulation 35) provide for the consolidation of other arbitral proceedings or concurrent hearings.

12. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

Other than the possible exception of investment treaty arbitration and a party's subsequent consent to be bound by the arbitration clause, there are no express provisions either in UAE Federal or UAE Common Law jurisdictions that allow for a non-signatory to be bound by an arbitration agreement.

However, Article 22 of the UAE Arbitration Law does envisage the possibility of intervention or joinder of third parties in arbitral proceedings if this authorised by the

tribunal pursuant to either the request of a party or the joining party, provided that the latter is already a party to the arbitration agreement.

13. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?

UAE- Federal Jurisdiction

Commercial disputes which relate to the registration of real estate, insurance policies and commercial agencies are generally not arbitrable. The arbitrability of each dispute will, however, be considered on its own merits.

UAE - Common Law Jurisdictions

Although Article 41(2)(b)(i) and 44 (1)(b)(iv) of the DIFC Arbitration Law and Articles 53(2)(b)(i) and 57(1)(b)(i) of the ADGM Regulations provide for the possibility of a subject-matter not being capable of settlement by arbitration, there is no prescriptive list within either of these laws as to what matters may not be arbitrable.

14. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

There are no recent court decisions as it is generally rare for parties in the UAE to expressly opt for a specific arbitration law. The default position of the *lex arbitri* being the law of the seat of the arbitration is set out in article 2 of Federal Law No. 6/2018 for arbitration proceedings seated in onshore UAE and article 7.1 of the DIFC Arbitration Law No. 1 of 2008 (as amended) for DIFC seated arbitration proceedings as well as article 8 of the ADGM Regulations 2015 for those arbitration proceedings seated in the ADGM.

15. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

The applicable law is normally stated within the underlying contract.

Where the parties have failed to agree, however, the following applies:

UAE- Federal Jurisdiction

Article 38 of the UAE Arbitration Law requires the Arbitral

Tribunal to apply those *'substantive rules of law, which it considers to have the closest connection with the substance of the dispute'*.

The merits of the dispute shall be decided by the Arbitral Tribunal, taking into consideration the *'terms of contract, which is the subject of the dispute and any relevant usages applicable to the transaction and between the Parties'*.

The DIAC Rules (Article 30.1) provide for an Arbitral Tribunal to decide on the rule of law which the Arbitral Tribunal considers as most appropriate to be applied. Any designation of the law of a given state shall be construed (unless expressly stated otherwise) as the applicable law.

UAE - Common Law Jurisdictions

DIFC

The DIFC Arbitration Law (Article 35) provides that *'Any designation of the law or legal system of a given State or jurisdiction shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State or jurisdiction and not to its conflict of laws rules'*.

In the absence of such designation, the Arbitral Tribunal shall apply the law as determined by the conflict of law rules which the Arbitral Tribunal considers applicable, *'provided that the parties shall be free to agree in writing that the Arbitral Tribunal may apply the law or rules of law which it considers to be most appropriate in the facts and circumstances of the dispute'*.

In all cases, the Arbitral Tribunal will apply the principles of equity and good conscience, only if the parties have authorised the Arbitral Tribunal to do so.

The Arbitral Tribunal will take into account the terms of the contract and the trade usages applicable.

ADGM

The ADGM Regulations (Regulation 44) have adopted a similar approach to that of the DIFC Arbitration Law. The ADGM Regulations provides that:

'In the absence of any designation by the parties, the arbitral tribunal shall decide the dispute in accordance with the rules of law it considers appropriate' (Regulation 44(2)).

The ADGM Regulations further confirm that *'the arbitral tribunal shall take trade usages into account'* (Regulation 44(3)).

16. Have the courts in your country applied the UNIDROIT or any other transnational principles as the substantive law? If so, in what circumstances have such principles been applied?

None that have been published and the UAE is not a member of UNIDROIT, nor has it acceded to the UNIDROIT Statute.

17. In your country, are there any restrictions in the appointment of arbitrators?

UAE- Federal Jurisdiction

Article 10 of the UAE Arbitration Law, prescribes that an appointed arbitrator must:

be *'a physical person, and he may not be a minor, incapacitated, or deprived of his civil rights due to declaration of bankruptcy unless he is rehabilitated, or due to being sentenced for a felony or misdemeanour involving moral turpitude or dishonesty, even if he is rehabilitated'*; and

'not be a member of the Board of Trustees or the administrative branch of the competent Arbitration Institution administering the arbitration case...'

The arbitrators appointed must also remain independent and impartial for the duration of the arbitral process.

UAE - Common Law Jurisdictions

Both under the DIFC Arbitration Law and the ADGM Regulations, there are provisions that allow for the challenge of arbitrators if justifiable doubts exist as to their impartiality or independence, or if they do not possess qualifications agreed to by the parties.

18. Are there any default requirements as to the selection of a tribunal?

There are no default requirements other than those set out at Article 10 of the UAE Arbitration Law. The parties are further free to choose any additional criteria, over and above, that set out in Article 10.

The DIFC Arbitration Law (Article 17) and the ADGM Regulations (Article 18(6)) both provide for selection criteria where there is no agreement on the procedure for the appointment of arbitrators.

The DIAC Rules (Article 14.1) requires that arbitrators

remain independent and impartial.

19. Can the local courts intervene in the selection of arbitrators? If so, how?

UAE- Federal Jurisdiction

Article 11(5) of the UAE Arbitration Law provides that the court may take the relevant actions for the *'completion of the composition and appointment of the members of the Arbitral Tribunal'*, upon request of a party.

Such actions may be taken where the authorised entity fails to appoint the Arbitral Tribunal, pursuant to the agreement of the parties or the terms of the UAE Arbitration Law.

Article 11(8) of the UAE Arbitration Law further provides for the Court, upon the request of the parties, ask an arbitral institution to provide a list arbitral specialist for potential appointment. This would seem to expand the possibility more suitable arbitrator may be appointed.

UAE - Common Law Jurisdictions

DIFC

A party may request the DIFC Court of First Instance to intervene where there has been a failure on behalf of the parties, the arbitrators or third parties (including the relevant arbitral institution) to validly constitute an Arbitral Tribunal (Article 17).

ADGM

Should the parties fail to agree on the procedure for appointing an arbitrator or arbitrators, the ADGM Regulations (Regulation 18) provide the below.

