



IBA TOOLKIT ON INSOLVENCY AND ARBITRATION
QUESTIONNAIRE
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<p>Hashem AlAidarous Partner – Arbitration, Advocate (UAE); Lawyer (Qld, Australia); Attorney (New York) AL Aidarous Advocates & Legal Consultants</p>
<p>Waleed Hamad Partner – Head of Litigation AL Aidarous Advocates & Legal Consultants</p>
<p>Joanna Lamah Associate – Litigation AL Aidarous Advocates & Legal Consultants</p>

IMPACT OF NATIONAL INSOLVENCY ON DOMESTIC OR FOREIGN ARBITRATION

[These questions relate to the effects that insolvency proceedings initiated in UAE produce on arbitration commitments (foreign as well as national/local) involving the insolvent party.]

Disclaimer: This report has been drafted prior to the publication of the Federal Decree Law No. 51 of year 2023 on Financial Restructuring and Bankruptcy which was officially published in the Official Gazette on 31st of October 2023 and shall come into effect six months after its publication in the Gazette, hence, this report is not addressing this new law.

Part I: Impact of Insolvency Proceedings on the Ability to Commence or Continue Arbitration

1. Does the law of UAE contain any provision on the effect that the opening of insolvency proceedings produces on arbitration? If so, what is the source of the provision or provisions providing for the effects? That is, are the effects provided by the insolvency legislation as part of the consequences produced by the opening of insolvency proceedings? Or, are they provided by the arbitration legislation or law as a matter concerning the arbitrability of disputes, the capacity of the parties to arbitrate, the validity and effectiveness of arbitration agreements, or any other arbitration-specific category?

1. At the outset, it is important to note that under the UAE legal system, ‘*insolvency*’ and ‘*bankruptcy*’ are not synonymous terms and have distinct legal effects. While ‘*insolvency*’ refers to insolvency proceedings applicable to civil persons and individuals being subject to Federal Decree Law No. 19 of year 2019, ‘*bankruptcy*’ refers to bankruptcy proceedings applicable to corporates and traders being subject to Bankruptcy Law enacted by virtue of Federal Decree-Law No. 9 of 2016 (as amended by Federal Decree-Law No. 35 of 2021) (the “Bankruptcy Law”).
2. Having stated the above distinction, we will address the questions in this questionnaire on the basis of bankruptcy rather than the insolvency term; therefore, the questions below will be addressed based on the Bankruptcy Law.
3. Following a revision of the UAE legislations related bankruptcy laws, the Arbitration Law (Federal Law No. 6 of 2018) as well as the UAE Civil Procedures Law (Federal Decree-Law No. 42 of 2022), there is no express provision which directly addresses the effects of the opening of bankruptcy proceedings on arbitration. However, there are two main impacts of bankruptcy proceedings on arbitration proceedings.
4. The first impact would be the stay of proceedings stipulated in Article 162 of the Bankruptcy Law which states that “The decision of the court to open the proceedings pursuant to Article (78) of this Decree Law shall result in the stay of the judicial proceedings and the judicial enforcement procedures over the assets of the debtor...”.
5. Given that this Article stipulates the stay of judicial proceedings without making any specific reference to the arbitration proceedings, a controversy arises on whether arbitration proceedings shall be included in such stay. The stay mentioned in the above article shall be

applicable to arbitration proceedings being legal proceedings. From a practical perspective, however, we have witnessed several arbitral tribunals that have proceeded with arbitrations despite the opening of bankruptcy proceedings against one of the parties.

6. To the best of our knowledge, there are no court rulings that clarify the Court of Cassation's view should the bankrupt party challenge such award rendered in the above circumstances on the basis that the arbitral tribunal has not stayed the proceedings.
7. Further, the second impact of the bankruptcy proceedings would be on the capacity of the legal representative of the party subject to bankruptcy, which will be clarified in the subsequent answers.

2. Does the insolvency legislation in UAE provide for the concentration of disputes concerning the insolvent debtor before the insolvency court (*vis attractiva concursus*)? If so,

- a. Which disputes fall under the rules on *vis attractiva concursus*?
- b. Are disputes in arbitration or subject to an arbitration agreement covered by the *vis attractiva concursus*?

