



Arbitration Guide
IBA Arbitration Committee

UNITED ARAB EMIRATES

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I. Background

(i) How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?

The use of arbitration increased considerably following the introduction of the Federal Civil Procedure Code No. 11 of 1992 ('CPC'), which laid the foundations of the former regime for arbitration in the United Arab Emirates ('UAE'). The liberalisation of the UAE economy and its growth into a commercial hub in the Middle East and North Africa ('MENA') region have brought arbitration to the forefront of commercial practice in the UAE. The use of arbitration as a common form of dispute resolution was further cemented in the aftermath of the global financial crisis, which saw an explosion of disputes in various economic sectors. More recently, the UAE has taken further steps to promote the UAE as a credible arbitration seat through the promulgation of Federal Law No. 6 of 2018 on Arbitration (the 'Federal Arbitration Law'), which brought much needed change to the UAE's old arbitration regime.

As in other jurisdictions, arbitration provides commercial entities with an efficient, flexible, and (generally) confidential process for the settlement of disputes. The nature of arbitration as a process that permits arbitrating parties to tailor the dispute resolution process to their needs, including by selecting professionals with the requisite qualifications to resolve complex cases. Arbitration is also favoured because of the flexibility it accords in the selection of the arbitral seat, the law applicable to the merits of the dispute and the language of the proceedings. Choosing arbitration as an alternative means for dispute settlement allows the parties to have more control over the proceedings. Furthermore, in the UAE, parties are able to seat their arbitrations in either of three jurisdictions. In addition to the UAE proper (or, onshore UAE), the parties have the choice of the Dubai International Financial Centre ('DIFC') or the Abu Dhabi Global Market ('ADGM'). The DIFC and ADGM are autonomous financial free zones with independent courts which apply DIFC Laws (based on English common law) and English common law, respectively. This pluralism of legal systems in the UAE enables it to cater to businesses that come from different legal cultures.

Notwithstanding these advantages, further development is still necessary to enhance the arbitration environment in the UAE. Despite many positive developments in recent years, the formalistic and sometimes unpredictable approach of local i.e. 'on-shore' courts in dealing with arbitration remains a cause for concern among arbitration users in the UAE. It is not uncommon for parties to arbitral proceedings to become embroiled in lengthy battles in the local courts as a result of dilatory tactics by recalcitrant parties. UAE courts have historically interpreted arbitration agreements narrowly and set aside awards on purely technical grounds. Remnants of judicial hostility towards arbitration still manifest themselves from time to time. However, the picture is improving and, while it



remains to be seen how the judiciary will interpret the new Federal Arbitration Law, initial indications are relatively positive.

(ii) Is most arbitration institutional or ad hoc? Domestic or international? Which institutions and/or rules are most commonly used?

Institutional arbitration is more common in the UAE.

Given that the UAE has become a hub for international businesses in the region and home to a high number of expatriate individuals, even the most domestic disputes are likely to have some international element. Both domestic and international arbitration is commonly practiced.

These factors have spurred a proliferation of specialised arbitration institutions throughout the UAE. At present, the major arbitral institutions in the UAE include the Dubai International Arbitration Centre ('DIAC'), the Abu Dhabi Commercial Conciliation and Arbitration Centre ('ADCCAC'), the Arbitration Centre of the Dubai International Financial Centre-London Court of International Arbitration ('DIFC-LCIA'), and the Emirates Maritime Arbitration Centre ('EMAC'). Further, the ADGM has established the ADGM Arbitration Centre ('ADGMAC'), a state-of-the-art hearing facility, which opened its doors in October 2018. Because ADGMAC is not an arbitration institution, it neither administers arbitrations nor has its own arbitration rules. Hence, parties can avail themselves of ADGMAC's services irrespective of the institution they choose to administer their arbitration and even when the seat of the arbitration is outside the ADGM.

Further, the ICC International Court of Arbitration has set up a MENA Representative Office in Abu Dhabi. The Representative Office, which is located in the ADGM, opened its doors in 2018 and is staffed with a local ICC team which accepts the registration of new cases under the ICC Rules, to be administered by the ICC Court Secretariat's case management teams in Paris and Singapore.

Ad hoc arbitration is still in use, despite being less common in practice.

(iii) What types of disputes are typically arbitrated?

Various types of disputes are typically referred to arbitration, including construction, property, real estate, oil and gas, other commercial, and to a limited extent, investment disputes.

(iv) How long do arbitral proceedings usually last in your country?

The duration of arbitral proceedings usually depends on the nature, size and complexity of the dispute. The Federal Arbitration Law provides that the arbitral



award must be rendered within six months from the date of the ‘first arbitration session’, with the possibility of a six-month extension by the tribunal, unless the parties agree otherwise. In practice, arbitrations usually last for 1-2 years, although many proceedings last longer.

(v) Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?

Foreign nationals can act as counsel or arbitrators in the UAE. The Federal Arbitration Law provides that the arbitrator need not be of a specific gender or nationality, unless otherwise agreed upon by the parties or provided for by law.

II. Arbitration Laws

(i) What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?

Arbitration proceedings seated in the UAE are governed by the lex loci arbitri of the particular jurisdiction selected by the parties. Parties wishing to select a seat in the UAE may opt for one of three jurisdictions:

- Onshore UAE: the jurisdiction comprising the seven constituent Emirates of the UAE. Arbitrations seated onshore are governed by the Federal Arbitration Law which is largely modelled on the UNCITRAL Model Law.
- DIFC: an autonomous financial free zone in the Emirate of Dubai. The DIFC has an independent arbitration regime set forth in DIFC Arbitration Law No. 1 of 2008, as amended by DIFC Amendment Law No. 1 of 2013 (the ‘DIFC Arbitration Law’), which is based on the UNCITRAL Model Law.
- ADGM: an autonomous financial free zone in the Emirate of Abu Dhabi. Like the DIFC, the ADGM has its own arbitration regime. It is set out in the ADGM Arbitration Regulations 2015 (the ‘ADGM Arbitration Regulations’), which are also based on the UNCITRAL Model Law.

Under the above arbitration frameworks, the law applies equally to domestic and international arbitrations (however, different regimes apply to enforcement of domestic and foreign awards, see Section XIII.i below).

(ii) Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?

The Federal Arbitration Law applies equally to domestic and international arbitrations. Similarly, there is no distinction between domestic and international arbitration under the DIFC Arbitration Law or the ADGM Arbitration Regulations.



(iii) What international treaties relating to arbitration have been adopted (eg New York Convention, Geneva Convention, Washington Convention, Panama Convention)?

The UAE has ratified the following Conventions:

- the 1907 Hague Convention for the Pacific Settlement of International Disputes, in 2008;
- the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the ‘New York Convention’), in 2006;
- the 1965 Washington Convention on the Settlement of Disputes between States and Nationals of Other States (the ‘ICSID Convention’), in 1982;
- the 1980 Unified Agreement for the Investment of Arab Capital in the Arab States (the ‘Arab Investment Agreement’), in 1980;
- the 1983 Riyadh Convention on Judicial Cooperation between States of the Arab League (the ‘Riyadh Convention’), in 1999; and
- the 1987 Gulf Cooperation Council Convention for the Execution of Judgments, Delegations and Judicial Notifications (the ‘GCC Convention’), in 1996.

