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UAE Arbitration: An Era of Historic Changes

When the UAE issued its first standalone Arbitration Law, Federal Law No. 6/2018 which came into force in June last year it was seen by many practitioners here as a historic moment, as for many years there had been campaigning for more extensive legislation in this area. In the past, law in this area had only been covered in a handful of provisions in the more general civil procedure law, Federal Law No. 11/1992.

In contrast we now have a new standalone law arbitration which not only provides far more detailed guidance on this subject but is also based on the UNCITRAL Model Law which sends a strong message to the international community that arbitration in the UAE is now based on the best possible standards and procedures.

Steps have been taken under the new law to ensure the best arbitrators from across the globe can assist with arbitrations in the UAE, regardless of their physical location, as Federal Law No. 6/2018 allows video-conferencing and there is no longer a need for the arbitrators to meet in person. The aim is to create a modern environment in which arbitration can flourish.

The new law details some important characteristics which arbitrators must have and makes it very clearly – that the arbitrator must be independent and impartial and where that is not the case there are provisions for the arbitrator's recusal.

However, the new Arbitration law was not the only legal development last year to have had an impact on this area. In 2016 a change was made to the Penal Code here which made arbitrators criminally liable for expressions of bias in the course of the arbitration process. Although the intentions of this change were good, it did create worry for those who were concerned that it could in some circumstances be abused by parties wishing to disrupt the arbitration, and as a result some arbitrators were for a while nervous about working here.

In another move which shows the UAE's arbitration friendly credentials this law has now been amended too and arbitrators excluded from the relevant provision to rectify this anomaly and bring us inline in yet another area with international best practice. As a result of all this change in the last year in arbitration, we have decided to dedicate this issue to this topic – including a review of the new legal framework and the range of specialist arbitration institutions now operating here. We hope, as a result you find it both useful and informative.

Justice Dr Jamal Al Sumaiti
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ADVISING GLOBAL INVESTORS ON UAE LEGAL BEST PRACTICE

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PROFILE 38

His Excellency Humaid Mohamed Ben Salem, Secretary General of the UAE Chamber of Commerce.

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Arbitration Overview

Hassan Saeed Abaragh of International Consultant Law Office (ICLO) looks at the new UAE Arbitration Law, Federal Law No. 6/2018 and its impact on investment flows.

A new Federal Arbitration Law, Federal Law No. 6/2018 came into force on 15 June 2018 and is already being treated by many commentators as one of the major achievements in the history of UAE arbitration.

THE PAST POSITION

After the UAE's accession to the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards of 6 July 1958 (the New York Convention), there was a decision to initiate a wide reform of the legal framework in the UAE governing arbitration.

Part of this initiative was the aim to create a new separate Arbitration Law in the UAE which would replace the previous legislation in this area which was found in Chapter 3 of Book II of the UAE Civil Procedure Code (Federal Law No. 11/1992). Chapter 3 had not been particularly extensive as it had just a handful of provisions from Article 203-218 of Federal Law No. 11/1992.

THE FREEZONE IMPACT ON THE REFORMS

Pressure to reform the UAE arbitration framework also came with the aim of positioning the UAE as a major financial centre in West Asia and the MENA region. This had led first to the promulgation of Federal Law No. 8/2004 Regarding the Financial Freezones in Dubai which allowed offshore Financial Freezones to be set up in the country, and was then followed by Federal Decree No. 35/2004 which created the DIFC in Dubai and Federal Decree No. 15/ 2013 establishing a Financial Free Zone in the Emirates of Abu Dhabi which established the Abu Dhabi Global Market (ADGM). Both of these freezones have issued their own modern arbitration laws, DIFC Law No. 1/2008 (the DIFC Arbitration Law) and the 2015 ADGM Arbitration Rules which also acted as an impetus for reform of the UAE Federal legislation in this area.

DEBATES ON THE FORMAT OF THE NEW LAW

Despite agreement that there was a need for reform, the drafting and issue of this new UAE arbitration law was quite a long process. There were extensive discussions and detailed debates around the new law.