8. The principle of *vis attractiva concursus* is not recognized under the Bankruptcy Law of the UAE.
9. Despite the absence of such principle in the UAE laws, the Bankruptcy Law provides that all creditors, whether (i) those who already filed their cases which shall be stayed as stated above, (ii) those who obtained final judgment against the debtor, and (iii) those who have yet to take any legal proceedings against the debtor, to submit their claims to the trustee. Such requirement shall make all the claims submitted before the trustee to be ultimately examined by the bankruptcy court.

3. What are the effects (if any) of the opening of insolvency proceedings in UAE on the possibility to commence or continue arbitration proceedings?

In answering this question, please address separately each of the following points:

- a. Does the law draw any distinction between arbitration proceedings where the insolvent party acts as defendant and as claimant?

10. As stated above, the Bankruptcy Law does not contain any specific provision in relation to the effects of the bankruptcy on arbitration proceedings. Having said that, there would be two effects of the bankruptcy on arbitration proceedings related to (i) the stay of proceedings whether the bankrupt party acts as claimant or defendant, and (ii) the capacity of the legal representative of the party subject to bankruptcy. With respect of such capacity, the bankrupt party will be the concerned party who will have the right to raise any challenge. The adversary, however, in an attempt to protect such challenge, would be entitled to request the involvement of the trustee in the arbitration proceedings.

b. Does the law draw any distinction between insolvency proceedings aimed at the liquidation of the company and proceedings aimed at the financial restructuring or rehabilitation of the company?

11. There is no distinction between the bankruptcy proceedings aimed at the liquidation of the company and proceedings aimed at the financial restructuring on the basis that both matters have been regulated by the same chapter of the Bankruptcy Law.

c. Does the law draw any distinction based on the subject matter or relief sought in the arbitration?

12. No distinction is drawn between the relief sought or the subject matter of the arbitration.

d. Do these effects (if any) also extend to pre-insolvency proceedings or restructuring proceedings which do not require a declaration of insolvency?

13. The debtor would still have the same legal capacity for representation before courts or arbitral tribunals during the pre-bankruptcy proceedings or restructuring proceedings. Broadly, the debtor would cease to have such capacity once the court declares the bankruptcy of the party.

e. Does the law draw any distinction between arbitration proceedings which are pending at the time of the opening of insolvency proceedings and arbitration proceedings which commence after the opening of insolvency proceedings?

14. The arbitration proceedings in both scenarios shall be stayed as mentioned above. As such, no distinction shall be drawn between arbitration proceedings initiated before and/or after the opening of insolvency proceedings (see Question 1 above).

f. Does the law regulating the effect of insolvency on arbitration make any distinction between voluntary and compulsory insolvency proceedings?

15. No distinction is drawn between voluntary and compulsory insolvency proceedings.

g. Do those effects intend to apply extraterritorially, i.e. to every arbitration regardless of the location of the seat in UAE or abroad?

16. Since the legal representative of the bankrupt party loses its legal capacity to represent such party, in which the trustee in turns take part in the arbitration proceedings to represent it, such effect shall extend to any arbitration irrespective of its seat whether in the UAE or abroad and irrespective of the applicable law agreed upon between the parties to arbitration as long as it is related to a party who is subject to bankruptcy proceedings in the UAE.

h. When do the effects (if any) of insolvency on arbitration become operative (e.g., from the time of the opening of insolvency proceedings, the declaration by the court, its publication or service of process through other means on the affected parties or even the arbitrators, etc.)?

17. According to Article 157 of the Bankruptcy Law, the debtor shall cease to have capacity in managing its assets or disposing of them from the date of the court's decision to open the bankruptcy proceedings. However, whether the debtor ceases to have capacity to litigate has not been expressly regulated by law. We are of the opinion that the stripping off the debtor's authority to manage its assets would *ipso facto* imply losing the right to represent the company subject to bankruptcy.

4. Does the law of the jurisdiction permit relief from the effects above? If so, what procedures must be followed in order to proceed with an arbitration?

a. Can an interested party seek to intervene in the insolvency proceeding in order to proceed with arbitration?

b. What considerations will the insolvency court take into account in making the decision of whether to send the matter to arbitration?

18. The interested party is required to submit its claims along with the supporting documents to the trustee within (20) days from the date of publication of the decision of the court to commence bankruptcy proceedings in two national newspapers with the aim to include the claims in the list of creditors (See Question 9). However, such submission is not a pre-requisite to proceed with arbitration as the arbitration proceedings could continue whether or not the creditor submits its claims to the trustee.