(iv) Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

UAE law recognises the autonomy of the parties to choose the law applicable to the merits of their dispute. In the absence of such agreement, tribunals seated in the UAE have the power to determine the applicable substantive law. In those circumstances, the Federal Arbitration Law directs tribunals to apply “the substantive rules of the law it deems most closely connected to the dispute”. In addition, tribunals shall take into account the terms of the contract, subject of the dispute, the usages of the trade applicable to the transaction and past practices between the parties.

Similarly, the rules of the major arbitral institutions in the UAE typically vest in arbitral tribunals the power to determine the substantive law in the absence of the parties’ agreement. For example, Article 22.3 of the DIFC-LCIA Arbitration Rules 2016 (the ‘DIFC-LCIA Rules’) provides that the arbitral tribunal “shall apply the law(s) or rules of law which it considers appropriate” if it finds that the parties have made no choice of the law or rules as applicable to the merits. Article 33.1 of the DIAC Arbitration Rules 2007 (the ‘DIAC Rules’) reiterates the same principle.



By contrast, the ADGM Arbitration Regulations provide that, absent a choice of the substantive law by the parties, the tribunal shall decide the dispute in accordance with the rules of law it considers appropriate, whereas the DIFC Arbitration Law states that, in such circumstances, the tribunal must determine the dispute in accordance with the law determined by the conflict of laws rules that the tribunal deems applicable.

III. Arbitration Agreements

- (i) **Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?**

Under the Federal Arbitration Law, the arbitration agreement must be recorded in writing. The writing requirement is satisfied if it is contained in a document signed by the Parties, in an exchange of correspondence or other written means of communication, or in the form of an electronic message in accordance with the applicable rules of the UAE concerning electronic transactions. It can take the form of an arbitration clause, a standalone and signed agreement, or it can be incorporated by reference. The parties to the arbitration agreement must have the requisite capacity and the subject matter of the dispute must be arbitrable in accordance with UAE law. The position under the Federal Arbitration Law with respect to authority to sign an arbitration has not changed. Despite a number of cases in which the Dubai courts accepted the principle of apparent authority (both under the CPC and the new law), a recent case has been reported in which the Dubai Court of Cassation took a strict approach requiring ‘special authority’. Parties should therefore exercise caution with respect to the authorisation of signatories of arbitration agreements.

The requirements for the validity of arbitration agreements are similar under the DIFC Arbitration Law and the ADGM Arbitration Regulations. Under both regimes, an arbitration agreement must be reduced to writing. It may be in the form of an arbitration clause or a standalone agreement. The writing requirement can also be met by electronic communication if the information is accessible so as to be useable for subsequent reference. An arbitration agreement is also deemed to be in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by a party and not denied by the other. Lastly, reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement in writing, provided that such reference is such as to make that clause part of the contract.



- (ii) What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration agreement will not be enforced?**

UAE courts generally enforce agreements to arbitrate, provided that the basic requirements for validity of such agreements are met. However, under the old regime, the UAE courts often interpreted arbitration agreements restrictively. The extent to which the courts will follow the pro-arbitration spirit of the new Federal Arbitration Law is yet to be seen. Furthermore, courts will not enforce an arbitration agreement (i) when it is rendered void (by, for example, fraud or incapacity), or (ii) where the subject matter of a dispute is non-arbitrable (eg matters of public policy), or (iii) when the opposing party fails to raise the arbitration defence at the appropriate time.

In comparison, the DIFC Courts have a better track record of enforcement of arbitration agreements. The ADGM Courts, which are still in their early years, are expected to be arbitration-friendly and in favour of enforcing agreements to arbitrate.

- (iii) Are multi-tier clauses (eg arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?**

Multi-tier clauses are common in the UAE, particularly in the construction industry. Such clauses are enforceable in the UAE. Where mandatory pre-conditions to arbitration are not followed, a respondent may argue that the claim is inadmissible and that a constituted tribunal does not have jurisdiction to hear the dispute. Awards made notwithstanding a claimant's failure to follow the pre-conditions may be annulled by the courts.

That said, article 25 of the Federal Arbitration Law provides for an automatic waiver of a party's right to object to its opponent's non-compliance with a requirement under the arbitration agreement if it did not raise the objection to such non-compliance within the agreed time limit, or within seven days of it becoming aware of the non-compliance if a time limit has not been agreed.

- (iv) What are the requirements for a valid multi-party arbitration agreement?**

There are no particular requirements for valid multi-party arbitration agreements under the Federal Arbitration Law or the arbitration rules of the major arbitral institutions in the UAE. In the absence of specific guidance, such arbitration agreements should be enforceable insofar as they provide clear and unequivocal



consent to arbitration. Note that the DIAC and DIFC-LCIA Rules have special procedures for the appointment of arbitrators in multi-party arbitrations.

(v) Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?

It is unclear whether the UAE courts would enforce a unilateral right to arbitration. The prudent course is to avoid such clauses.

(vi) May arbitration agreements bind non-signatories? If so, under what circumstances?

The Federal Arbitration Law and DIFC Arbitration Law do not contemplate the possibility of a non-signatory being bound by an arbitration agreement. However, the ADGM Arbitration Regulations permit the joinder of a third party who has not signed the arbitration agreement provided that party has consented to joinder in writing.

IV. Arbitrability and Jurisdiction

(i) Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?

The Federal Arbitration Law limits arbitration to matters which are capable of being resolved by conciliation. Matters which cannot be resolved by conciliation (ie are non-arbitrable) are those which have been reserved for the sole jurisdiction of the local courts or those which pertain to UAE public policy. The first category includes disputes arising out of commercial agency, distributorship, and labour agreements. Meanwhile, the Federal Civil Transactions Law No. 5/1985 (the ‘Civil Code’) defines questions of public policy as those which relate to personal status (eg marriage, inheritance and lineage), as well as provisions relating to systems of governance, freedom of trade, the circulation of wealth, private ownership and other rules and foundations on which the society is based, provided that these provisions are not inconsistent with the imperative provisions and fundamental principles of Islamic Shari’a.

The DIFC Arbitration Law and ADGM Arbitration Regulations provide that the award may be set aside if the subject matter of the dispute it purports to resolve is not capable of settlement by arbitration under DIFC Law or the laws of the ADGM, respectively.



- (ii) **What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?**

If a party files a claim before the local courts notwithstanding an existing arbitration agreement, in a welcome change to the old arbitration regime, the respondent must object to the court's jurisdiction before presenting any arguments on the merits of the dispute in order to preserve the arbitration agreement. Failing to invoke the arbitration agreement before addressing the merits of the dispute would be deemed as a waiver of the right to arbitrate, and the local courts would therefore restore their jurisdiction over the dispute. Previously, the respondent had to object during the first court hearing, irrespective of whether an application for adjournment was made at that time.