A Sole Arbitrator

Where parties cannot agree on a sole arbitrator, within 30 days of one party requesting the other to do so, the arbitral institution administering the arbitration or the Court (where no arbitral institution has been appointed) shall, on the request of either party, appoint the arbitrator.

A Three-Member Arbitral Tribunal

Where an Arbitral Tribunal is to comprise of three members, each party shall appoint one arbitrator. These two appointed arbitrators shall subsequently appoint a third arbitrator as the *'presiding arbitrator'*.

The arbitral institution which administers the arbitration, or the Court (where no arbitral institution has been

appointed) on request of either party shall appoint:

- two arbitrators for a three-member Arbitral Tribunal where no arbitrators have been appointed within 30 days of receipt of a party's request to the other party to do so; or
- a *'presiding arbitrator'* where the two party-appointed arbitrators cannot agree on a *'presiding arbitrator'* within 30 days of their appointment.

Multiple Claimants and/or Respondents before a Three-Member Arbitral Tribunal

Where there are multiple claimants and/or multiple respondents, the parties shall jointly appoint a single arbitrator on behalf of the claimant and the respondent, in accordance with any procedures agreed upon by the parties.

Where no agreement has been reached between the parties, the Arbitral Tribunal shall appoint the three-member Arbitral Tribunal in accordance with the section entitled *'A Three-Member Arbitral Tribunal'* above.

In the absence of joint nomination procedure and where there is no agreement between the parties as to a method for the constitution of the Arbitral Tribunal, the arbitral institution administering the arbitration or the Court (where no arbitral institution administering the arbitration has been appointed) shall appoint the arbitrators and *'presiding arbitrator'*.

The decision of the arbitral institution or the Court is not subject to appeal.

The arbitral institution or the Court, when appointing the Arbitral Tribunal, shall:

- have due regard to the qualifications of the arbitrators, on which the parties have agreed;
- have due regard to such considerations which are likely to result in the appointment of an *'independent and impartial'* arbitrator; and

take into account the *'advisability of appointing an arbitrator of a nationality other than that of any party'*.

20. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

UAE- Federal Jurisdiction

Article 15 of the UAE Arbitration Law and the DIAC Rules

(Article 15) both provide for the challenging of an arbitrator's appointment.

Article 14 of the UAE Arbitration Law provides that an arbitrator may be recused, *'in circumstances which are likely to give rise to serious doubts regarding his impartiality or independence'*.

Article 15 of the UAE Arbitration Law requires that a party intending to recuse an arbitrator must write to the Arbitral Tribunal within 15 days of becoming aware of:

- *'the arbitrator's appointment'* (Article 15(1)); or
- the grounds for the recusing the arbitrator (Article 15(1)).

This written statement should set out the grounds for the arbitrator's recusal.

Should the arbitrator not recuse himself / herself or the other party *'does not approve the recusal within 15 days from the date of notification'*, the challenging party may file its application with the [arbitration authority or court] within 15 days of the expiry of the above 15 day period.

The [arbitration authority or court] shall subsequently make its decision as to whether to recuse the arbitrator within 10 days.

This provision may be particularly helpful in *ad hoc* arbitrations and could be viewed as even more detailed and thorough than the equivalent process set out in some arbitral rules of institutional arbitration proceedings.

Where the relevant grounds exist, this process can be used to remove both arbitrator and chairman alike from their position on the Arbitral Tribunal.

UAE - Common Law Jurisdictions

The appointment of an arbitrator can be challenged pursuant to DIFC Arbitration Law (Article 18) on the grounds he / she is not independent, impartial or does not possess the qualifications agreed upon by the parties.

ADGM

Challenging an Arbitrator where no Procedure was agreed by the Parties

Where the parties have not agreed on a procedure for challenging an arbitrator, the ADGM Regulations provide the below.

A party wanting to challenge an arbitrator must send a

written statement to the Arbitral Tribunal setting out its reasons, within 30 days of becoming aware of:

- *'the constitution of the arbitral tribunal'* or;
- the existence of grounds on which to challenge the arbitrator (Regulation 20(2)).

The grounds for challenging an arbitrator are as followings:

- *'circumstances likely to give rise to justifiable doubts as to his [the arbitrator's] impartiality or independence'*; or
- he/she does not possess the qualifications agreed upon by the parties (Regulation 19).

The arbitration institution administering the arbitration or the Court (where there is no arbitral institution appointed) shall decide on the challenge to the arbitrator, unless the arbitrator withdraws, or the other party agrees to the challenge (Regulation 20(2)).

The arbitration shall, however, not be stayed pending the decision of the arbitral institution or the Court (Regulation 20(2)).

Failure or Impossibility to Act

'If an arbitrator becomes as a matter of law or fact unable to perform his function or for other reasons fails to act without undue delay', his mandate will be termination upon:

- his *'withdraw from his office'*; or
- the parties' termination of that arbitrator (Regulation 21).

Should the arbitrator not withdraw, or the parties cannot agree on his/her termination, or the *'controversy remains concerning any of these grounds'*, a party may request that the arbitral institution administering the arbitration or the Court (where no arbitral institution has been appointed) to terminate the mandate of the arbitrator.

This decision of the arbitral institution or the Court is not subject to appeal.

21. Have there been any recent developments concerning the duty of independence and impartiality of the arbitrators

Article 257 of Federal Law No. 3 of 1987 (i.e. the UAE Penal Code) as initially amended in September 2016, used to provide for the potential imprisonment of

experts and arbitrators in the event a breach of duty of fairness and impartiality. However, this provision has now been repealed with regard to its application to arbitrators, following extensive lobbying from the arbitration community.

22. Have there been any recent decisions in your concerning arbitrators' duties of disclosure, e.g., similar to the UK Supreme Court Judgment in Halliburton v Chubb?

No but the position on an arbitrator's duty to disclose is generally governed by article 10.4. of Federal Law No. 6/2018, article 18 (1) of the DIFCArbitration Law No. 1 of 2008 (as amended) and article 20.1 of the ADGM Arbitration regulations 2015.

23. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

UAE- Federal Jurisdiction

Article 41 of the UAE Arbitration Law provides that an arbitral award issued by an Arbitral Tribunal comprising more than one arbitrator, must be signed by the majority of the arbitrators.

Where the arbitrators do not sign the arbitral award, the reason for not doing so must be stated.

Where the arbitral award is not signed by the majority of the Arbitral Tribunal, the arbitral award shall be issued by the Chairman, unless otherwise agreed by the parties.