These included whether there should merely be an enhancement of the Arbitration Chapter found in Federal Law No. 11/1992 taking inspiration from regional best practice or if there should be a more extensive shift which would see the UAE implement the Model Law of the United Nations Commission on International Trade Law (UNCITRAL) which had been adopted in 1985 and amended in 2006?

The decision by the two financial centres, the DIFC and ADGM, to opt for the UNCITRAL Model Law for their arbitration legislation led in the end to the Federal legislature deciding to opt for including the UNCITRAL Model Law within its new law, as this create d legislative harmony between the arbitration laws in the mainland UAE, and offshore DIFC and ADGM jurisdictions.

UAE COURT DEVELOPMENTS

It is also worth mentioning in this respect the role of the UAE Courts who were in charge of the application of the Arbitration chapter of Federal Law No. 11/1992. In parallel to these debates about adoption of the UNCITRAL Model Law within the new law, the Courts were issuing progressively pro-arbitration decisions and had overcome the doctrinal debate on the direct application

of the New York Convention versus an updated Arbitration Chapter in relation to the enforcement of foreign arbitral awards.

Paradoxically, the long gestation period of the new law in fact, positively impacted the quality of the law's final text and led to the retention of the globally recognised UNCITRAL Model Law based text which had certain particularities.

ADOPTING THE BEST ARBITRAL STANDARDS

The result of all this debate has been a new law which is good news both for investors and regional arbitration centres such as the Dubai International Arbitration Centre (DIAC) and the Abu Dhabi Conciliation and Commercial Arbitration Centre (ADCCAC).

For the first time, there is arbitration legislation in the UAE which has wide scope and is a fully dedicated law. This new law has six chapters and 61 articles. It also regulates both national and international arbitrations (see Article 2 of Federal Law No. 6/2018). As a result, the UAE will now be perceived by the business community as being a pro-arbitration jurisdiction. In addition, ad hoc and institutional arbitrations seated in mainland UAE will be backed by a more predictable arbitral procedural law (which follows the legal concept of lex fori.

DEFINITION OF AN ARBITRATION AGREEMENT

One of the positive points of the new law is that it has adopted a wide definition of what constitutes an arbitration agreement. Under Article 7(2) of Federal Law No. 6/2018 this includes any exchange of correspondence by email or a reference to another agreement, a model contract or an international agreement containing the arbitration agreement .

USE OF MODERN TECHNOLOGY

One area where there is a considerable enhancement of the position in the UNCITRAL Model Law is the emphasis on the use of modern means of technology in arbitral proceedings which is found in Federal Law No. 6/2018. The legislature has opened the door to integrating existing and future technologies like video conferencing which will facilitate remote hearings and deliberations (see Article 28(2) of Federal Law No. 6/2018) and modern means of communication and electronic technology which will help reduce the cost of arbitration, as having a physical presence at arbitration hearings is not required (see Article 33(.3) of Federal Law No. 6/2018).

CONFIDENTIALITY

Another difference of approach between the new UAE law and the UNCITRAL Model Law comes in the area of confidentiality. The UAE legislature has chosen to stress the confidentiality of arbitral proceedings. Under Article 33(1) of Federal Law No. 6/2018, it is stated arbitration hearings are confidential unless the parties have otherwise agreed.

The position in the UNCITRAL Model Law in contrast is that confidentiality is a choice of the parties.

KEY IMPROVEMENTS

A number of significant improvements have been introduced in the new Arbitration law which have significantly upgraded the arbitral legal framework in the UAE. Among those most likely to help make the UAE's attractiveness as an arbitration friendly jurisdiction, is the simplification of the procedure for

> “Judges have at their disposal a good text they can easily enhance to provide local and international businesses with a stable and predictable seat of arbitration.”

enforcement of the arbitral awards. The new enforcement procedure is similar to that found in France. Under Article 55(2) of Federal Law No. 6/2018, the President of the Court of Appeal has been given responsibility for addressing requests seeking ratification and enforcement of an arbitration award. The President is then required to address any request for enforcement within 60 days from the date of the application. In addition, under Article 54(2) of Federal Law No. 6/2018 any challenge to an arbitral award has to be made within 30 days from the date of notification of the award. The Court also has a discretionary power to suspend the execution of the award if serious reasons are proven under Article 56(1) of Federal Law No. 6/2018.