In the DIFC, parties wishing to rely on an arbitration agreement despite an action having been brought to the DIFC Court must do so not later than in submitting a first statement regarding the substance of the dispute. A 2012 judgment held that the DIFC Courts are only obliged to stay proceedings where the arbitration is seated in the DIFC, and where the seat is outside the DIFC, the DIFC Courts retained a discretionary power to stay such proceedings.

- (iii) **Can arbitrators decide on their own jurisdiction? Is the principle of competence-competence applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?**

Contrary to the old arbitration regime, the Federal Arbitration Law confirmed the principle of competence-competence, including with respect to the validity of the arbitration agreement. Furthermore, institutional arbitration rules typically stipulate the power of the tribunal to rule on its own jurisdiction.

The DIFC Arbitration Law enables the tribunal to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. Similarly, under the ADGM Arbitration Regulations, the tribunal may rule on its own substantive jurisdiction: ie the tribunal may determine whether there is a valid arbitration agreement, whether the tribunal is properly constituted, and what matters have been submitted to arbitration in accordance with the arbitration agreement.

V. Selection of Arbitrators

- (i) **How are arbitrators selected? Do courts play a role?**

The Federal Arbitration Law gives the parties to an arbitration the freedom to choose arbitrators, provided certain requirements in respect of the qualifications



or arbitrators are met. Notably, Article 10(2) prohibits the appointment of an arbitrator who serves on the ‘board of trustees’ or the ‘administrative body’ of the arbitration institution administering the arbitration. Apart from those specific requirements, the parties are also free to agree on the procedure for appointing arbitrators.

The arbitration rules of the major arbitral institutions do not impose any restrictions on the parties’ choice of arbitrator.

In the absence of the parties’ agreement on a procedure for appointing arbitrators, or if one of the parties fails to appoint a party-appointed arbitrator, a default appointment can be made either by the designated arbitration centre or, in *ad hoc* arbitrations, by the competent court.

(ii) **What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?**

Article 10(4) of the Federal Arbitration Law creates an express duty on arbitrators to disclose in writing anything likely to give rise to doubts as to their impartiality or independence. This duty runs from the moment they are appointed as an arbitrator, throughout the entire arbitral proceedings. The Federal Arbitration Law also provides for the disqualification of arbitrators if there are circumstances giving rise to ‘serious doubts’ as to their impartiality or independence.

Accordingly, arbitrators are under a duty to disclose any conflicts or circumstances which are likely to give rise to serious doubts over their impartiality or independence. Arbitrators may seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration (the ‘IBA Guidelines’) on the type of relationships that ought to be disclosed, especially that the UAE courts are yet to interpret the relatively recent provisions of the Federal Arbitration Law.

By contrast, the DIFC Arbitration Law and ADGM Arbitration Regulations impose explicit obligations on potential and appointed arbitrators to disclose circumstances likely to give rise to justifiable doubts as to their impartiality or independence.

If the parties opted for institutional rules, arbitrator challenges will be governed by the procedure for challenge set forth therein. Institutional rules typically vest in the administering institution the power to decide on arbitrator challenges. Pursuant to the Federal Arbitration Law, the administering institution’s decision on the challenge is not subject to appeal.



- (iii) **Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?**

There are few restrictions on the freedom of the parties to choose the members of the tribunal. Any person who satisfies the requirements of competence, impartiality and independence (including independence from the arbitral institution administering the proceedings) may serve as an arbitrator. Under the Federal Arbitration Law, the following categories lack the capacity to serve as arbitrators: minors, individuals under court interdiction order, entities who are not a natural person, and individuals who are deprived of their civil rights by reason of bankruptcy (unless discharged), or due to conviction in a felony or misdemeanour involving moral turpitude or breach of trust (even if rehabilitated).

Arbitrators are required to act with integrity and impartiality during their appointment. Arbitrators may also be criminally liable for soliciting and/or accepting bribes in relation to their conduct of arbitral proceedings. Institutional rules may also provide for similar ethical duties. For example, under the DIFC-LCIA Rules, an arbitrator may be disqualified for acting in deliberate violation of the arbitration agreement; failing to act fairly or impartially as between the parties; or failing to conduct or participate in the arbitration with reasonable efficiency, diligence and industry.

- (iv) **Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?**

The Federal Arbitration Law does not set out ethical rules of conduct for arbitrators beyond a few provisions on the qualifications of arbitrators. There are no UAE rules that govern conflicts of interest for arbitrators. Arbitrators are subject to the professional standards embodied in the code of ethics applicable in their home jurisdiction.

The parties are free to agree that the IBA Guidelines on Conflicts of Interest in International Arbitration should be binding on the arbitral tribunal.

VI. Interim Measures

- (i) **Can arbitrators issue interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?**

The Federal Arbitration Law empowers arbitral tribunals to issue interim and conservatory measures. After obtaining leave from the tribunal, a party may apply to enforce interim measures in court.



The DIFC Arbitration Law and the ADGM Arbitration Regulations specifically permit tribunals to grant interim measures as appropriate. Generally, the party requesting an interim measure must demonstrate to the tribunal that (i) harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm outweighs the harm, if any, that is likely to result to the party against whom the measure is directed if the measure is ordered; and (ii) there is a reasonable possibility that the requesting party will succeed on the merits of the claim.

In addition to orders to provide security for costs, the tribunal may order a party to preserve evidence and goods or take precautionary measures against actions that are likely to cause current or imminent harm or prejudice to any party or to the arbitral process itself. With leave from the tribunal, interim relief orders can be enforced by the DIFC Courts.

The DIAC, DIFC-LCIA and ADCCAC Rules also provide for the tribunal's power to adopt certain interim and conservatory measures, including injunctions or security for costs. Such decisions may take the form of interim or provisional awards.

- (ii) **Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following the constitution of the arbitral tribunal?**

Under the Federal Arbitration Law, the curial court may, at the request of a party or the tribunal, grant provisional relief in the form of interim or conservatory measures in support of a potential or existing arbitration. Such a measure shall remain in force even after the constitution of the arbitral tribunal until it is terminated by a subsequent decision of the curial court.

The DIFC Arbitration Law permits applications to the DIFC Courts for interim measures of protection, whether before or during the arbitral proceedings.

The ADGM Arbitration Regulations also recognise that measures relating to the taking of evidence or provisional or conservatory measures can be sought before the ADGM Court, whether before or during arbitral proceedings. However, the ADGM Court shall only grant such relief when the arbitral tribunal (or other institution or person vested by the parties with such power) is unable to act effectively.



- (iii) **To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?**

If requested by the tribunal, whether on its own motion or if requested by a party, the UAE courts can grant evidentiary assistance in support of the arbitration. Such assistance includes orders compelling (i) witnesses to give oral testimony before a tribunal; or (ii) third parties to produce documents or other evidentiary materials as may be necessary in the proceedings.