In such a scenario, the dissenting reasons shall be written or attached to the arbitral award.

The arbitral award shall contain the grounds for an arbitral award, unless the parties agree or the applicable law does not so require.

The DIAC Rules (Article 16) provide for the revocation of appointment of the absent arbitrator and appointment of a replacement thereof (Article 15).

The above procedures do not, however, cater for the risk that the arbitrator is not replaced and remaining arbitrators cannot reach a consensus on liability or quantum.

UAE - Common Law Jurisdictions

ADGM

The ADGM Regulations (Regulation 45) provides that where more than one arbitrator has been appointed, the decision of the majority shall be valid unless otherwise agreed by the parties.

Where there is no majority decision, the arbitral award shall be made by the '*presiding arbitrator*', alone.

The '*presiding arbitrator*' may further determine questions of procedures if duly authorized by all the members of the Arbitral Tribunal or the parties.

24. Are arbitrators immune from liability?

UAE- Federal Jurisdiction

An English translation of the recent amendment to Article 257 of the UAE's Federal Law No. 3 of 1987 by Federal Decree Law No. 7 of 2016 (the "**Penal Code**") provides that:

'Temporary imprisonment shall be inflicted on whoever issues a decision or expresses an opinion or submits a report or presents a case or proves an incident, in favour of a person or against him, contrary to the duty of fairness and unbiasedness, in his capacity as an arbitrator, expert, translator or investigator who is appointed by a judicial or an administrative authority or elected by the parties.'

The introduction of the above caused significant concern amongst the arbitration community, with both experts and arbitrators rejecting potential appointments.

The concern within the arbitration market has however subsided, assisted by the fact that no arrests nor convictions of either arbitrators or experts have occurred since the promulgation of the above amendment.

DIAC

The DIAC Rules (Article 40) provides for immunity for any act or omission in connection with the arbitration, by an arbitrator. The terms of reference, should be produced, normally limit an Arbitral Tribunal's liability to acts of bad faith.

ADCCAC

The ADCCAC Rules do not expressly provide for the grounds on which arbitrators, will or will not be held liable for their actions and/or omissions.

UAE - Common Law Jurisdictions

DIFC

DIFC Arbitration Law (Article 22) provides that an arbitrator will only be liable for his / her acts or omissions where such have caused 'damage by conscious and deliberate wrongdoing'.

The above does 'not affect any liability incurred by an arbitrator by reason of his resigning'

ADGM

The ADGM Regulations (Regulation 23) also provides that an arbitrator shall not be liable unless the 'act or omission in connection with an arbitration' is shown to have 'caused damage by conscious and deliberate wrongdoing'.

25. Is the principle of competence-competence recognized in your country?

UAE- Federal Jurisdiction

Article 19 of the UAE Arbitration Law provides for the principle of 'Kompetenz-Kompetenz' by providing that the Arbitral Tribunal may rule on any plea as to its jurisdiction.

The Arbitral Tribunal's ruling may form part of the answer of a 'preliminary question' or as part of the final arbitral award.

Should the Arbitral Tribunal decide the issue of jurisdiction as a 'preliminary question', this decision may be appealed within 15 days of notice of that decision. The appropriate court will then issue its decision within 30 days. The decision of the court is not subject to appeal.

DIAC Rules (Article 6) also expressly confer power on an Arbitral Tribunal to rule on its own jurisdiction.

UAE - Common Law Jurisdictions

The DIFC Arbitration Law

An Arbitral Tribunal may rule on its own jurisdiction (Article 23).

Should the Arbitral Tribunal rule in favour of its own jurisdiction as part of a preliminary question, this decision ('subject to any process agreed between the parties') can be appealed by any party to the DIFC Court of First Instance.

This appeal must be made within 30 days of receipt of the decision of the Arbitral Tribunal, and the arbitral process shall not be stayed pending the outcome of the appeal.

The decision of the DIFC Court of First Instance on the jurisdiction of the Arbitral Tribunal is not subject to appeal.

ADGM Regulations

Unless the parties have agreed otherwise, an Arbitral Tribunal may rule on its own 'substantive jurisdiction' pursuant to the ADGM Regulations (Regulation 24).

The Arbitral Tribunal's determination may be challenged through the processes agreed by the parties or in accordance with the ADGM Regulations.

The Arbitral Tribunal's response to a challenge may be answered as either a 'preliminary question' or as part of its award on the merits, unless the parties have agreed on how the Arbitral Tribunal should decide such a challenge.

The Court may determine the question of the 'substantive jurisdiction' of the Arbitral Tribunal, upon the application by a party to the arbitration, on notice to the other party.

A party may, however, 'lose its right to object' pursuant to Regulation 10.

The application to the Court to determine the question of the Arbitral Tribunal's 'substantive jurisdiction' will not be considered unless:

- a. 'it is made with the agreement in writing of all the other parties to the proceedings'; or
- b. 'it is made with the permission of the Tribunal' (Regulation 26)

The Court must, however, be satisfied that:

- its decision will save substantial costs;
- there was no delay in making the application; and
- there is good reason why the Court should decide this matter.

Should this application be made without the agreement of the parties, the grounds for the Court deciding the matter shall be contained within the application.

The decision of the Court shall not be subject to appeal, and unless agreed otherwise by the parties, proceedings shall not be stayed pending the Court's decision.

26. What is the approach of local courts towards a party commencing litigation in

apparent breach of an arbitration agreement?

Claimants may attempt to bypass a contractually required arbitration process and file their claim directly with the courts.

Before the UAE Arbitration Law, the applicable provision of the UAE Civil Procedure Law (Federal law no. 11 of 1992 for the Promulgation of the Law on Civil Procedure) dictated that a party was required to object at the first hearing to litigation proceedings filed by the other party, failing which it would be deemed to have waived its right to arbitrate.

However, this provision has now been repealed by the UAE Arbitration Law, although the practice of filing an objection at the very first hearing is likely to remain.

UAE - Common Law Jurisdictions

The DIFC Arbitration Law (Article 23) empowers an Arbitral Tribunal to rule on its own jurisdiction.

27. How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?

How an arbitration is commenced is subject to the rules of the relevant arbitral institution which is to govern the arbitration process or those rules and procedures that an ad hoc tribunal may choose to adopt.

UAE - Federal

Where there is no specific time limit in an arbitration agreement or method for determining such a time limit, Article 42 of the UAE Arbitration Law provides for a 6-month period to issue the final award.