SPECIALISATION WITHIN THE JUDICIARY

Not only will this new approach help streamline procedures but it will also lead to specialisation within the judiciary. Within each Emirate, a pool of experienced judges will be created who will rely on their cumulative practice to smoothly implement the New Arbitration Law and interpret it in the light of the spirit of openness which the legislature has put forward.

ENFORCEMENT AND THE FREEZONES

MOUs signed between the DIFC and the Dubai Courts on one hand and the ADGM and Abu Dhabi Judicial Department on the other, should also help facilitate the enforcement of arbitral awards which have been recognised by the respective Courts of these financial centres.

This will help facilitate the execution of a significant number of foreign arbitral awards whether these have been seated in the DIFC and ADGM or not, if the losing party in the arbitration's assets are located in the UAE mainland. In addition, the recent UAE Cabinet Decision No. 57/2018 adopting the Executive Regulation of the UAE Civil Procedure Law (Federal Law No. 11/ 1992) will facilitate obtaining requests to enforce these arbitral awards in other Emirates via a demand for enforcement addressed by Abu Dhabi or Dubai Courts to any other Emirate.

ATTRACTING INVESTORS

A few months after the promulgation of the New Arbitration Law, the first UAE Foreign Direct Investment Law (Federal Decree Law No. 19/2018 On Foreign Direct Investments) was issued. This new law has expressly opened the door for foreign investors to opt for Federal Law No. 6/2018 as an alternative to the competent courts if there is an absence or inapplicability of bilateral investment protection treaties.

Article 12 of Federal Decree Law No. 19/2018 states that, 'Without prejudice to the right to litigation, disputes and disputes that may arise from the Foreign Direct Investment Project may be settled by all alternative means of dispute settlement'.

What is clear is that Federal Law No. 6/1018 has filled an important gap. It has also helped harmonise arbitral regulations across freezone and mainland UAE and helped create a positive ecosystem which is supported by receptive case law.

The UAE judges now have at their disposal a good text that they can easily enhance to provide the local and international business community with a stable and predictable seat of arbitration. ■

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Hassan Saeed Abaragh has over 20 years of experience in international business law and dispute resolution in France, Japan, the UAE and GCC countries and is the co-founder of the International Consultant Law Office (ICLO), a boutique law firm based in Abu Dhabi (UAE) which focuses on arbitration and international business law. He has an extensive legal practice in Abu Dhabi but also regularly assists clients throughout the EU, East Asia, GCC and MENA Region. In particular he focuses on advising international clients on their investments projects in UAE and GCC region and local clients on their expansion abroad.

An ABC of UAE Arbitration

Our Expert Panel explains how arbitration operates both onshore and offshore in the UAE.

"In the UAE the law which is applicable to an arbitration depends on whether the arbitration is seated in the 'onshore' UAE, or 'offshore' in other jurisdictions such as the Dubai International Financial Centre (DIFC) or the Abu Dhabi Global Market (ADGM)," Harriet Jenkins of Simmons & Simmons Middle East LLP explains.

WHAT IS THE MAIN ARBITRATION LAW?

"By default, UAE arbitrations are governed by Federal Law No. 6/2018 (Federal Arbitration Law) which only recently came into force in June last year. This law applies to all arbitrations taking place in the UAE, unless the parties agree to apply a different arbitration law, and that law does not contravene the public order and morality of the UAE," Harriet Jenkins continues.

"It also applies to international commercial arbitrations that take place outside the UAE, provided the parties agree to apply Federal Law No. 6/2018 and the disputes arises out of a legal relationship that is regulated by UAE law, (unless this is excluded by special provisions) where UAE law mandatorily applies to resolve the dispute," Jenkins continues.