Provided it is not contrary to the arbitration agreement, the DIFC Arbitration Law allows a party to seek provisional relief, before or during arbitral proceedings, from the DIFC Court. Further, the tribunal or a party with the approval of the tribunal may request from the DIFC Court assistance in taking evidence. The DIFC Court may execute such requests within their competence and according to their rules on taking evidence. The position under the ADGM Arbitration Regulations is similar.

VII. Disclosure/Discovery

- (i) **What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?**

Except in limited circumstances, disclosure obligations before the UAE courts under the applicable Law of Evidence No. 10 of 1992 (the 'Evidence Law') are very limited, typically only involving production of documents relied on by each party. In contrast, in arbitration proceedings, tribunals may order any kind of disclosure compliant with applicable arbitration rules and the parties' agreement on disclosure. Tribunals in the UAE are often guided by the IBA Rules on the Taking of Evidence in International Arbitration (the 'IBA Rules on the Taking of Evidence'). The Evidence Law does not apply to arbitration proceedings (unless the parties agreed to apply it).

As addressed above, the Federal Arbitration Law enables the tribunal, whether on its own motion or on either party's application, to seek the assistance of the curial court in taking evidence.

There are no express limitations regarding the tribunal's authority to order disclosure under the DIFC Arbitration Law or the ADGM Arbitration Regulations. The tribunal may request assistance in taking evidence from the DIFC Court, which will entertain the request pursuant to its own rules on taking evidence.



- (ii) **What, if any, limits are there on the permissible scope of disclosure or discovery?**

Given the limited nature of the principle of disclosure under UAE law, its scope will depend primarily on the specific agreement between the parties as well as the tribunal's directions.

- (iii) **Are there special rules for handling electronically stored information?**

The Federal Arbitration Law does not provide any specific guidance concerning electronically stored information. However, under UAE law, soft copy documents carry the same evidential weight as hard copy documents, provided that they are stored in a manner which allows the verification of the sender, destination and the times and dates of transmissions and receipt. Furthermore, electronic communications and transactions in the UAE are governed by Federal Law No. 1 of 2006 concerning Electronic Transactions and Commerce.

VIII. Confidentiality

- (i) **Are arbitrations confidential? What are the rules regarding confidentiality?**

The Federal Arbitration Law provides that arbitral awards are confidential and cannot be published in whole or in part without the written consent of the parties (except when addressed in judicial rulings). The law is silent with respect to the confidentiality of the proceedings. However, even though the old arbitration regime also did not expressly provide for confidentiality of the proceedings, it is generally accepted before the UAE courts that arbitration proceedings are conducted in private.

The DIFC Arbitration Law and the ADGM Arbitration Regulations stipulate that arbitral proceedings shall be kept confidential.

In addition, institutional rules (including the DIAC Rules, the DIFC-LCIA Rules, and the ADCCAC Rules) typically provide for the confidentiality of the proceedings.

- (ii) **Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?**

There is no specific provision as such under the Federal Arbitration Law, beyond the general obligation of confidentiality of arbitral awards. That said, the arbitral tribunal may have such a power by granting interim measures to restrain the divulgence of protected information by either Party.



(iii) **Are there any provisions in your arbitration law as to rules of privilege?**

UAE law does not recognise the concepts of legal privilege or the protection of without-prejudice communications, absent specific agreement of the parties.

A narrow exception is attorney-client privilege. Pursuant to the UAE Federal Law on the Regulation of the Legal Profession No. 23 of 1991 (the ‘Legal Profession Law’), an attorney is prohibited from giving evidence in relation to any matter which they become aware of in the course of practising the profession. Nonetheless, the protected information can be divulged if (i) the attorney has obtained consent of the person who has supplied that information, or (ii) if the client intends to commit a crime.

Tribunals seated in the UAE often follow international guidelines, such as the IBA Rules on the Taking of Evidence, which allow documents to be excluded from evidence or production on grounds of privilege, and require the equal treatment of the parties. To achieve parity among the parties in respect of the treatment of privileged documents, tribunals often apply the most-protective privilege rule.

IX. Evidence and Hearings

(i) **Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?**

Arbitral tribunals seated in the UAE often either refer to or adopt the IBA Rules on the Taking of Evidence. Typically, tribunals retain discretion to depart from the rules. Alternatively, and in particular in domestic arbitrations, tribunals at times adopt the Evidence Law which addresses similar matters to the IBA Rules on the Taking of Evidence.

(ii) **Are there any limits to arbitral tribunals’ discretion to govern the hearings?**

In principle, the tribunal is bound by the parties’ agreement on procedural rules for conducting the proceedings. In the absence of such an agreement, the tribunal may adopt the procedures it considers appropriate, provided it observes due process as well as the provisions of the Federal Arbitration Law and any relevant international agreement to which the UAE is party. The Federal Arbitration Law affords tribunals discretion to determine the rules of evidence to be followed and the admissibility, relevance or weight of evidence adduced by the parties.

Certain arbitral rules set out additional limits on the tribunal’s discretion to manage the proceedings. For example, pursuant to Article 22 of the DIAC Rules,



the tribunal must notify the parties of the date of the preliminary meeting within 30 days of the transmission of the case file to the tribunal.

- (iii) **How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?**

Witness testimony is typically presented orally to the tribunal under oath, and usually complements written witness statements. Witness testimony usually involves a short direct examination and a full cross-examination. This applies to both expert and fact witnesses. Arbitrators typically question expert witnesses and occasionally also question fact witnesses.

Notably, the Federal Arbitration Law allows more flexibility with regard to the presentation of witness testimony. It provides that tribunals may question witnesses, including expert witnesses, through modern means of communication without their physical presence at the hearing.

- (iv) **Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?**

There are no rules on who can appear as a witness. Pursuant to the Federal Arbitration Law, the hearing of witnesses, including experts, shall be conducted under the laws of the UAE, unless otherwise agreed by the Parties. According to UAE law, all witnesses must swear the oath set out in the Evidence Law before giving evidence.

- (v) **Are there any differences between the testimony of a witness specially connected with one of the parties (eg legal representative) and the testimony of unrelated witnesses?**

UAE law does not distinguish between the testimony of witnesses who are connected with one of the parties and witnesses who are not. That said, arbitral tribunals retain a wide margin of discretion in weighing the credibility of witness testimony. Accordingly, the degree of connection to one of the parties will likely affect the extent to which the tribunal relies on such evidence.

- (vi) **How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?**

Expert testimony must also be presented under oath. Expert witnesses are required to act with fairness and impartiality.



- (vii) **Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?**

Under the Federal Arbitration Law, as well as the DIFC Arbitration Law and the ADGM Arbitration Regulations, unless otherwise agreed by the parties, the tribunal has the power to appoint one or more experts. The major institutional rules, such as the DIAC and DIFC-LCIA Rules, also permit tribunal-appointed experts. Moreover, the IBA Rules on the Taking of Evidence, which are often followed in arbitral proceedings, also empower tribunals to appoint their own experts.

