

# The New UAE Arbitration Law: an incremental shift towards international norms

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The UAE has taken a significant step towards making commercial arbitration a more appealing dispute resolution mechanism for companies conducting business in the UAE and the broader GCC region. The newly enacted Federal Arbitration Law is likely to offer an attractive solution to some of the problems facing UAE-seated arbitrations in recent years; however, the practical effect of the new law remains to be seen.

## A Long-Awaited Change

Whispers of a new arbitration law have been circulating since the UAE acceded to the New York Convention in 2006. Until very recently, the laws governing UAE-seated arbitrations were set out at Articles 203 - 218 of Chapter 3 of the UAE Civil Procedure Code (“**CPC**”). These provisions only briefly dealt with the key issues concerning arbitration, which often resulted in unpredictability of outcomes at the time of enforcement of arbitral awards.

On 13 May 2018, Federal Law No. 6 of 2018 (“**UAE Federal Arbitration Law**”) was ratified by the UAE Supreme Council and was signed by the President of the UAE, His Highness Sheikh Khalifa Bin Zayed Al Nahyan.

The position under Article 61 of the UAE Federal Arbitration Law is that it comes into force one month from the publication date in the Official Gazette. In accordance with Article 59 of the UAE Federal Arbitration Law, the new law will apply to all arbitration proceedings, including those that were initiated prior to the new law coming into force. Any arbitration proceedings that have been conducted in accordance with the provisions of the previous law shall remain valid.

## The UNCITRAL Model Law

The UNCITRAL Model Law was prepared to provide States with a framework of national arbitration and to unify the law of international arbitration. The Model Law covers all stages of the arbitral process and clearly sets out the scope of the curial court’s powers to intervene in the arbitral process. A key feature of the Model Law is that it sets out the rules for recognition and enforcement of arbitral awards (Article 35) and the grounds for refusing recognition or enforcement (Article 36), based on those listed in Article V of the New York Convention. The Model Law therefore represents an international benchmark for arbitration legislation.

Legislation based on the Model Law has been adopted in not less than 80 States in a total of 111 jurisdictions, including prominent arbitration jurisdictions such as Singapore, the United Kingdom and the United States of

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America; and regionally in Bahrain, the Kingdom of Saudi Arabia and Oman, reflecting the international nature and adaptability of the law.

Whilst the UAE Federal Arbitration Law is largely based on the UNCITRAL Model Law, as we discuss below, several modifications have been made which echo the previous technical requirements set out in the CPC.

## The UAE Federal Arbitration Law

The UAE Federal Arbitration Law consists of 61 articles, and pursuant to Article 2 the law applies to:

- arbitrations seated in the UAE, unless the parties have agreed that the proceedings should be subject to another arbitration law, providing such other law does not conflict with notions of public order or morals of the UAE (Article 2(1));
- international arbitrations seated outside of the UAE where the parties have agreed to subject the proceedings to the UAE Federal Arbitration Law (Article 2(2)); and
- arbitrations which arise out of a dispute relating to a legal, contractual or non-contractual, relationship which is governed by the laws inside the UAE, unless specified otherwise (Article 2(3)).

The UAE Federal Arbitration Law does not apply to certain financial free zones in the UAE, for example, the DIFC and ADGM, which are exempt from the application of UAE civil and commercial federal laws pursuant to Federal Law No. 8 of 2004. These financial free zones have independent laws governing arbitrations seated in those jurisdictions.

One of the most important changes under the new law is that it grants the Court power to issue interim measures in relation to the arbitration proceedings and to intervene in the arbitration process if, for example, the appointment process fails. The section on enforcement in the UAE Federal Arbitration Law is modelled on the New York Convention with modifications reflecting the requirements that existed under the CPC. There are now also strict time limits for enforcement procedures which are expected to simplify and expedite the process of enforcement. For example, the Court is now required to authenticate, approve and execute an award within 60 days from the date the request for enforcement of the award is filed, unless the Court is satisfied that a reason for annulment exists under Article 53 of the UAE Federal Arbitration Law.

The UAE Federal Arbitration Law builds on the previous arbitration law and seeks to address those areas which were commonly abused by award debtors to resist enforcement of an award under the CPC. Examples include:

- **Capacity to agree arbitration** – The CPC previously provided under Article 203(4) that “[a]n arbitration agreement may be made only by the parties who are legally entitled to dispose of the disputed right.” Article 4(1) of the UAE Federal Arbitration Law states in similar terms that the signatory must have the requisite “capacity or the eligibility to dispose of the rights...[o]therwise, the agreement shall be deemed null and void”<sup>1</sup>.

Article 58(2) of the CPC, which has not been repealed, states that “[n]o admission or waiver of a right alleged or settlement or submission to arbitration...or any other disposition in respect of which the law requires special authorisation may be made without special authority”.

In several Court of Cassation judgments, “special authority” was held to mean an express authority to agree arbitration, usually in the form of a Power of Attorney or Board Resolution except in the case of a General Manager listed on the trade licence of an LLC who is deemed to have the authority to agree arbitration. It remains to be seen whether the new provisions of the UAE Federal Arbitration Law will be read together with the existing provisions of the CPC, or if the UAE Court’s will dispense with the need for express or special authority to agree arbitration.