This 6-month period starts from the date of the 'first hearing'.

This period may be expended by 'no more than six (6) additional months' unless the parties have agreed otherwise.

Should the Arbitral Tribunal not issue a final award, within the time permitted, the Arbitral Tribunal or a party may request the court to terminate the arbitration or determine the additional period of time required for rendering the Final Award.

The decision of the Court is final and binding, unless

agreed otherwise by the parties.

2022 DIAC Rules

Pursuant to the 2022 DIAC Rules (Article 35), an Arbitral Tribunal has six months from the date the sole arbitrator or chairman (where three arbitrators are appointed) received the file, to issue the final award.

The time limit for issuing the Final Award may, at any time during the arbitration, be extended by the written agreement of all parties.

The time limit for issuing the Final Award may, at any time during the arbitration, be extended by the Arbitration Court, upon a reasoned request from the Tribunal or on its own initiative, if it decides that it is necessary to do so for the Tribunal to comply with its responsibilities under the Rules.

ADCCAC Regulations

The ADCCAC Regulations (Article 27) also provide for an initial period of 6 months from the date the file is received, for an arbitrator or panel of arbitrators to issue the final award.

The Arbitral Tribunal may, on its own initiative or at the request of one of the parties, extend the time to issue the final award by up to 3 months.

The Committee (the body in charge of administering commercial arbitration cases) may grant a further extension of time to issue the final award, upon the reasonable application of either the Arbitral Tribunal or one of the parties.

UAE - Common Law Jurisdictions

Neither the DIFC Arbitration Law, nor the ADGM Regulations provide for a time limit for the issue of the final arbitral award.

28. In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?

There is no concept of immunity for the state or state entity, in the UAE.

There is, however, a separate procedure for making such claims.

A claimant must first submit its claim to the Department of Legal Affairs of the Government of Dubai ("DLAD").

The procedure for how the DLAD should deal with such claims is set out in Law No. (3) of 1996 (as amended).

The procedure requires that:

the claim should be submitted in writing to the DLAD;

the DLAD refer the claim submitted to the relevant entity within 1 week of receipt;

the relevant entity which receives the claim, shall reply to the DLAD within *'fifteen days from the receipt of the letter...'*

if a period of 2 months expires, from the date of the submission of the claim to the DLAD, without amicable settlement, the claimant may proceed with its claim through the normal channels.

29. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

Under the UAE Arbitration Law a respondent cannot be compelled to participate in the arbitration process. Should a respondent choose not to participate in an arbitration, the respondent may attempt to nullify the final award. The respondent may base its claim for nullification within Article 53(d).

Article 53(d) provides for nullification on the grounds that the respondent was *'unable to submit his statement of defence due to that he was not given a proper notice of...the arbitration proceedings'*

A claimant may easily prove its compliance with the requirement to properly notify the respondent, if the arbitration was administered by the courts or an arbitral institution.

In an ad hoc arbitration, where notifications may not be as authoritative as they would be in an institutional arbitration, a party may utilise the services of a UAE Federal Court bailiff to deliver a legal notice (or any other formal notice) informing the other party of the commencement of arbitral proceedings or of any other procedural part that is of critical importance to communicate.

30. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the

tribunal allow for it?

Article 22 of the UAE Arbitration Law envisages the possibility of intervention or joinder of third parties in arbitral proceedings if this authorised by the tribunal pursuant to either the request of a party or the joining party, provided that the latter is already a party to the arbitration agreement. Therefore, in the absence of an agreement that binds all concerned parties a tribunal cannot impose the joining of a third party.

31. Can local courts order third parties to participate in arbitration proceedings in your country?

Article 22 of the UAE Arbitration Law empowers an Arbitral Tribunal to authorise the joinder of a third party to the arbitral proceedings. The Arbitral Tribunal may do so upon the request by a party or by the joining party. The request to the Arbitral Tribunal, must, however, be made by a party to the arbitration agreement, and provided all parties are given an opportunity for their views to be heard.

This provision could find its application where subcontracts validly incorporate the arbitration clause of a main contract.

Third parties cannot be compelled by the UAE Courts to participate in arbitral proceedings.

32. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

UAE- Federal Jurisdiction

Prior to the introduction of the UAE Arbitration Law, a party would apply to the UAE Courts for a precautionary attachment of movable property, pursuant to Article 252 of the UAE CPC, to secure its debt.

Article 21 of the UAE Arbitration Law permits the Arbitral Tribunal, subject to meeting certain pre-conditions, to order a wide range of interim and precautionary measures.

The Arbitral Tribunal may order such measures, upon the request of the parties, or upon the Arbitral Tribunal's own initiative.

These measures can include orders to preserve evidence, assets or property, maintain/restore *'the status quo pending determination of the dispute'*, or to prevent actions which would likely harm or prejudice the

arbitration process.

Article 21(4) of the UAE Arbitration Law also provides for a party in favour of which an order has been granted by the Arbitral Tribunal, to enforce that order through the Courts. The party's ability to do so, is subject to the approval of the Arbitral Tribunal.

Where a matter is raised, which:

- falls beyond the Arbitral Tribunal's scope or involves the submission of forged documents to the Arbitral Tribunal; and
- '*criminal measures have been pursued for this or any other claim*',

the Arbitral Tribunal may suspend proceedings (Article 43).

An Arbitral Tribunal will, however, only suspend proceedings where it considers that such issues would affect the outcome of the arbitration.

In such a case, the arbitral proceedings will be stayed until a final decision is issued in this regard.

The DIAC Rules (Article 34) also provide for an Arbitral Tribunal to issue provisional orders or other interim/conservatory measures, including injunctions, at the request of a party.

Interim measures may, however, be at all times subject to the requesting party providing appropriate security.

UAE - Common Law Jurisdictions

DIFC Arbitration Law

Unless agreed otherwise, an Arbitral Tribunal has the power to order interim measures at the request of a party pursuant to Article 24 of the DIFC Arbitration Law.

With the written permission of the Arbitral Tribunal, the party in whose favour the order was granted may apply to the DIFC Court of First Instance for the enforcement of the order.

The party requesting interim measures may however be liable to '*any costs or damages caused by the measure to any other party if the Arbitral Tribunal later determines that...the measure should not have been granted*'.

ADGM

Unless otherwise agreed by the parties, the Arbitral Tribunal may grant interim measures at the request of a party to the arbitration, pursuant to the ADGM

Regulations (Regulation 27).