However, in practice it is comparatively rare for tribunals to appoint experts besides those appointed by the parties.

- (viii) **Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?**

Witness conferencing is commonly used in UAE arbitrations. It usually involves questioning expert witnesses simultaneously on identical issues by both side's counsel and then the tribunal.

- (ix) **Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?**

There are no rules relating to arbitral secretaries under the Federal Arbitration Law. As in other jurisdictions, arbitral secretaries are common for larger disputes.

X. Awards

- (i) **Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?**

The formal requirements for a valid award under the Federal Arbitration Law are set out in Article 41 and in brief are as follows:

- the award must be made in writing;
- the award must be issued and signed by all or a majority of the arbitrators;
- the award must set forth the reasons upon which it is based, unless the parties agreed otherwise or the law applicable to the arbitral proceedings does not require reasons to be given; and



- the award must contain the names and addresses of the parties; the names of the arbitrators, their nationalities and addresses; the text of the arbitration agreement, a summary of the parties' claims, statements and documents; the order made and the reasons on which the award is based (if required) and the date and place of issue of the award.

In a welcome change to the previous legal position, the Federal Arbitration Law specifically permits for awards to be signed outside the UAE even if the seat of the arbitration is in the UAE.

Previously, both the final decision and the grounds in support of that decision had to be signed which meant that each page of the award needed to be signed by each arbitrator. The Federal Arbitration Law is silent on this particular issue; however, it is hoped that the requirement for the award to be signed (without reference to the grounds of the award) means that it will be sufficient for arbitrators to sign the final decision only.

There is no express limitation as to permissible remedies, as long as the award is in accordance with the law. However, the tribunal cannot award criminal or public remedies.

(ii) **Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?**

UAE law does not recognise punitive or exemplary damages. Further, in the UAE, remedies should be linked to the damage suffered by the injured party. Although enforceable, an agreement of pre-determined damages (such as liquidated damages) can therefore be modified by the tribunal in certain circumstances.

However, arbitrators may be able to award punitive or exemplary damages if the substantive law so permits.

Arbitrators typically award simple interest provided that the amount of interest does not exceed the principal amount of damages. Awards of compound interest, or interest exceeding the principal amount of damages, may be permitted in limited circumstances, depending on the seat of the arbitration and the nature of the dispute. For example, compound interest on commercial loans is permitted before the Dubai courts, even if the total amount of interest exceeds the principal amount of the loan. By contrast, the Abu Dhabi courts neither permit awards of compound interest nor allow the total amount of interest awarded to exceed the principal amount.



(iii) **Are interim or partial awards enforceable?**

Article 39(1) of the Federal Arbitration Law expressly confirms the tribunal's power to render interim and/or partial awards. Article 39(2) provides that interim awards are enforceable by the courts, however, omits any reference to partial awards. It is unclear whether this omission is deliberate.

Both the DIFC Arbitration Law and the ADGM Arbitration Regulations do not expressly differentiate between different types of awards.

The DIAC Rules provide that the tribunal may render preliminary, interim, interlocutory, partial or final awards. The DIFC-LCIA Rules also permit the tribunal to issue separate awards on different issues at different times, and provide that such awards shall have the same status as any other award made by the tribunal. The ADCCAC Rules also allow the tribunal to issue a ruling on parts of the claims before rendering a final award on the entire dispute.

(iv) **Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?**

Dissenting opinions are permitted under the Federal Arbitration Law. A dissenting opinion must be noted in writing, or enclosed with the majority opinion. The dissenting opinion shall form an integral part of the award. Dissenting opinions are not addressed under the DIFC Arbitration Law or the ADGM Arbitration Regulations.

Unlike in the ADCCAC Rules, dissenting opinions are not provided for under the DIAC Rules and the DIFC-LCIA Rules which only require that an award be issued by a majority of the arbitral tribunal, failing which the Chairman may issue the award alone.

(v) **Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?**

Consent awards are permitted under the Federal Arbitration Law. Consent awards are also recognised under the DIFC Arbitration Law and the ADGM Arbitration Regulations.

The DIAC Rules and the DIFC-LCIA Rules provide for the possibility of a consent award if the parties agree on a settlement. Such an award must state that it is made by the parties' consent.



(vi) **What powers, if any, do arbitrators have to correct or interpret an award?**

Pursuant to the Federal Arbitration Law, the tribunal has the power to correct any material errors in its award, whether clerical or computational. The tribunal may make this correction whether on its own initiative or upon a party's request. The parties have 30 days following receipt of the award to request a correction, and the tribunal shall then make the correction within 30 days of receiving the request for correction, or rendering the award, as the case may be. The tribunal may extend this time limit by a further 15 days if necessary.

In DIFC and ADGM arbitrations, a party may, upon notice to the other party, request the tribunal to correct computational, clerical and/or typographical errors, or any errors of a similar nature that are found in the award. Further, upon agreement of the parties, either party may, with notice to the other party, request the tribunal to give an interpretation of a specific point or part of the award.

Under the DIAC Rules, the parties have 30 days from the final award to request an interpretation of the award. During the same time, the tribunal may correct the award either voluntarily or upon request of any one party. The time frame for corrections of the award under the ADCCAC Rules is 14 days from the date of the parties' receipt of the award. As for the DIFC-LCIA Rules, the time frame for corrections is 28 days after the receipt of the award.

XI. Costs

(i) **Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?**

Under the Federal Arbitration Law, and subject to any contrary agreement by the parties, tribunals have discretion to award tribunal fees and expenses, and costs of experts appointed by the tribunal. The tribunal has the power to apportion such costs between the parties, including to order either party to bear the costs in full. The law is silent with respect to the costs of the administering authority, any experts appointed by the parties, and any legal fees and expenses.

Even prior to the enactment of the Federal Arbitration Law, there has been some debate whether tribunals are permitted to order the losing party to pay the legal costs of the winning party bar any specific party agreement to that effect. In interpreting the DIAC Rules, the Dubai Court of Cassation held in 2013 that legal costs cannot be granted without the parties' express agreement. The Court noted that the DIAC Rules indicate that the costs of arbitration which the tribunal may award comprise DIAC's administrative fees, the fees and expenses of the tribunal, as well as the fees and expenses of tribunal-appointed experts in accordance with the DIAC Costs Schedule. The Court added that such costs do not include attorney fees. Accordingly, the Court partially annulled a DIAC award to the extent that it granted legal costs to the winning party on the basis that the DIAC



Rules do not provide for that category of costs. Other courts in the UAE may adopt the rationale of the Dubai Court of Cassation when dealing with comparable applications. Since the Federal Arbitration Law does not resolve this lacuna, it therefore remains advisable for parties to agree that tribunals can grant any cost awards, either in the arbitration clause or later, such as in the Terms of Reference.