WHAT AREAS DOES IT COVER?

"The dispute itself must be arbitrable. Broadly speaking, disputes which cannot be arbitrated in the UAE include those related to

KEY LEGISLATION

Federal Law No. 6/2018

This new standalone arbitration law has replaced what was known as the Arbitration chapter previously found in the UAE Civil Code.

Federal Law No. 11/1992

Until the issue of Federal Law No. 6/2018 Title 3 of this law contained provisions covering arbitration in the onshore UAE.

DIFC Law No. 1/2008

This law provides a framework to cover DIFC seated arbitrations.

ADGM Arbitration Regulations 2015

This law provides a framework to cover ADGM seated arbitrations.

UNCITRAL Model Arbitration Law

This law was adopted by United Nations Commission on International Trade Law and provides details of international best practice in arbitration. UAE offshore and onshore arbitration laws have been based on it.

public policy, commercial agency contracts, criminal acts, family, estate and employment matters," Harriet Jenkins explains.

"There are also other types of matters which may not be arbitrable, subject to exceptions and circumstances, which include, rental disputes in Abu Dhabi, some aspects of Dubai real estate disputes, some civil disputes relating to insurance policies, and certain mandatory provisions in the UAE Companies Law, Federal Law No. 2/2015," Harriet Jenkins adds.

ARE THERE SPECIAL FREEZONE ARBITRATION LAWS AND WHAT DO THEY COVER?

"Federal Law No. 6/2018 does not apply to financial free zones in the UAE, such as the DIFC and the ADGM," Harriet Jenkins states. "These financial free zones have independent laws governing arbitrations seated in those jurisdictions."

"This is because the DIFC is an autonomous common law jurisdiction, located within Dubai. It is empowered by Federal Law No. 8/2004 to enact its own regulatory and legal framework for all matters civil and commercial, and has its own independent courts," Harriet Jenkins explains.

"DIFC arbitrations are subject to the procedural framework set out in DIFC Law No. 1/2008 (the DIFC Arbitration Law). As is the case with Federal Law No. 6/2018 the framework for DIFC Law No. 1/2008 is based on the UNCITRAL Model Arbitration Law) which represents international best practice in arbitration," Jenkins continues.

"The DIFC has its own independent common law court system, and DIFC Law No. 1/2008 sets out the framework for the DIFC courts to oversee and support DIFC seated arbitrations," Jenkins adds.

"The ADGM is also an autonomous common law jurisdiction within the UAE and is located within Abu Dhabi," Jenkins explains. "Its arbitration law, the ADGM Arbitration Regulations 2015, applies to any ADGM-seated arbitration. These Regulations are a modern, progressive, pro-arbitration framework which is also based on the UNCITRAL Model Law."

"Unlike UAE law, ADGM directly adopts English common law (including the principles of equity), and a defined list of certain statutes which were in force in England by reference. In a similar way to the DIFC, the ADGM has its own common law courts, which have curial functions in support of ADGM seated arbitration proceedings and are set by the ADGM Arbitration Regulations 2015," Jenkins explains.

"It is important to note in this context that both the DIFC and ADGM are 'opt in' jurisdictions," Jenkins continues. "This means that parties can elect for their disputes to be heard in these jurisdictions, even if neither party, or the subject contract or project, has any connection to them."

WHAT ARE THE MAIN DIFFERENCES IN THE WAY ARBITRATION WORKS IN THE UAE AND OTHER JURISDICTIONS?

"The most significant differences (although there are other minor ones too) that make the UAE stand out from other countries in terms of arbitration is that thanks to the new Arbitration Law, Federal Law No. 6/2018, we now have quick enforcement procedures which can be used by those wishing to enforce UAE arbitration awards," states Mohsen Mostafa of Al Dhaheri International Advocates & Legal Consultants. "Enforcement procedures can now be commenced directly before the UAE Federal or local Court of Appeal, when previously enforcement procedures had to be started in the Courts of First Instance. In addition, once the procedures have started formally, the Appeal Court has 60 days to render its decision on whether the arbitral award should be upheld or not. After this ratification, the Award can be enforced through the relevant execution courts for obtaining the award amount."