In the case of non-UAE incorporated companies, the wording of Article 53(1)(c) of the UAE Federal Arbitration Law, which deals with the grounds to challenge the validity of an arbitration award, suggests that when determining if a party representative is “legally entitled to dispose of the disputed right”, consideration will be given to the law which governs such party. In other words, if one of the parties to the

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<sup>1</sup> All UAE legislation quoted in this article are from unofficial English translations of the original Arabic text of the law.

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arbitration agreement is incorporated in the United Kingdom, the laws applicable in the United Kingdom will be applied to determine the authority of the company representative to bind the company to arbitration.

- **The oath** – The CPC previously provided at Article 211 that “arbitrators shall cause the witnesses to take oath. Whoever makes a false statement before the arbitrators shall be deemed to have committed the crime of perjury.” The Dubai Court of Cassation held in one case that the oath must be given in the official form prescribed at Article 41(2) of the UAE Evidence Law which reads: “I swear by Almighty God that I shall tell the whole truth and nothing but the truth”. As a result, the common practice amongst arbitration practitioners has been to have witnesses take the oath in the form prescribed in the UAE Evidence Law.

Article 33(7) of the UAE Federal Arbitration Law states that “[u]nless otherwise agreed by the parties, hearing the statements of the witnesses, including the experts, shall be carried out as per the effective laws in the State”. The new law appears to give parties and the tribunal the flexibility and autonomy through agreement to deviate from the UAE Evidence Law and the official form of the oath set out at Article 41(2) of the UAE Evidence Law.

- **Video conference** – There was previously uncertainty as to whether witness testimony by video-conferencing was permitted under the arbitration provisions of the CPC, particularly in circumstances where there was no party agreement to do so. The UAE Federal Arbitration Law provides under Article 35 that the “Arbitral Tribunal may hear the statements of the witnesses, including the expert’s witnesses, through the modern means of communication, which do not require their personal attendance at the hearing”. This is aligned with the amendments made to the CPC in 2017 to allow remote communication technologies, such as video-conferencing, in UAE Court hearings.
- **Signing the Award** – Article 212(5) of the CPC provided in general terms that the “award shall be valid if signed by a majority of the arbitrators”. Various decisions were handed down by the Dubai Court of Cassation and Abu Dhabi Court of Cassation on what formalities must be satisfied for an award to be valid. This ultimately resulted in arbitrators signing each page of an award as best practice to avoid the risk of annulment. Article 41(3) of the UAE Federal Arbitration Law states that “the arbitrators shall sign the award” without specifying in any detail the form of a valid award. In light of the current wording of Article 41(3) of the UAE Federal Arbitration Law, there is still the possibility that future awards will be exposed to the risk of annulment if the UAE Court’s follow the previous Court of Cassation decisions on the procedural formalities of an award.
- **Time limit for rendering the Award** - Article 42(1) of the UAE Federal Arbitration Law states that the tribunal shall issue the award by the date agreed upon by the parties and that if no date is agreed upon the award shall be issued within six months from the date of holding the first hearing of the arbitration procedures. The six month time limit to issue the award can be extended with the agreement of the parties. If this time limit is not adhered to, the award can be annulled pursuant to Article 53(1)(g) of the UAE Federal Arbitration Law. This is similar to the wording of Article 210 of CPC which required tribunals to render awards within six months from the first arbitration session unless otherwise agreed by the parties. Whilst the expeditious conclusion of an arbitration is no doubt of benefit to all parties, in light of the inherent complexities which arise in most commercial arbitrations, a time limit to issue an award can result in unfairness particularly in circumstances where there is no guarantee that the parties will agree to an extension of time.
- **Time limit to challenge Award** – Under Article 54(2) of the UAE Federal Arbitration Law a party that wishes to challenge an award must do so within 30 days of the date of notification of the award. A challenge to the award does not, however, automatically suspend enforcement like it did under the CPC. If a party wishes to suspend the execution of the award until such time that the nullification application has been heard, then an application can be made to the Court for a suspension of execution. Under Article 56(1) of the UAE Federal Arbitration Law, the Court may order the suspension of the execution if the request is for a serious reason. The UAE Federal Arbitration Law does not define what constitutes a ‘serious reason’ and therefore it remains to be seen how Article 56(1) will be interpreted by the UAE Courts.

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## A New Era for UAE Arbitration?

The development of a federal arbitration law and the alignment of the UAE's arbitration laws with international best practice have been long anticipated by businesses and arbitration practitioners in the region. The adoption of the Model Law will no doubt result in the UAE being perceived as a more arbitration-friendly jurisdiction.

It is, of course, yet to be seen how the UAE Courts will interpret the new UAE Federal Arbitration Law, and the expectation is that the UAE Courts will continue to grow as an arbitration friendly jurisdiction. One key concern that remains alive is the issue of immunity of arbitrators, which has stemmed from the amendments to Article 257 of the Penal Code in 2016. Under Article 257 of the Penal Code, arbitrators are exposed to punishment by imprisonment if they are found to be in contravention of the duty of neutrality and integrity.

This modernisation of the UAE's arbitration framework, coupled with the UAE's accession to a number of bilateral and multilateral conventions providing for the recognition and enforcement of arbitral awards and foreign judgments, including the New York Convention and GCC Convention, puts the UAE in a strong position to be a preferred seat for arbitration in the Middle East. The outlook is that the UAE will continue to move in the right direction, with further reforms to its domestic laws to eradicate any obstacles hindering the growth of arbitration in the UAE.

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