However, in contrast to the DIAC Rules, Article 28.3 of the DIFC-LCIA Rules specifically empowers tribunals to award legal and other costs. It should therefore not be necessary to specifically agree this point in any arbitrations seated in on-shore UAE, but subject to the DIFC-LCIA Rules.

Under DIFC law, the costs of the arbitration which the tribunal may award include the following elements: the tribunal's fees and expenses; the costs of expert advice and of other assistance required by the tribunal; the travel and other expenses of witnesses as approved by the tribunal; other costs as are necessary for the conduct of the arbitration (eg meeting rooms, interpreters and transcription services); 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 tribunal determines that the amount of such costs is reasonable; and, any fees and expenses of any arbitral institution or appointing authority. Therefore, legal fees may be recovered in arbitrations seated in the DIFC without any specific agreement to that effect.

Under the ADGM Arbitrations Regulations, the tribunal has the discretion to determine which party should bear the whole or part of the costs of the arbitration.

As a matter of practice, the losing party typically bears at least part of the costs of the arbitration (typically including the fees and expenses of the arbitrators, the costs of the administering authority, as well as legal and expert fees), however, there is no established doctrine that costs follow the event.

(ii) **What are the elements of costs that are typically awarded?**

Please see Section XI(i) above.

(iii) **Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?**

Unless otherwise agreed by the parties, the tribunal has jurisdiction to decide on its own fees and expenses. In institutional arbitration, the tribunal's fees are generally determined in accordance with the institution's fee scale.



- (iv) **Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?**

Please see Section XI(i) above.

- (v) **Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?**

Absent agreement between the parties with respect to the quantum of costs, the curial court may, upon application of a party, adjust the tribunal's assessment of their fees and expenses to ensure it is commensurate to their effort expended, the nature of the dispute, and the arbitrators' experience.

XII. Challenges to Awards

- (i) **How may awards be challenged and on what grounds? Are there time limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?**

Awards may be challenged by means of either (i) an application for annulment, or (ii) submissions made during the ratification of the award. The parties have no right of an appeal on the merits against the award. As a matter of practice, award debtors typically challenge awards as a defence to a ratification application by the award creditor.

The main grounds for annulment of an arbitral award are provided for under Article 53 of the Federal Arbitration Law, and include circumstances where:

- there are defects in relation to the arbitration agreement and the tribunal's jurisdiction, such as where the award was rendered without a valid arbitration agreement, where the tribunal overstepped its jurisdiction set out in the arbitration agreement (although if decisions can be separated, only that part of the award which exceeds the tribunal's jurisdiction would be set aside), or where the arbitration agreement was concluded by those not having the capacity to agree to arbitration;
- there are defects in relation to the tribunal, such as where the arbitrators were improperly appointed, or by arbitrators who did not fulfil the legal requirements to act as an arbitrator;
- there are other procedural defects, such as not respecting the parties' due process rights;
- the award excluded the application of the law chosen by the parties to govern the substance of the dispute;



- the subject matter of the dispute is not arbitrable;
- the award is contrary to public policy or public morality.

The curial court may set aside an award on its own initiative on the basis of the final two grounds for annulment relating to arbitrability and public policy only. UAE courts have historically interpreted public policy and procedural grounds for annulment broadly. Guidance on the meaning of public policy is provided at Article 3 of the UAE Civil Code.

Any application to set an award aside must be filed within 30 days from the date of notification of the award. While an action to set aside an award does not automatically stay its enforcement, the curial court may order a stay if requested by a party showing good cause (and can order security to be granted). Either party may request the Court of Appeal to reconsider its decision on the stay with an application within 30 days following the date of the notification.

The Court of Appeal shall enforce the arbitral award within 60 days of submission of the request for enforcement, unless the award is set aside. The Court of Appeal's decision can only be challenged before the Court of Cassation. However, the law does not provide a time limit during which the Court of Cassation must render its judgment.

Under DIFC Law, either by way of a separate annulment action or as a defence to an action for the recognition and enforcement of an award, a party may raise grounds for challenge that are drawn from Article V of the New York Convention. These are discussed further below in Section XIII(i). An independent action for annulment must be made within three months from receipt of the award. It is in the DIFC Court's discretion to determine whether to adjourn enforcement in light of annulment proceedings, and may also, on the application of the party seeking recognition or enforcement of the award, order the other party to provide appropriate security.

Under the ADGM Arbitration Regulations, the parties have a right to challenge the recognition or enforcement of the award. The right to apply for an award to be set aside is considered the exclusive form of recourse against an award. Accordingly, a party cannot challenge the recognition or enforcement of an award if that party has made or could have made an application for that award to be set aside.

- (ii) **May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?**

Under the Federal Arbitration Law, an agreement to waive the right to challenge an arbitration award prior to its issuance does not prevent either party from challenging the award by way of an annulment application. Conversely, an



agreement to waive the right to seek annulment of the award after it has been issued is enforceable.

There is no authoritative guidance on this question for DIFC-seated arbitrations.

Pursuant to section 54 of the ADGM Arbitration Regulations, the right to apply for an award to be set aside can be expressly waived by the parties in whole or in part. The parties may also limit the grounds for setting aside to one or several of the grounds listed in section 53(2) of the ADGM Arbitration Regulations. It is also arguable that failure to object to a procedural irregularity in a timely fashion constitutes waiver of the right to rely on that irregularity in a setting aside application.

(iii) **Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?**

Awards cannot be appealed. The grounds for annulment are set out exhaustively in the provisions of the Federal Arbitration Law, as described above. The position is the same under the DIFC Arbitration Law and the ADGM Arbitration Regulations.

(iv) **May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?**

Contrary to the position under the CPC, the Federal Arbitration Law now provides for the courts' power to remand arbitral awards to tribunals, as well as for the tribunal's power to interpret, correct, or issue an additional award. Article 54(6) of the Federal Arbitration Law empowers the court tasked with a setting aside application to suspend the proceedings for up to 60 days in order for the tribunal to amend the award in order to eliminate the grounds for setting aside without affecting the substance of the award. Separately, Article 49 stipulates that a party may request the tribunal to interpret any obscurity or ambiguity in its award, which will then form part of the relevant award. Article 50 provides for the correction of any material errors in an award by the tribunal, which shall similarly form part of the relevant award. Finally, Article 51 permits parties to request the tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the initial award. With respect to Articles 49-51, Article 51(4) provides that if the tribunal does not issue the requested interpreted, corrected or additional award, the interested party may request the court to do so.

The parties may also agree on an additional procedure for the correction or interpretation of an award. For example, the DIAC Rules provide that parties may do so 30 days from receipt of the award.



In the DIFC and the ADGM, only the tribunal has the power to correct or interpret the award or to render an additional award. The DIFC and ADGM Courts cannot remand the award to the tribunal once it is issued.