WHAT ARE THE UAE'S MAIN ARBITRATION INSTITUTIONS?

"The Dubai International Arbitration Centre (DIAC) is the main domestic arbitration institution in 'onshore' UAE," Harriet Jenkins explains. " At the time of writing revision to DIAC's Rules is anticipated to be issued shortly and it is understood the updated DIAC Rules will be modelled on the UNCITRAL Model Law, which will align DIAC more closely with international arbitration best practice."

"Another key arbitration institution in the UAE is the DIFC-LCIA which is, in effect, a joint venture between the DIFC Arbitration Institute (DAI), and the London Court of International Arbitration (LCIA)," Jenkins explains. "It is headquartered in the DIFC, but supported by the LCIA, which has a good international reputation, standards, and capabilities and has rules which are well known, tested and trusted by international investors and commercial parties. Meanwhile, the Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC) is an arbitration institution which is located in 'onshore' Abu Dhabi and is the arbitration 'arm' of the Abu Dhabi Chamber of Commerce & Industry, which is a centre for the Abu Dhabi business community."

"Like DIAC, ADCCAC is an independent and autonomous institution, and the UAE Court of Appeal has ultimate oversight over it by virtue of Federal Law No. 6/2018. The International Chamber of Commerce (ICC) has also recently established a representative office in ADGM, which facilitates ICC-administered arbitration proceedings in the region," Jenkins adds. "While the ADGM Arbitration Centre only opened in October last year, given the sophistication of the operating rules and the standard of the governing and administrative oversight, it is expected to become a preferred venue for Abu Dhabi based parties or projects to resolve complex disputes, especially those related to construction and commercial contracts. "

"There are also other formal arbitral institutions within the UAE, including the Sharjah International Commercial Arbitration Centre and the Ras Al Khaimah Centre of Reconciliation and Commercial Arbitration, whose rules aim to cater for both domestic and international arbitrations," Jenkins continues.

"In addition, the International Islamic Centre for Reconciliation and Arbitration is available to assist with Islamic finance related disputes."

DO PEOPLE TEND TO USE LOCAL OR INTERNATIONAL ARBITRATION INSTITUTIONS IN THE UAE?

"That depends on the individual and the company and significantly, their knowledge of arbitration and arbitration procedures," states Mohsen Mostafa. "In Dubai, arbitration tends to be conducted mostly through DIAC and DIFC-LCIA."

"Their rules and procedures for conducting abitration are similar to most international arbitration institutions. Usually, however, when individuals or companies are not aware of these institutes, they tend to resort to the Dubai Courts to conduct arbitration for the parties. The choice of the parties, and their knowledge in selecting the arbitration forum plays a major role in stipulating the correct dispute resolution clause in their respective contracts," Mostafa adds. "As a general rule, most of the arbitrations are referred to the relevant arbitration institution which is available in the particular Emirate, for example,

MAIN ARBITRATION INSTITUTIONS IN THE UAE

DIAC

The Dubai International Arbitration Centre

DIFC-LCIA

The DIFC and London Court of International Arbitration Centre

ADCCAC

Abu Dhabi Commercial Conciliation and Arbitration Centre

ADGM Arbitration Centre

Abu Dhabi Global Market Arbitration Centre

EMAC

Emirates Maritime Arbitration Centre

TAHKEEM

Sharjah International Commecial Arbitration Centre

DAI

DIFC Arbitration Institute

RAK Centre of Reconciliation and Commercial Arbitration

Ras Al Khaimah Centre of Reconciliation and Commercial Arbitration

the Ras Al Khaimah Commercial and Arbitration Centre if they are in Ras Al Khaimah, ADCCAC if they are in Abu Dhabi or or Abu Dhabi Global Markets Arbitration Centre if they are in the ADGM. "

WHO CAN BE AN ARBITRATOR?

"A key feature of the UNCITRAL Model Law is that an arbitrator must be independent and impartial. This principle is embedded within the rules governing the various arbitral institutions in the UAE," Harriet Jenkins explains.