This request is made on notice to the other party and the Arbitral Tribunal may grant interim measures to:

- '*maintain or restore the status quo pending determination of the dispute*';
- '*take action to prevent or not take such action that is likely to cause, current or imminent harm or prejudice to any party or to the arbitral process itself*';
- preserve '*assets out of which a subsequent award may be satisfied*'; or
- preserve '*evidence that may be relevant and material to the resolution of the dispute*'. (Regulations 27(2)(a)-(d)).

A party requesting such relief must, however, satisfy the Court that:

- "*harm*", which cannot be rectified by damages, will be inflicted upon the requesting party, should the interim measure not be ordered;
- "*harm*" to the requesting party, by not granting the interim measure, is greater than that "*harm*" caused to the party against which the interim measure is to be ordered; and
- '*there is a reasonable possibility that the requesting party will succeed on the merits of the claim*'.

These interim measures may be modified, suspended or terminated, at the request of a party, or in '*exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative*'.

The Court may further require:

- security in connection with the interim measure ordered; and/or
- immediate notification should the grounds on which an order was requested or granted change.

The requesting party will further be liable for costs and damages should the Arbitral Tribunal later determine that the interim measure should not have been granted.

These costs and damages may be awarded against the requesting party at any point in the arbitral proceedings.

33. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

UAE - Federal Jurisdiction

Anti-suit and/or anti-arbitration injunctions are not recognised by the UAE Federal judicial system and as such are not issued.

UAE - Common Law Jurisdictions

The DIFC Courts can issue such injunction although so far this has primarily occurred in instances of competing jurisdictions between the DIFC and non DIFC / mainland Dubai.

With the introduction of the Joint Judicial Committee which was established to deal with amongst other issues, jurisdictional conflicts between the DIFC Courts and Dubai Courts, with regard to, for example, which court has jurisdiction to enforce a given award, the instances of applications for anti-suit (and even less so anti arbitration) injunctions have been substantially reduced.

34. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

UAE- Federal Jurisdiction

Article 36 of the UAE Arbitration Law provides for an Arbitral Tribunal, upon its own initiative or pursuant to a party's request, to seek the court's assistance in taking evidence.

A witness may, therefore, be required to appear before the Arbitral Tribunal, to:

- 'submit oral testimony'; and/or
- 'present documents or any evidence thereof'.

The request submitted to the president of the Court, may decide on the following:

- 'a-Sentencing the witnesses who fail to appear or abstain from answering without legal justification with the penalties prescribed in the applicable laws in the State.
- b-Rendering a decision requiring a third party to produce a document in his possession which is significant to resolve the dispute.
- c-Issuing a letter rogatory'.

Whilst rarely exercised, these powers allow, in theory, an Arbitral Tribunal to access to the local courts and require

the production of evidence.

UAE - Common Law Jurisdictions

Article 34 of the DIFC Arbitration Law and Regulation 43 of the ADGM Regulations provide that the Arbitral Tribunal or a party (with approval of the Arbitral Tribunal) the right to request 'assistance in taking evidence'.

The rules of arbitral institutions such as the DIAC Rules (Article 25.2) provide the Arbitral Tribunal with the discretion to adopt its preferred rules on evidence.

35. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

The DLAD has published the 'Charter for the Conduct of Advocates and Legal Consultants in the Emirate of Dubai' (the "Charter"). The Charter applies to legal services including arbitration. This Charter however remains in draft form and therefore may be subject to amendment.

The DIFC Court's Code of Best Legal Professional Practice ("DIFC COP"), applies to both practitioners who undertake contentious work in the DIFC Courts and those who undertake non-contentious work but are licenced to conduct business in the DIFC '(and who are registered with and authorised by DFSA (Dubai Financial Services Authority) as Ancillary Service Providers)'. The DIFC COP does not however have any regulatory status.

36. In your country, are there any rules with respect to the confidentiality of arbitration proceedings?

UAE- Federal

Article 48 of the UAE Arbitration Law only refers to the confidentiality of the arbitral award as opposed to the arbitral proceedings. However, it can safely be deduced that if the arbitral award is considered confidential, such confidentiality would also extend to the proceedings leading up to the award.

UAE-Common Law

Article 14 of the DIFC Law and Article 40 of the ADGM Regulations both expressly provide for the confidential nature of arbitration proceedings.

37. Are there any recent decisions in your country regarding the use of evidence acquired illegally in arbitration proceedings (e.g. 'hacked evidence' obtained through unauthorized access to an electronic system)?

In practice, parties to arbitration proceedings within the UAE often agree to refer to the International Bar Association (IBA) Rules on the Taking of Evidence in International Arbitration the third edition of which empowers arbitral tribunals to exclude evidence obtained illegally, by their own motion or at the request of a party but there are no court judgments publicly available that specifically deal with a tribunal's power to do so.

38. How are the costs of arbitration proceedings estimated and allocated?

Estimation of Costs

Assessment of the cost of arbitration proceedings is dependent on the rules of the arbitral institution which governs the proceedings.

The DIAC and ADCAAC provide a costs schedule based on the value of the claim.

To this schedule, additional fees / costs may be added, for example, those fees levied by the arbitral institution or fees for tribunal appointed experts.

Allocation of Costs

The parties must agree to empower the Arbitral Tribunal to award legal costs. This agreement is also normally recorded within either the Terms of Reference or within the rules of the applicable arbitral institutions.

In practice whether that power will be exercised by a given Arbitral Tribunal remains at its discretion and there is no definitive rule necessarily applied of "costs following the event".

Often tribunals are influenced by the procedural law governing litigation in their home jurisdiction and may be reluctant to award substantial legal costs, even if empowered to do so and even if a party has been entirely successful.

Following the recent amendment of the DIAC Rules, they currently contain a provision for an Arbitral Tribunal to award legal costs (Article 36).

The ADGM Regulations (Regulation 50(5)) provide that

the costs of an arbitration should be set out within the arbitral award.

Should the Arbitral Tribunal fail to do so, a party has 30 days from receiving the arbitral award to apply to the Arbitral Tribunal for a 'further order on costs'.

The term "costs" under the ADGM Regulations (Regulation 50(5)(f)) includes:

'the costs for legal representation and assistance of the successful party if such costs were claimed during the arbitration, and only to the extent that the arbitral tribunal determines that the amount of such costs, or a part of them, is reasonable.'