19. The bankruptcy court shall not send the matter to arbitration under any circumstances.

5. Can the insolvency courts give an order to stop arbitration proceedings (e.g., an anti-arbitration injunction)? If so, does it depend on the seat of the arbitration being in the jurisdiction or abroad?

20. Anti-arbitration injunctions/anti-suit injunctions are not recognized under the UAE legal system, which adopts a civil law system.

6. Can the insolvency administrator or the insolvency court terminate or suspend the effectiveness of contracts that contain arbitration agreements concluded by the insolvent party before the opening of insolvency proceedings? If so, on what basis?

21. This matter is regulated by Article 165(2) of the Bankruptcy Law, which states: “Initiating the restructuring proceedings shall not cause the expiration or termination of any contract in force between the debtor and third parties unless it is based on personal considerations. The party contracting with the debtor shall fulfil his contractual obligations unless he invokes, prior to the issuance date of the decision initiating the proceedings, the exception of non-execution due to the debtor's failure to perform his obligations.”
22. Based on the above Article, the court and the trustee have no power to terminate an agreement concluded between a third party and the bankrupt party prior the commencement of the bankruptcy proceedings, unless the creditor party invoked, prior to the issuance date of the decision initiating the proceedings, the exception of non-enforcement due to the debtor’s failure to perform its obligations.
23. We note that the above article addresses the issue with respect to the contracts concluded in general, however, this article does not address the circumstances where those contracts contain an arbitration clause. This would be a controversial matter where the said contract contains an arbitration clause, given that even when contracts are to be terminated and/or declared null and void, the arbitrator shall reserve its jurisdiction to decide on the matter in accordance with the principle of *kompetenz-kompetenz* as referred to in Question 7 below.

7. What is the effect (if any) on the arbitration agreement of the decision of the insolvency administrator or insolvency court to terminate/disclaim the contract that contains such arbitration agreement?

24. Should the bankruptcy court terminate a contract that contains an arbitration clause for any reason whatsoever by virtue of a final judgment, such arbitration clause shall become ineffective and unenforceable, hence, the court shall vest its jurisdiction to over the matter.

8. Can the insolvency administrator or the insolvency court terminate or suspend the effectiveness of arbitration agreements themselves? If so, on what basis? What is the effect of such decision on pending arbitration proceedings derived from the arbitration agreement in question?

25. The bankruptcy court shall not decide whether or not an arbitration clause included in an agreement is effective and valid or not. However, its main role would be to examine the claims submitted to the trustee by the relevant creditors and then to examine the financial status of the bankrupt party to ultimately decide whether to approve the restructuring of its business or

declare its bankruptcy taking into consideration that all the creditors of the bankrupt party have already submitted their claims to the trustee within the prescribed timeframe.

9. Does the insolvency regime require the alleged creditor to take any step in the insolvency process to be able to commence or continue with the arbitration (e.g., file the claim within the insolvency proceedings for verification/registration/ proof)?

a. If an alleged creditor files its claim with the insolvency proceedings and the claim is refused, does the existence of an arbitration agreement mean that an arbitral tribunal would have jurisdiction to decide on the existence and amount of the claim, so that it can be eventually submitted to the insolvency proceedings?

b. Does the filing of the claim with the insolvency proceedings amount to a submission of the jurisdiction of the insolvency court and a waiver of the arbitration agreement?

26. In accordance with Article 88(2)(b) of Bankruptcy Law, the creditor is required to submit its alleged debt along with the supporting documents to the trustee within twenty days from the publication of the court's decision in local newspapers. Any claim filed after such date shall be disregarded, unless the cause of such delay is accepted by the trustee for being legitimate.

27. Should the claim been rejected by the court, the creditor would be entitled to file an objection against such decision pursuant to article (94) of the Bankruptcy Law. Subsequently, should such objection have also been rejected, then proceeding with the arbitration to obtain an arbitral award may run the risk of being conflicted with the bankruptcy court's final judgment, and in this case, the arbitral award shall be (i) null and void, and (ii) unenforceable before the bankruptcy court.

28. Hence, the significance of staying the arbitration proceedings by operation of law upon the opening of the bankruptcy proceedings which aims to avoid potential conflicted decisions with respect to the same claim.