"So an arbitrator accepting an arbitration appointment would ordinarily be required to provide a statement disclosing any interests that might call into question their independence in the eyes of any of the parties. The IBA Guidelines on the Conflicts of Interest in International Arbitration are widely accepted in the international arbitration community in assessing the impartiality and independence of arbitrators, and grounds for challenging an appointment."

"In addition, Article 10 of Federal Law No. 6/2018 sets out requirements for arbitrators. For instance, an arbitrator must not be a minor, or be judicially declared as incapacitated, or be someone without civil rights for the reasons of bankruptcy (unless they have been discharged). In addition, they cannot be convicted of a crime (even if they have been rehabilitated)."

"An arbitrator also cannot be a member of the Board of Trustees or of the administrative body of the arbitral institution administering the arbitration in which that person was asked to sit," Jenkins adds.

"Controversially, this is considered to potentially disqualify board members and/or trustees of institutions such as DIAC and DIFC-LCIA from sitting as arbitrators in arbitrations where Federal Law No. 6/2018 applies."

WHAT TRENDS DO YOU EXPECT TO SEE IN ARBITRATION?

"The new Federal Law No. 6/2018's alignment with international standards and best practice will no doubt play a role in building on the UAE's reputation as the preferred seat for arbitration in the MENA region," Harriet Jenkins states. "As this new law becomes more used by parties and arbitrators, I would expect an increase in confidence for UAE seated arbitrations within the international arbitration community."

"In terms of changes in the types of business which are using arbitration, property and construction disputes are continuing to dominate arbitrations in the region, however there is also a continued rise in disputes involving telecommunications, financial institutions, and a rise in investor state disputes is also anticipated," Jenkins states.

"Another expected change is an increase in claims funded by Third Party Funders (also known as Litigation Funding), which is gaining momentum in the UAE," Jenkins adds. "In 2017, the DIFC issued a practice direction specifically addressing and providing guidance on Third Party Funding (TPF) arrangements. The ADGM Regulations also expressly permit it and it is expected that the new DIAC Rules will include provisions on this area too."

"I would also like to see some improvements in diversity and increased representation of women on international arbitration panels, driven by the commitments of the international arbitration community through the disclosure of statistics on the gender balance of tribunals (which is being led by the ICC), international organisations such as ArbitralWomen with a MENA chapter, and other initiatives such as the Equal Representation in Arbitration (ERA) Pledge (http://www.arbitrationpledge.com/), which calls for enhanced diversity in international arbitration."

HOW COMMON ARE OTHER FORMS OF ALTERNATIVE DISPUTE RESOLUTION IN THE UAE?

"International and domestic parties are increasingly using arbitration clauses in their contracts," states Harriet Jenkins,

"However, there are also a number of different forums in which a dispute can be resolved. The UAE Courts have jurisdiction to consider civil disputes with an international element where a claim is brought against a UAE citizen or persons / companies domiciled or residing in the UAE. They will also have jurisdiction where the action relates to assets, contracts or incidents based in the UAE," Jenkins continues.

"In relation to ADR methods other than arbitration, for a long time informal negotiation or mediation has been part of the Middle Eastern tradition, and this is likely to continue. However, more formalised ADR processes, such as dispute adjudication boards are only being seen here to a limited degree.

HOW DOES ISLAMIC LAW IMPACT ARBITRATION?

"As a generally accepted principle, everyone should abide by the fundamental principles of the Islamic Sharia and any matters which are regarded as coming within the remit of public order are not capable

of being resolved by arbitration," Mohsen Mostafa states. "Public order is deemed to include matters involving, among other things, personal status such as marriage, inheritance and lineage, matters relating to systems of government, freedom of trade, the circulation of wealth, rules of individual ownership and the other rules and foundations on which society is based, to the extent that these matters do not conflict with the definitive provisions and fundamental principles of the Islamic Sharia. This approach is in line with Article 3 of Federal Law No. 5/1985. Therefore, it is expected that everyone must follow the rules of public order which aim to fulfil the public, political, social and economic interest of the UAE and are related to higher governance of society."