Legal costs may, therefore, be claimed by the successful party to an arbitration, subject to the Arbitral Tribunal's assessment as to whether such costs are reasonable.

39. Can pre- and post-award interest be included on the principal claim and costs incurred?

In general, interest is awarded in most UAE-based arbitration proceedings, commonly as post-award, unless specific contractual provisions allow for pre-award interest.

Pre-award interest may be claimed pursuant to Article 88 of the UAE CPC which provides for a commercial obligation (essentially, the monetary debt) being a sum of money which was known at the time that the obligation arose.

The above provision stipulates that in such an instance, if the debtor delayed its payment, it shall be bound to pay to the creditor as compensation for delay, interest up to 12% per annum, unless the parties have agreed otherwise.

The creditor does not have to prove actual loss incurred in order for it to claim interest and this is stipulated in Article 89 of the aforementioned law.

40. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

The legal requirements for the recognition of an arbitral award, differ between those applied to foreign and domestic arbitral awards.

Foreign Arbitral Awards

The enforcement of foreign arbitral awards by the UAE Federal Courts or the DIFC Courts is generally straightforward and in general compliance with the New York Convention.

The location of the assets, against which the arbitral award is to be enforced, will ultimately determine the court in which the enforcement proceedings are brought.

Domestic Arbitral Awards

It was commonplace for arbitral awards, prior to the introduction of the UAE Arbitration Law, to be nullified for very idiosyncratic reasons native to the UAE.

The recent introduction of the UAE Arbitration Law has overcome some but not all of the possible reasons for award nullification that existed under the previous legislation.

Article 4 of the UAE Arbitration Law may continue to expose arbitral awards to the risk of nullification.

The grounds for such nullification could be that a natural person (or a representative thereof) who was not legally competent to enter into an agreement to arbitrate, did so.

An agreement to arbitrate entered into by such individuals (or a representative thereof), would be rendered void.

The UAE Arbitration Law also retains certain procedural requirements which may affect the arbitral process.

Article 58(2) of the UAE CPC, for example, requires that *'The attorney may not... go to arbitration; ... abandon litigation ...or undertake any other action for which the law requires special authorisation'*.

The requirement for specific powers of attorney for those, other than the "General Manager" named in the company's trade licence, appears to have survived the introduction of the UAE Arbitration Law.

Article 41 of the UAE Arbitration Law prescribes the criteria for an arbitral award, which includes the requirement that the nationalities of the arbitrators are stated in the final award.

A very positive provision of this article confirms that an arbitral award will be deemed to have been signed at the seat of the arbitration, regardless of where it was actually signed.

With regard to reasons of an award, Article 41 (4) of the

UAE Arbitration Law, Article 38(2) of the DIFC Arbitration Law, Article 50(2) of the ADGM Regulations, Article 34.4(g) of the DIAC Rules, Article 28.6 of the ADCCAC regulations all provide that the award shall be reasoned unless the parties agree otherwise.

41. What is the estimated timeframe for the recognition and enforcement of an award? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

UAE- Federal Jurisdiction

The UAE Arbitration Law introduces a fast-track approach to the recognition and enforcement of arbitral awards (Article 55).

A request, on an *ex parte* basis, may be submitted to the president of the Court, for *'the recognition of the arbitral award and the issue of an enforcement order'*.

The president of the relevant court or delegated judge must, within 60 days of the date of filing of this request, order the recognition and enforcement of the arbitral award, unless a reason to nullify the award set out in Article 53 is furnished.

Should an action to nullify the arbitral award be filed with the Court, the enforcement of the award is not automatically stayed (Article 56).

A party may, however, request that the enforcement of the arbitral award is stayed. A stay will only be granted by the Court if the request is based on *'serious grounds'* (Article 56).

The Court must decide on the request to stay the enforcement of an arbitral award within 15 days of the first hearing to examine this request.

If a stay is granted by the Court:

- a. it may request a *'final guarantee or security'* from the party which requested the stay; and
- b. it is required to decide on the *'action in nullity'* within 60 days from the date of its decision to stay proceedings.

UAE - Common Law Jurisdictions

DIFC

The Rules of the Dubai International Financial Centre Courts 2014 (the "RDC") set out the process applicable to arbitration claims (Part 43 of RDC).

An arbitration claim, including an application to either recognise or enforce an arbitral award (Part 43.2(3)(xii) of the RDC), must be commenced through the issue of the arbitration claim form in accordance with Part 8 of RDC (Part 43.3 of the RDC).

An application to either recognise an arbitral award (Article 43 of DIFC Arbitration Law) or enforce an arbitral award (Article 42(1) of the DIFC Arbitration Law) 'may be made without notice' (Part 43.62 of the RDC).

The Court does, however, retain the authority to specify which parties to the arbitration must be served with an arbitration claim form (Part 43.63 of the RDC).

The Order enforcing or recognising the arbitral award must be served on the party against which recourse is sought (Part 43.68 of the RDC).

The recipient has 14 days after the service of an Order, made without notice, to apply to set aside the Order (Part 43.70 of the RDC).

Where an Order is served outside of Dubai, the Court will determine the period of time during which the recipient can apply to set aside the Order (Part 43.70 of RDC).

ADGM

The ADGM Court Procedure Rules 2016 (the "ADGM CPR") set out the rules in relation to Arbitrations (Part 27 of the ADGM CPR) and arbitral awards.

An arbitration claim, including a claim for the enforcement of an arbitral award, must be made through the issue of an arbitration claim form pursuant to Rule 30 of ADGM CPR (Rule 231(2) of the ADGM CPR).

The ADGM CPR, however, provides that an application made pursuant to section 56 of the ADGM Regulations [recognition and enforcement of awards] for the enforcement of an award may be made without notice.

However, the Court may 'specify those parties to the arbitration, on whom the claim form must be served' (Rules 232(2) of the ADGM CPR).

Following service of an Order to enforce an arbitral award, the recipient has 14 days, from the date of service, to apply for the setting aside of the Order (Rule 234(3) of the ADGM CPR).

Where the recipient of the Order is outside of the jurisdiction, the Court may decide upon the time period, within which the recipient may apply to set aside the Order (Rule 234(3) of the ADGM CPR).

42. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

Domestic Awards

The different standards of review are set out in the response to Question 29 above.

Foreign Awards

Foreign Awards are subject to the provisions of the New York Convention.

43. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts

UAE - Federal

There are no specific limits on the remedies that an Arbitral Tribunal in an On-Shore arbitration may award.

UAE - Common Law Jurisdictions

Neither the DIFC Court nor the ADGM Court impose any specific limit, nor expressly classify any remedies as unenforceable.

However, an award may not be enforced upon public or private property owned by an Emirate or government body as set out in Article 247 of the UAE CPC

44. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

UAE- Federal Jurisdiction

Should a party wish to nullify an arbitral award, it may only do so by 'lodging an action of nullity with the Court' (Article 53) or by objecting during the process for recognising an arbitral award.

The Process for Challenging

Pursuant to Article 54 of the UAE Arbitration Law, a party has 30 days, from the date of notification of the arbitral award to apply to nullify the arbitral award.

The Court may, at the request of a party, stay enforcement proceedings for a period of up to 60 days in order to provide the Arbitral Tribunal with the

opportunity to address any possible grounds for award nullification.

The Grounds for Challenging

The party which intends the arbitral award to be nullified, pursuant to Article 53 of the UAE Arbitration Law, can do so on the following grounds:

- a. there was no arbitration agreement, or such agreement was null and void or forfeited pursuant the law applied by the parties or the UAE Arbitration Law, where no law was chosen;
- b. a party to the arbitration agreement was incapacitated or lacked capacity, at the time of its conclusion;
- c. a party had no legal capacity to be part of the arbitration;
- d. a party was unable to submit his statement of defence due to having been given improper notice of the appointment of an arbitrator or arbitral proceedings, or by reason of a failure on behalf of the Tribunal, or for any reasons outside the control the party;
- e. the arbitral award did not apply the law agreed by the parties, to the subject of the dispute;
- f. the appointment and/or composition of the Arbitral Tribunal was contrary to the UAE Arbitration Law or the agreement of the parties;
- g. the arbitral process is void in such a way that it influenced the arbitral award, or the arbitral award was issued after the deadline for issuing the arbitral award; and
- h. the arbitral award addressed matters not covered by the arbitration agreement, or beyond the scope of the arbitration, unless such matters can be separated from the arbitral award.

Should a dissatisfied party wish to appeal Court' decision on nullification of an arbitral award, it may do so through the Court of Cassation.

UAE - Common Law Jurisdictions

The DIFC Arbitration Law (Article 41) and the ADGM Regulations (Regulation 53) set out the grounds on which an application for setting aside award may be made.

DIFC

An arbitral award may be set aside under the DIFC Arbitration Law where the Court finds that:

- *'the subject-matter of the dispute is not capable of settlement by arbitration under DIFC Law;*
- *'the dispute is expressly referred to a different body or tribunal for resolution under this Law or any mandatory provision of DIFC Law; or*
- *'the award is in conflict with the public policy of the UAE.'*

The first and last requirement listed above are essentially the same as in Article V of the New York Convention.

ADGM

An arbitral award may be set aside under the ADGM Regulations only where the Court of First Instance finds that:

- *'the subject-matter of the dispute is not capable of settlement by arbitration under the Laws of the ADGM';* or
- *'the recognition or enforcement of the award would be contrary to the public policy of the UAE'.*

The above grounds are essentially the same as those on which a foreign arbitral award may be refused recognition and enforcement under Article V of the New York Convention.

45. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

UAE- Federal Jurisdiction

Article 54(5) of the UAE Arbitration Law provides that the right to challenge an arbitral award cannot be waived prior to the issue of the award.

The grounds on which the arbitral award can be nullified is set out in Article 54 of the UAE Arbitration Law.

The nullification of an arbitral award is only subject to appeal before the Court of Cassation.

UAE - Common Law Jurisdictions

The DIFC Arbitration Law does not expressly either allow nor restrict the parties to the arbitration from agreeing to exclude rights of appeal or recourse to the Courts.

This right may, however, be waived by the parties or the grounds on which such an application may be permitted

can be limited by agreement under the ADGM Regulations (Regulation 54).

46. To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

Neither an Emirate of the UAE nor government bodies thereof have immunity. At the enforcement stage, barriers exist to the enforcement of awards against an Emirate or governmental body's assets. For example, an award may not be satisfied by the seizure of public or private property owned by an Emirate or government body as set out in Article 247 of the UAE CPC.

47. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

UAE- Federal Jurisdiction

There are no statutory provisions whereby a third party/non-signatory may be bound by or challenge the recognition of an arbitral award pursuant to UAE Arbitration Law.

UAE - Common Law Jurisdictions

The DIFC Arbitration Law (Article 44) and the ADGM Regulations (Regulation 53) do not provide for an arbitral award to be binding upon or challenged by a third party/non-signatory.

48. Have there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

The local arbitration market has not been significantly impacted by Third Party Funding although the option has been promoted within the region to interested stakeholders.

49. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

UAE- Federal Jurisdiction

The concept of emergency arbitrator relief has not been

envisaged within the UAE Arbitration Law until recently by virtue of the amendment of the DIAC Rules, which now provides for the provision of appointment of an emergency arbitrator under Article 2 of Appendix II. **UAE - Common Law Jurisdictions**

The International Chambers of Commerce announced in 2017 that it would open a representative office in Abu Dhabi located in the ADGM. The ICC Arbitration Rules (2012) and the ICC Arbitration Rules (2017) both provide the services of an emergency arbitrator. This office became operational in 2018.

50. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

There are no provisions within the UAE Arbitration Law, the DIFC Arbitration Law or the ADGM Regulations which relate to expedited procedures for claims below a certain value.

However, following the recent amendments, the DIAC Rules now provide for expedited arbitral proceedings (Article 32).

51. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

The population of the UAE is a confluence of cultures, with professionals stemming from a range of jurisdictions, ethnicities and differing legal traditions, working in a single market. The arbitration community reflects this diversity both as counsel and arbitrators.

The UAE further recognises the benefits of developing the new generation of young arbitrators when it previously launched "DIAC 40". An initiative to support the development of younger arbitrators in the MENA area.

52. Have there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

There has been no recent decisions on the setting aside of arbitral awards enforced in a different jurisdiction.

Foreign arbitral awards which seek enforcement in the UAE, are subject to the requirements of Article V of the New York Convention.

As previously indicated, the Joint Judicial Committee has however been established to deal with amongst other issues, jurisdictional conflicts between the DIFC Courts and Dubai Courts with regard to which court has jurisdiction to enforce a given award, based on a number of criteria.