10. In the event of a contract concluded by the insolvent party and a creditor prior to the opening of the insolvency proceedings, is an arbitration agreement contained in that contract enforceable in relation to an action commenced by the insolvency administrator to avoid that transaction based on grounds provided by insolvency law (insolvency *actio pauliana* or setting aside action)?

29. The mere fact that the bankruptcy administrator files an action to avoid a transaction should not have any effect on the contract that includes the arbitration clause. However, should the judgment have been issued in the case where the bankruptcy court decides to set aside the contract that contains the arbitration clause, the arbitration agreement shall become

unenforceable against the insolvency administrator regardless of its validity and effectiveness between the contracting parties.

11. Can the insolvency administrator conclude new arbitration agreements after the opening of insolvency proceedings?

30. The authority of a trustee, whether appointed during the restructuring phase or the liquidation phase, is limited to the extent required for the relevant phase and does not extend to waiving the rights of the company subject to bankruptcy, including agreeing on arbitration. As arbitration is considered as a waiver of a party's right to litigate before the State courts.

12. Do the effects of insolvency on arbitration (if any) operate after a creditors' arrangement has been agreed and approved by the competent authority?

31. As stated above, the two implications of bankruptcy on arbitration proceedings, stay of arbitral proceedings and loss of capacity, shall come into effect upon the opening of the bankruptcy proceedings.

13. Are any or all the rules regulating the effects of insolvency on arbitration mandatory? That is, can an agreement between the insolvent party and one or more of its creditors (e.g., the parties to the arbitration) exclude the application of those rules?

32. It is to be noted that laws may not, in their entirety, be classified as of public order. However, considering that the Bankruptcy Law is a procedural law which regulates the bankruptcy proceedings, this would imply that most of its provisions shall be considered of public order, such as Article (165) provisions related to the means of challenge, and statutory time limits.

14. Are arbitrators seated in the jurisdiction bound by the rules discussed above in considering whether to proceed with an arbitration?

33. Arbitration proceedings shall be stayed upon the opening of bankruptcy proceedings. However, should the arbitration proceedings continue despite the opening of the bankruptcy proceedings, the arbitral tribunal would probably not be bound by the bankruptcy law or procedures save for the two impacts mentioned above. Still, to the best of our knowledge, there are no court rulings that clarify the Court of Cassation's view should the bankrupt party

challenge an award on the basis that the arbitral tribunal has not stayed the proceedings despite the opening of bankruptcy proceedings against one of the parties.

15. Does the court's personal jurisdiction over the party to the arbitration that is *not* in insolvency make any difference with respect to the effectiveness of the insolvency court's position on the arbitration?

34. This is an irrelevant factor for the application of the bankruptcy regime in the UAE.

Part II: Considerations with Respect to the Arbitration Proceeding Where a Party Is Subject to Insolvency Proceedings

16. Will the insolvency administrator take part in the arbitration exclusively or will the insolvent party in some instances continue to have procedural capacity to participate in the arbitration in its own name (debtor in possession)?

- a. **If the insolvency administrator takes part in the arbitration, does she step into the shoes of (ie, replace) the insolvent party or can the insolvent party continue to appear in its own name? [in the latter option, what are the roles of the insolvency administrator and the insolvent debtor?]**

35. While we are of the opinion that arbitration proceedings shall be stayed upon the opening of the bankruptcy proceedings, should the arbitration proceedings continue, the legal representative of the party subject to bankruptcy loses its capacity to represent the said party upon the opening of the bankruptcy proceedings and the arbitration proceedings shall be interrupted by operation of law until the interested party involves the trustee in the proceedings to legally represent the bankrupt party. Thus, the concerned party who has lost its capacity, cannot continue to appear in the arbitral proceedings in its own name and it shall be solely represented by the trustee.

17. Do the considerations of confidentiality that apply in a non-insolvency scenario vary as a consequence of the opening of insolvency proceedings against one of the parties to the arbitration? For instance, are there any restrictions on the information that the insolvency administrator can share with the insolvency court or with the creditors in the insolvency concerning the conduct, status or content of the arbitration? Or can the creditors appear in the arbitration as parties interested in the outcome of the proceedings?