IS ARBITRATION EVER MANDATORY?

"There is no such rule or law in effect in the UAE which requires referral of certain types of dispute to arbitration," states Mohsen Mostafa. "The parties are absolutely free to stipulate in their contracts whether they want to consider arbitration as a means for resolving their dispute or differences arising under a contract. For any dispute to be referred to arbitration, the contract must clearly contain provision for use of arbitration to resolve disputes and the parties' agreement to submit the disputes to arbitration. If such a clause or provision is not stipulated in the contract the parties cannot refer the dispute to arbitration and the dispute is referred to the relevant local court with the jurisdiction to resolve it."

"However, Article 4(2) of Federal Law No. 6/2018 is clear in stating that an arbitration agreement may not be executed in relation to matters which are not open to settlement or compromise," states Maria Mazzawi of Pinsent Masons. "These include matters of personal statute and criminal matters, as well as other matters where the subject matter is reserved exclusively to the national courts by virtue of applicable law, such as commercial agency."

WHAT INTERNATIONAL TREATIES HAS THE UAE SIGNED IN THIS AREA?

"The UAE has signed the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the New York Convention," states Maria Mazzawi. "The UAE acceded to this Convention by Federal Decree No. 43/2006, which was published in the Official Gazette on 28 June 2006, without reservation. The New York Convention is widely considered the 'foundational instrument' for international arbitration."

"One of the key advantages of international arbitration is the relative ease with which an international arbitral award rendered in one country can be enforced in another country, on the basis of the New York Convention," Mazzawi continues. "The New York Convention has 159 Member, or Contracting States and its principle aim is to ensure that Contracting States recognise and enforce foreign awards in their jurisdiction in the same way as domestic awards, subject to specific limited exceptions. It also allows a Contracting State to enforce an award rendered in its favour in any other Contracting State in which the unsuccessful party has assets."

"The UAE has also acceded to the Washington Convention on the Settlement of the Investment Disputes between

States and Nationals of Other States also known as the ICSID Convention since it established the International Centre for Settlement of Investment Disputes," Mazzawi states. "The ICSID Convention is similar to the New York Convention and is considered the 'foundational instrument' for investment treaty arbitration because it gave both private individuals and corporations who were 'investors' in a foreign state the right to bring legal proceedings against that State directly, before international arbitral tribunals. It also established a legal and procedural framework under which individuals and corporations could demand redress directly against the state, without asking their own state for assistance or intervention, either directly, by way of diplomatic intervention or any other way."

HOW DOES RECOGNITION WORK IN THIS JURISDICTION?

"Federal Law No. 6 /2018, which came into effect, on 16 June 2018, covers all stages of the arbitral process from the arbitration agreement through to the ratification (which is the UAE's process of recognition) and enforcement of the arbitral award," Maria Mazzawi states. "While its enforcement provisions are generally in line with the tenets of the New York Convention, the enforceability of awards in the UAE remains subject to the requirement of ratification."

"In addition, although Federal Law No. 6/2018 expressly repeals the arbitration chapter contained in Articles 203-218 of Federal Law No. 11/1992 it did not repeal Article 235-238 of Federal Law No. 11/1992 on the enforcement of foreign arbitral awards, or any provisions of Federal Law No. 11/1992 which are outside the arbitration chapter that involve the enforcement of domestic awards," Mazzawi adds.

"However, new rules came into force on 16 February 2019, within the Cabinet Decision No. 57/ 2018, which provide for a streamlined procedure for applications for the enforcement of a foreign judgment or arbitral award in the UAE."

ARE ARBITRATION DECISIONS FROM SOME JURISDICTIONS GIVEN GREATER DEFERENCE THAN OTHERS IN THE UAE?

"The 1958 New York Convention on the Recognition and Enforcement of Arbitral Awards has helped standardise enforcement criteria in a large number of states," states

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Mohsen Mostafa. "As the UAE acceded to the New York Convention without reservation it would be incorrect to say that arbitration awards from other jurisdictions will be given more weight or less weight as the law is now applicable to all irrespective of jurisdiction."