XIII. Recognition and Enforcement of Awards

- (i) **What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?**

UAE Awards

Awards rendered in the UAE are enforced through a ratification process in the local courts. Awards that are rendered in the UAE must be deposited in original or certified copy by the parties with the chief justice of the competent court accompanied by (a) an attested Arabic translation (if the award is not issued in Arabic); (b) a copy of the arbitration agreement; and (c) a copy of the minutes of deposit of the award. The court must ratify and enforce the award within 60 days, unless it finds one or more grounds for annulment set out in Article 53(1) of the Federal Arbitration Law.

An action to set aside an award does not automatically stay its enforcement. The court hearing the challenge has discretion to stay enforcement of the award within 15 days upon application of either Party showing good cause.

During the ratification process, a counter-application for the annulment of the award may be made on the grounds already identified above.

An award made in accordance with the Federal Arbitration Law is binding on the parties, constitutes *res judicata* and, once confirmed by the court, becomes enforceable as a judicial ruling. Until the award is ratified, the award creditor will be unable to seek enforcement.

DIFC Awards

Awards rendered in the DIFC are recognised and enforced, subject to the grounds for opposing enforcement which follow the limited grounds for challenging awards set out in Article V of the New York Convention. A DIFC court seized with an annulment proceeding has discretion to determine whether to adjourn enforcement in light of annulment proceeding. Once ratified, an award may thereafter be executed in the DIFC or elsewhere in the emirate of Dubai, without any further review by the Dubai courts by virtue of a protocol that exists between the Dubai courts and the DIFC courts (enshrined in Dubai Law No. 16 of 2011).



The DIFC Courts have earned a reputation of being arbitration-friendly and relatively quicker than their onshore counterparts (previously subject to the old arbitration regime). As a result, they have attracted award creditors to seek enforcement of their awards through the DIFC. In particular, the DIFC Courts were at times used as a conduit jurisdiction for the recognition and enforcement of arbitral awards rendered in onshore Dubai proceedings, including when none of the parties involved had any connection to or assets in the DIFC. However, the increased use of the DIFC Courts in that manner created jurisdictional conflicts with the onshore Dubai Courts. Consequently, a judicial tribunal was set up to resolve conflicts of jurisdiction and conflicts of judgments that arise between the onshore Dubai Courts and the DIFC Courts and resolve conflicts of jurisdiction as they may arise (see further addressed at Section XVII.iii below).

Foreign Awards

Since the UAE ratified the New York Convention in 2006, awards rendered abroad are enforceable in the UAE in accordance with the New York Convention. After some initial hiccups, the courts are now typically enforcing foreign awards by applying the New York Convention.

After the passing of the Federal Arbitration Law, some uncertainty existed as to whether the new mechanism for enforcement of UAE-seated awards (by commencing proceedings before the relevant Court of Appeal, rather than the Court of First Instance as per the CPC) extended to the enforcement of foreign awards, pursuant to the non-discrimination principle under Article III of the New York Convention.

The confusion was resolved after the Government of the UAE passed Cabinet Resolution No. 57 of 2018 concerning the Executive Regulations to the CPC (the 'Executive Regulations'), which entered into force on 16 February 2019. The Executive Regulations set out the current procedure for enforcement of foreign arbitral awards in the UAE (excluding the financial free zones of the DIFC and the ADGM). Most notably, Article 85(2) of the Executive Regulations provides for the enforcement of foreign arbitral awards by way of submitting an application to the execution judge for an 'order on petition' (*ordonnance sur requête*) granting enforcement of the foreign award. It is therefore not necessary to file a case before the Court of First Instance (which was the mechanism under the old arbitration regime), or to file an application with the Chief Justice of the relevant Court of Appeal, which is the mechanism for enforcing UAE-seated awards under the Federal Arbitration Law.

Furthermore, Article 86 of the Executive Regulations states that the requirements set out in Article 85 (regarding the recognition and enforcement of foreign judgments in the UAE) are also applicable to foreign arbitral awards and that "the arbitration award must have been issued on a matter for which



arbitration is permissible in accordance with the Law of the [UAE] and is enforceable in the State where it was issued”.

Article 88 of the Executive Regulations states that the rules set out in those regulations shall not prejudice the provisions of treaties and agreements between the UAE and other States on the enforcement of foreign judgments, orders and instruments. The requirements for enforcement of a foreign arbitral award stated in the New York Convention are therefore still applicable in the UAE, given that the UAE acceded to the New York Convention. Consequently, if a conflict arises in relation to the requirements for enforcement under the Executive Regulations and in the New York Convention, a party can invoke the provisions of the New York Convention, if those are more favourable to that party’s position.

- (ii) **If an exequatur is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?**

Once an exequatur is obtained, the execution of the foreign award will be carried out under the supervision of an execution judge. The execution judge must issue an order within a maximum of three days from the date of filing. The order of the execution judge is subject to the usual channels of judicial appeal. The previous regime for the enforcement of foreign judgements and awards under Articles 235 to 238 of the CPC was repealed by the Executive Regulations.

- (iii) **Are conservatory measures available pending enforcement of the award?**

It is open to the award creditor to make an application for conservatory measures (in the form of a provisional attachment) in circumstances where there is a risk of dissipation of assets.

- (iv) **What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?**

Under the old arbitration regime, UAE courts often took a formalistic approach in their review of awards towards ensuring compliance with the mandatory requirements of the CPC and assessment of the grounds of annulment under its provisions. That said, the improvements introduced by the Federal Arbitration Law are expected to alleviate the risk of annulments on purely formalistic grounds.

Since the ratification of the New York Convention, the enforcement of foreign awards has become commonplace after some initial hiccups, although the lower courts are still prone to applying the pre-Convention enforcement regime on occasions.



Awards annulled at the place of arbitration are not enforceable in the UAE pursuant to Article 86 of the Executive Regulations which requires the foreign award to be “enforceable in the State where it was issued” in order to be enforced in the UAE.

(v) **How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?**

Under the Federal Arbitration Law, the court must order the arbitral award confirmed and enforced within sixty days of submission of the request for enforcement, unless it finds one or more of the grounds for setting aside. The decision to grant or deny enforcement of an award can only be challenged before the Court of Cassation. No time limit has been provided for the issuance of the cassation decision.

There is no time limit set out in the Federal Arbitration Law for bringing an application for ratification and enforcement of an award. However, once ratified, the award creditor should bring its action for execution within a period of 15 years.

XIV. Sovereign Immunity

(i) **Do state parties enjoy immunities in your jurisdiction? Under what conditions?**

UAE law does not expressly provide that foreign state parties enjoy immunity.

Emirati state parties are not immune from suit, but do enjoy immunity from execution (see below). Each individual Emirate may have preconditions that are to be fulfilled prior to commencing an action against a state party. For example, in order to commence an action against the government of Dubai and any department thereof (including public institutions and corporations), a claimant must first submit a written copy of the full details of the dispute with the Office of the Government of Dubai’s Legal Advisor.