36. While the arbitration laws in general and the UAE Arbitration Law in particular expressly stipulate the confidentiality of the arbitration proceedings, the Bankruptcy Law provides that the administrator to report certain information and status of the cases filed against the

bankrupt party to the court as well as to the creditors. Consequently, this might create some conflict between the arbitration law and the bankruptcy law in terms of confidentiality. Considering this, the administrator shall protect such confidentiality to the extent that does not contradict with its duties under the Bankruptcy Law.

18. Does the name of a party change as a consequence of the opening of insolvency proceedings over it?

37. The change of the name of a party shall only occur after declaring the debtor as bankrupt party.

19. Is the insolvency administrator (or the debtor in possession) empowered to reach a settlement in the arbitration, or is the insolvency court required to authorise any settlement for it to be effective?

38. As elaborated above, arbitration proceedings shall be stayed, as such the trustee will not be entitled to proceed with arbitration. However, should the arbitration proceedings continue despite the bankruptcy proceedings, which is contrary to our view, and the bankrupt party is represented by the trustee in the arbitration, then the trustee could reach a settlement in an arbitration so long as the subject matter is arbitrable, as only arbitrable subject matters could be resolved by settlement in accordance with the general legal principles.

20. Can an arbitral tribunal adopt interim measures concerning a party subject to insolvency proceedings?

39. According to Article 21 of the Arbitration Law, “unless otherwise agreed by the parties, the Arbitral Tribunal may, upon a request of a party, or on its own initiative, order the concerned party to take interim or precautionary measures as it may deem necessary and as required by the nature of the dispute”.

40. Given that the bankruptcy court may, after opening of the bankruptcy proceedings, ultimately decide to declare the closure of the bankruptcy proceedings, then issues may arise which require the urgent protection of a party’s rights. The nature of such interim measures, which are temporary, depends on the existing circumstances. In essence, the arbitral tribunal would still have jurisdiction to issue interim measures to protect a party’s rights subject to bankruptcy proceedings.

21. Does the opening of insolvency proceedings in UAE affect the validity of interim measures adopted against the insolvent party by an arbitral tribunal prior to the opening of the insolvency proceedings?

41. The interim measures taken against the insolvent party prior to the opening of the bankruptcy proceedings shall remain valid and in effect for the reasons stated above in the answer to question 20.

22. Is the capacity of the insolvent party to settle the dispute in the arbitration affected by the opening of insolvency proceedings in the jurisdiction?

42. As stated in question 19 above, upon the opening of the bankruptcy proceedings, the legal representative of the party subject to bankruptcy loses its capacity to represent the bankrupt company and as such it shall *ipso facto* loses capacity to settle the dispute in arbitration.

Part III: Ability to Enforce an Arbitration Award in Insolvency Proceedings

23. Does the opening of insolvency trigger a general prohibition of individual enforcement actions by creditors against the insolvent estate?¹

43. In accordance with the Bankruptcy Law, Article (162) stipulates that “... the opening of the insolvency/ bankruptcy and liquidation proceedings shall result in the stay of all judicial execution proceedings against the debtor’s funds ...” which shall include execution procedures taken against the bankrupt party.
44. This Article does not prevent the creditors from filing new enforcement actions against the insolvent estate; however, such actions after being filed shall be stayed by operation of law. In this case, we would advise our clients to submit their claims/final judgments, if any, to the trustee for examination instead of initiating enforcement actions that shall be ultimately stayed by operation of law.

24. What is the status of a claim that is being pursued in arbitration but has not yet reached a final award? Will that claim be converted to a different status once the arbitration award has been rendered and/or becomes enforceable?

45. As mentioned above, we are of the opinion that the arbitration proceedings shall be stayed upon the opening of the bankruptcy proceedings. As such, any award rendered despite of such stay shall be likely considered in violation of the law.
46. However, should the arbitral award deemed to be valid, in contrary to our view, then the answer to the above question will depend on whether the arbitral award was rendered within the prescribed timeframe for the creditors to submit their claims along with their supporting documents to the trustee or not. In the first scenario, where a creditor (claimant in arbitration

¹ The expression “individual enforcement actions” refers to actions commenced outside of the insolvency proceedings for the enforcement of a credit.

proceedings) submits its claims along with a final award, its claims will be recorded as a final and certain debt. In the second scenario, should the arbitral award have been issued after the elapse of the prescribed timeframe, then it would have no impact on the view of the court regarding the examination of that claim.