53. Have there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

Corruption in arbitration is not frequently alleged and even less frequently proven in the UAE.

In the limited number of instances where a party has sought to challenge the impartiality and independence of an arbitrator, the burden of proving such lack of impartiality or independence rested with the challenging party and the relevant decision was taken by the supervising arbitral body.

54. Have there been any recent court decisions in your country considering the judgments of the Court of Justice of the European Union in *Slovak Republic v Achmea BV (Case C-284/16)*, *Republic of Moldova v Komstroy LLC (Case C-741/19)* and *Republiken Polen v PL Holdings Sarl (Case C-109/20)* with respect to intra-European investor-state arbitration? Are there any pending decisions?

As mentioned above, in general, Federal Court decisions are not rendered public in the UAE (although DIFC and ADGM Court decisions generally are) and, as such, case reporting is limited.

In that context there have been no publicized UAE Court decisions that considered the aforementioned judgment and it is unlikely that any judgment will do so in the future, given the remoteness to UAE's arbitral and judicial practice of the topics the said Court of Justice of the European Union judgment covered.

55. Have there been any recent decisions in your country considering the General Court of the European Union's decision *Micula & Ors (Joined Cases T-624/15, T-694/15 and T-694.15)*, *ECLI:EU:T:2019:423*, dated 18 June 2019? Are there any pending decisions?

As mentioned above, in general, Federal Court decisions are not rendered public in the UAE (although DIFC and ADGM Court decisions generally are) and, as such, case reporting is limited.

In that context there have been no publicized or commented UAE Court decisions that considered the aforementioned judgment and it is unlikely that any judgment will do so in the future, given the remoteness to UAE's arbitral and judicial practice of the topics the said General Court of the European Union judgment covered.

56. What measures, if any, have arbitral institutions in your country taken in response to the COVID-19 pandemic?

Throughout the COVID-19 pandemic, arbitration institutions within the UAE remained fully operational and equipped to remotely carry out their services.

As with other jurisdictions, proceedings have been largely digitised with numerous service providers ensuring the efficient conduct of virtual hearings.

Currently, as the COVID-19 pandemic has settled down and work has been resumed through their physical offices, arbitration institutions within the UAE remain flexible and fully equipped to conduct virtual remote hearings, as the case may require.

57. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

The UAE's reforms of its arbitration landscape in recent years – before the COVID-19 pandemic – have significantly put the UAE at an advantage in adapting to the radical changes necessitated by the COVID-19 pandemic in 2020. In general, the arbitration laws within the UAE provided a distinction between the legal seat of arbitration and the physical versus virtual conduct of

arbitration hearings or meetings. This enabled tribunals and parties following the COVID-19 pandemic to conduct hearings/meetings in any place (physical or virtual) without undermining the legal seat of the arbitration.

Furthermore, Article 28(2) of the UAE Arbitration Law (enacted prior to the COVID-19 pandemic) provides that hearings and deliberations of the tribunal can be made by '*modern means of communication and electronic technology*'. Article 33(3) does not require the physical presence of the parties at any hearing. Article 41(6) of the UAE Arbitration Law also allowed the arbitral awards to be signed by electronic means.

Therefore, the UAE was able to quickly adapt to virtual hearings, electronic filings and remote communications in the conduct and administration of arbitral proceedings.

As for the rules of arbitration institutions within the UAE, except for the ICC Rules, none had explicitly provided for electronic procedures covering electronic filings and virtual hearings prior to the COVID-19 pandemic.

However, soon after the pandemic started, DIAC, ADCCAC and ADGM institutions have all issued guidelines and protocols to ensure the continuity of efficient administration of arbitral proceedings through electronic means. Furthermore, the new DIAC Rules recently issued in March 2022 now provide, unlike the old rules, for the tribunal to decide to conduct hearings or preliminary meetings at any place, in person, by telephone, or through any other means of virtual communication including video conferencing (Articles 20.2, 23.2 and 26.1). The same provision applies with respect to the tribunal's authority to accept oaths and conduct examination of witnesses through virtual means (Article 27.6). This brings the DIAC in line with the rules of other international arbitration institutions such as the LCIA and ICC.

58. In your country, does the insolvency of a party affect the enforceability of an arbitration agreement?

The insolvency of a party does not affect the enforceability of an arbitration agreement other than the fact that the party under insolvency is represented by a Court appointed Trustee or by a person that is duly authorized by the said Trustee (in instances falling under the application of the UAE Federal Bankruptcy Law No. 9 of 2016, as amended by Law No. 23 of 2019 (the "UAE Bankruptcy Law") or the Administrator (in instances falling under the DIFC Insolvency Law, Law No. 1 of 2019 (the "DIFC Insolvency Law").

In both instances, arbitral proceedings may be conducted validly, and arbitration clauses can be amended or given effect to, for as long as the party under the relevant insolvency process is duly represented and a moratorium on all creditors is not ordered under a Protective Composition Procedure (pursuant to the UAE Bankruptcy Law) or a Voluntary Arrangement (pursuant to the DIFC Insolvency Law).

59. Is your country a Contracting Party to the Energy Charter Treaty? If so, has it expressed any specific views as to the current negotiations on the modernization of the Treaty?

The UAE has signed the 2015 International Energy Charter on 29 June 2017 but is an observer to the 1991 Energy Charter and the 1994 Energy Charter Treaty.

60. Have there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

Whilst the UAE has taken steps towards addressing climate change (such as ratifying the Kyoto Protocol to the UN Convention on Climate Change in 2005, being the country host of the International Renewable Energy Agency, acceding to the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer in 1989 and establishing the Masdar initiative on renewable energy) no disputes arising from any violations have been reported so far.

61. Has your country expressed any specific views concerning the work of the UNCITRAL Working Group III on the future of ISDS?

The UAE has not expressed any views in that regard.

62. Has your country implemented a sanctions regime (either independently, or based on EU law) with regard to the ongoing crisis in Ukraine? Does it provide carve-outs under certain circumstances (i.e., providing legal services, sitting as an arbitrator, enforcement of an award)?

The UAE has not implemented nor adopted any

sanctions regime with reference to the ongoing crises in Ukraine.

No.

63. Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent decisions in your country considering the impact of sanctions on international arbitration proceedings?

64. Have arbitral institutions in your country taken any specific measures to administer arbitration proceedings involving sanctioned individuals/entities? Do their rules address the issue of sanctions?

No.

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