(ii) **Are there any special rules that apply to the enforcement of an award against a state or state entity?**

Public or private properties owned by the UAE or any individual Emirate are immune from seizure. No debt due from the governments in the UAE, their emanations or corporations may be recovered by a legal process – even if the judgment debtor has signed a sovereign immunity waiver, which the courts will likely not enforce on public policy grounds.



XV. Investment Treaty Arbitration

(i) **Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?**

Yes, the UAE is a party to the Washington Convention. The UAE is also a party to other multilateral treaties providing for the protection of foreign investments, including:

- the 1971 Convention Establishing the Inter-Arab Investment Guarantee Corporation;
- the 1974 Convention on the Settlement of Investment Disputes between States Hosting Arab Investments and Citizens of Other States;
- the 1980 Unified Agreement for the Investment of Arab Capital in the Arab States;
- the 1981 Agreement on Promotion, Protection and Guarantee of Investments among Member States of the Organization of the Islamic Conference;
- the 1985 Convention establishing the Multilateral Investment Guarantee Agency; and
- the 1992 Agreement of Islamic Corporation for the Insurance of Investment and Export Credit.

(ii) **Has your country entered into bilateral investment treaties with other countries?**

To date, the UAE is party to 84 bilateral investment treaties, 45 of which are in force at the time of publication.

XVI. Resources

(i) **What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?**

- Sami Tannous, Samantha Lord Hill & Sarah-Jane Fick, *National Report for the United Arab Emirates 2016*, in *ICCA International Handbook on Commercial Arbitration: Supplement 90* (Jan Paulsson & Lise Bosman eds, 2018);
- Abdul Hamid El Ahdab and Jalal El Ahdab, *Arbitration with the Arab Countries* (Kluwer Law International, 2011);
- Essam Al Tamimi, *Practitioner's Guide to Arbitration in the Middle East and North Africa* (Juris, 2009);



- Samir Saleh, *Commercial Arbitration in the Arab Middle East* (Hart Publishing, 2006);
- Essam Al Tamimi, *Practical Guide to Litigation and Arbitration in the United Arab Emirates* (Kluwer Law international, 2003);
- The Journal of Arab Arbitration.

(ii) **Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?**

The Dubai Arbitration Week, the GAR Live conferences in Dubai and Abu Dhabi, and the ICC MENA Conferences in Dubai and Abu Dhabi take place annually. Various other events and conferences are held on an annual or ad hoc basis.

XVII. Trends and Developments

(i) **Do you think that arbitration has become a real alternative to court proceedings in your country?**

The UAE has developed into an arbitration hub in the Middle East, North Africa and the Indian subcontinent. The UAE continues to promote arbitration with the aim of becoming one of the arbitration capitals of the world.

Arbitration has thus become a real alternative to court proceedings in the UAE. This is especially true for transactions involving multiple cross-border players as well as resident expatriate businesses and individuals.

The increasing popularity of arbitration is due, to some extent, to the existence of several institutions that administer commercial arbitrations including the DIFC-LCIA Centre, the DIAC, the ADCCAC, as well as the Sharjah International Commercial Arbitration Centre and the Ras Al Khaimah Commercial and Arbitration Centre.

(ii) **What are the trends in relation to other ADR procedures, such as mediation?**

Dubai Law No. 16 of 2009 created a forum for the amicable settlement of property disputes by establishing the Centre for Amicable Settlement of Disputes, which provides mediation services, provided that it has jurisdiction and that the parties have been referred to it by the appropriate Court. Separately, the Rental Disputes Centre, which is part of the Government of Dubai's Land Department, provides mediation services to tenants and landlords before the matter is referred to judges.



Nevertheless, ADR procedures, such as mediation, are less frequently used than litigation or arbitration.

(iii) **Are there any noteworthy recent developments in arbitration or ADR?**

A new law on arbitration

The most notable development in arbitration in the UAE is the passing of the Federal Arbitration Law, which the arbitral community has been anticipating since the UAE acceded to the New York Convention in 2006. The Federal Arbitration Law is based largely on the 1985 UNCITRAL Model Law (with amendments adopted in 2006), replacing the UAE's relatively outdated regime for arbitration contained in Articles 203-218 of the CPC.

The DIFC-LCIA Rules 2016

The DIFC-LCIA introduced a set of new Rules of Arbitration on 1 October 2016. The new Rules permit multi-party disputes as well as the consolidation of multiple proceedings. The new Rules provide for an online filing system and lay down a quicker process for the constitution of arbitral tribunals.

Specialised Centre for Maritime Arbitration

In April 2016, the Ruler of Dubai issued Decree No. 14 of 2016 to establish the Emirates Maritime Arbitration Centre ('EMAC'). The EMAC Rules provide for a DIFC seat by default unless the parties have expressly agreed otherwise.

Criminal liability of arbitrators

In 2016, the UAE passed Federal Law No. 7 of 2016 which amended Article 257 of the UAE Penal Code No. 3 of 1987 (the 'Penal Code'). The amendment provided for the imprisonment of arbitrators (among others) who failed to comply with the requirements of integrity and impartiality in arbitral proceedings. The controversial amendment caused disquiet in the arbitral community and resulted in many practitioners declining to accept new appointments in the UAE. In a welcome development, arbitrators were removed from the scope of application of Article 257 pursuant to Federal Decree Law No. 24 of 2018.

Cooperation between Arbitral Institutions and Courts

Greater cooperation between arbitral institutions and courts has become more visible recently. For instance, the DIFC Courts have entered into a Memorandum of Understanding with DIAC. The DIFC Courts have also signed a Memorandum of Understanding with the Shanghai High People's Court, as well as a new agreement with the Emirate of Ras Al Khaimah.



Noteworthy Case Law

In the 2016 case of *Ginette PJSC v. (1) Geary Middle East FZE and (2) Geary Limited*, the DIFC court held an award enforceable where the signatory to the arbitration agreement had no express authority to bind the party to arbitration, reasoning that the signatory nevertheless had apparent authority under DIFC law.

In the April 2016 case of *Gavin v. Gaynor*, the DIFC court was willing to imply an agreement between the parties in relation to the seat, based on the seat with the closest connection to the agreement, where parties had not expressly agreed to a nominated arbitral seat.

In the case of *Brookfield Multiplex Constructions LLC v. (1) DIFC Investments LLC (2) Dubai International Financial Centre Authority CFI 020/2016*, the DIFC court refused an anti-suit injunction in support of arbitration.

Furthermore, the Dubai Court of Cassation recognized the UK's membership of the New York Convention.

The Judicial Tribunal for the Dubai Courts and the DIFC Courts

As mentioned under Section XIII(i), a judicial tribunal has been established to resolve conflicts of jurisdiction and conflicts of judgments between the Dubai Courts and the DIFC Courts. The few published decisions of the judicial tribunal indicate that, where parallel proceedings are sought in onshore Dubai Courts and the DIFC Courts, the DIFC Courts cannot entertain the matter unless there is a connection to the DIFC or the parties have opted in to the jurisdiction of the DIFC Courts.