25. Is a credit contained in an arbitration award a valid proof of credit (ie, valid title) for the purposes of the insolvency proceedings? If it is a foreign award, will it need to be recognised under the New York Convention for it to be accepted or is there any other requirement that needs to be satisfied?

47. In relation to a domestic arbitration award, once the award has been rendered, it shall be deemed binding on the parties in accordance with Article (52) of the Arbitration Law and, as such, the trustee shall record it as final and certain debt against the bankrupt party.

48. On the other hand, in relation to an international arbitral award, the matter of whether such award shall be recognized, for the trustee to record it as a final debt, is uncertain. If the foreign award has been duly recognized, then it is likely to be considered as binding and the trustee shall record it as a final and certain debt. In this regard, no other requirements would be necessary.

26. Are any or all the rules regulating the effect of insolvency on arbitration considered part of public policy?

49. As stated in our response to Question 13 above, those laws may not, in their entirety, be classified as of public order. However, considering that the Bankruptcy Law is a procedural law which regulates the bankruptcy proceedings, this would imply that most of its provisions shall be considered of public order, such as Article (165) provisions related to the means of challenge, and statutory time limits.

50. As we also stated above, there would be two effects of the bankruptcy on arbitration proceedings related to (i) the stay of proceedings, and (ii) the capacity of the legal representative of the party subject to bankruptcy.

51. The issue of stay shall likely be considered of public order, whereas the issue of loss of capacity shall be available to the bankrupt party only being the concerned party who will have the right to raise it, hence, it shall not be considered as of public order.

27. Is the principle of *par conditio creditorum* part of public policy? If so, is public policy linked to the equal treatment of creditors from a substantive point of view (i.e., proportion of their credit that is satisfied in the insolvency process) or does it extend to the equal treatment of

creditors from a procedural point of view (e.g., prohibiting individual proceedings [e.g., arbitration] outside the insolvency process)?²

52. Even though the principle of *par conditio creditorum* constitutes a general legal principle, the implementation of such principle is related to the personal interest of each creditor and, as such, it is not of public order.

28. Are there any other provisions or case law of UAE concerning the effect of national insolvency on arbitration that have not been mentioned in the previous answers?

53. Not at the time of submission of this report.

IMPACT OF FOREIGN INSOLVENCY ON ARBITRATION SEATED IN NATIONAL JURISDICTION

[These questions focus on the effects that foreign insolvency proceedings produce on arbitration seated in UAE concerning the insolvent party]

29. Do foreign insolvency proceedings need to be recognised under any formal [local] procedure to produce effects in UAE?

54. Where such a judgment is issued outside the UAE it will be considered a foreign judgment. Foreign judgments are not automatically enforceable in the UAE. The Civil Procedure Law requires reciprocity of enforcement between the UAE and the country issuing the judgment. As such, to enforce foreign judgments in the UAE, the procedures must be followed as set out in Federal Decree-Law No. (42) of 2022 promulgating the Civil Procedures Law. More specifically, Chapter VI Execution of Foreign Judgments, Orders and Instruments regulates the enforcement of foreign judgments in the UAE.

55. Article 222 of the Civil Procedures Law states:

“(1) foreign judgment and order may be made for the enforcement in the UAE on the same conditions laid down in the law of the foreign country for the execution of judgments and orders issued in the UAE.

(2) An order for execution shall be applied for by means of a petition submitted by the concerned party including the details specified in Article (44) of this Code to the Execution Judge. The Judge shall issue their order within (5) five working days from the date of its

² If the equality of creditors is part of public policy only from a substantive point of view, an award rendered by a foreign arbitral tribunal despite the prohibition of arbitration might still be effective in the insolvency proceedings because the award creditor will still abide by the *pari passu* distribution in insolvency. If, on the contrary, the public policy consideration of equality of creditors also extends to its procedural dimension, i.e. every creditor should have its claim decided under the same procedure, an award rendered in breach/disregard of such procedures might not be effective in the insolvency proceedings.

submission, and the order shall be subject to appeal by direct appeal in accordance with the rules and procedures prescribed for appealing judgments. An execution order may not be made until after the following matters have been verified:

- a. The Courts of the State have no jurisdiction to try the dispute in which the order or judgment was made, and that the foreign Courts which issued it have jurisdiction thereover in accordance with the rules governing international judicial jurisdiction laid down in their law;
- b. The judgment or order was issued by a Court having jurisdiction in accordance with the law of the country in which it was issued and duly endorsed;
- c. The parties to the action in which the foreign judgment was issued were summoned to attend, and were duly represented;
- d. The judgment or order has acquired the force of *res judicata* in accordance with the law of the Court that issued it, provided that the applicant submits a certificate that the judgment has acquired the force of a final order or the same was stipulated in the judgment itself;
- e. It does not conflict with a judgment or order already made by a Court in the State and contains nothing that conflicts with morals or public order in the State.

(3) The Execution Judge shall have the right to collect the documents supporting the request before issuing their decision”.

30. Has the jurisdiction adopted legislation implementing the UNCITRAL Model Law on Cross-Border Insolvency? If so, does that legislation adopt the Model Law in full, or does it amend any provision of the Model Law related to the effect of insolvency on arbitration?

56. We note that the UAE has not adopted the UNCITRAL Model Law on Cross-Broder Insolvency; however, the DIFC and ADGM have embraced such Model Law on Cross-Broder Insolvency, which is incorporated with certain modifications into the DIFC and ADGM’s respective Insolvency Laws.

31. Does the opening of insolvency proceedings outside of the territory of UAE produce any effect on arbitrations seated in the jurisdiction? What is the source of the rule or legislation providing for such effects?

57. In general, arbitration proceedings seated in the UAE shall not be affected by the bankruptcy proceedings save for the following (i) the stay of arbitral proceedings, and (ii) the capacity of the legal representative of the party subject to bankruptcy. In this regard, a distinction shall be made between cross-border bankruptcy proceedings and domestic proceedings in respect of the two effects.

58. Where both the bankruptcy and the arbitration proceedings are on-going in the UAE’s jurisdiction, then the arbitral tribunal shall be bound by the stay of proceedings pursuant to

Article (162) of the Bankruptcy Law considering that such provision shall be deemed a procedural issue.

59. On the other hand, where the arbitration proceedings are domestic and the bankruptcy proceedings are cross-border, should the foreign bankruptcy law contain any specific provision that relates to the stay of all judicial and arbitration proceedings, the arbitral tribunal shall not be bound by such provision taking into account that this matter is considered a foreign procedural issue.
60. In relation to the capacity of the legal representative of the party subject to bankruptcy, the arbitral tribunal shall be bound by the provisions of the consequences of the bankruptcy proceedings, irrespective of whether the bankruptcy was domestic or foreign on the ground that capacity is not a procedural matter, nor should it be linked to the seat of arbitration. Instead, the issue of capacity is a substantive matter wherein the applicable law shall be the law governing the capacity of the party whether domestic or foreign law.

32. Are arbitrators seated in the jurisdiction required to take into account the rules on recognition of foreign insolvencies (if any) to evaluate the effects of such insolvencies in the arbitration, as described in the previous question?

61. Arbitrators in the jurisdiction are not required to consider the rules on recognition of foreign insolvencies. This matter will be left to the arbitral tribunal's discretion if it opts to consider the foreign laws of insolvency in any given matter as well as in the circumstances where the award to be issued in the arbitration is expected to be enforced in the country where the foreign bankruptcy proceedings are taking place.

33. Are the rules that regulate the effects on arbitration of foreign insolvency proceedings of mandatory application for arbitral tribunals seated in the jurisdiction?

62. There are no specific rules in the jurisdiction that regulate the effects of foreign insolvency proceedings on arbitrations seated in the jurisdiction.

34. Will an award which does not respect the effects of insolvency provided by the relevant regime in the jurisdiction be set aside?

63. In relation to domestic bankruptcy proceedings, such award will likely be set aside if the arbitral tribunal does not respect the two impacts for the mentioned above. However, in relation to the foreign bankruptcy proceedings, see answer to Question 31 where a distinction is made between the rules that are binding on the arbitral tribunal, notably the capacity matter, and those not binding on the tribunal such as the stay of proceedings. In case the rules are binding, the award might be set aside should the interested party raise such argument in its challenge



before the local court. In case the rules are not binding, there would probably be no legal ground for such challenge.

35. Are there any other provisions or case law concerning the effect of foreign insolvency on arbitration seated that have not been mentioned in the previous answers?

64. Not at the time of submission of this report.