DOES THE UAE DEAL WITH FOREIGN AND DOMESTIC ARBITRATIONS DIFFERENTLY?

"Yes, foreign arbitration decisions will be enforced in the UAE on account of international conventions such as the Convention on the Recognition and Enforcement of Foreign Arbitration Awards, (the New York Convention) and the Riyadh Convention of Judicial Cooperation," says Damian Crosse of Pinsent Masons. "The parties also need to ensure that procedural requirements set out under the Cabinet Resolution Concerning the Civil Procedure Law (Federal Law No. 11/1992) are met."

"However, domestic arbitration decisions are enforced and ratified in accordance with the new arbitration law, (Federal Law No. 6/2018) only as opposed to the New York Convention," Crosse adds. "An application must be made before the courts and accompanied by a number of documents. The courts are then required to ratify and enforce the arbitral award within 60 days in line with Article 55 of Federal Law No. 6/2018."

HOW DO ARBITRATION COSTS COMPARE IN THE UAE WITH OTHER JURISDICTIONS?

"Arbitration costs in the UAE will vary depending on the centre's administrative and registration fees, the amount disputed and tribunal fees," Crosse explains.

"In terms of litigation costs, the UAE courts have set court fees at a percentage of the claim amount. For example, the Dubai Courts have a fee structure of 7.5% of the claim amount up to a maximum of 40,000 AED. The DIFC Courts have a fee structure of 5% of the claim amount if the amount is up to USD 500,000."

> "Timeframes depend on the complexity of the dispute. Some arbitrations may take up to 12 months whereas other more complex ones may take up to two years or more."

WHAT ARE THE AVERAGE TIMEFRAMES FOR AN ARBITRATION IN THE UAE?

"Average time frames for arbitration in the UAE also vary depending on the complexity of the dispute," Crosse states.

"Some arbitrations may take up to 12 months whereas other more complex cases may take up to two years or more."

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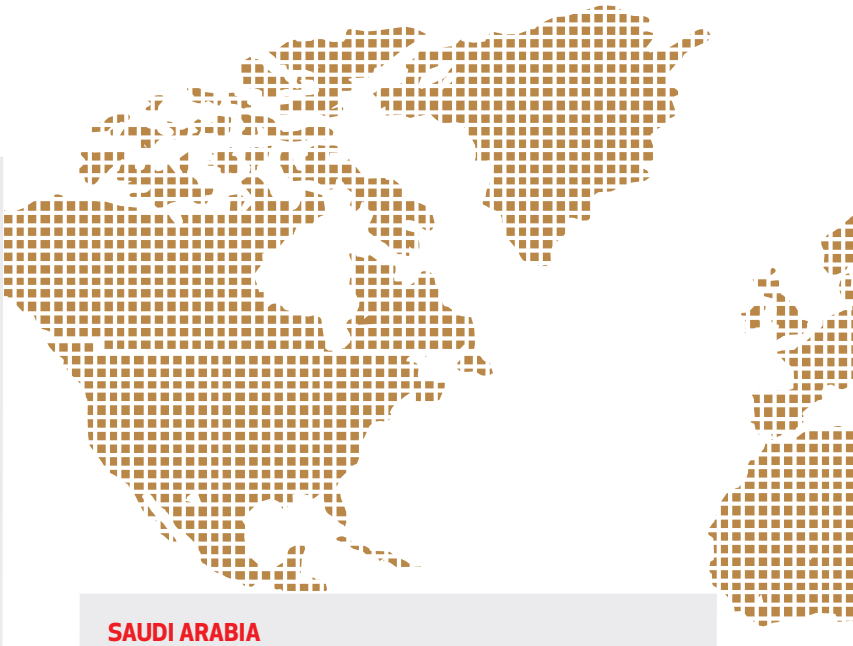
Harriet Jenkins has a wide range of experience acting for clients from across the globe, advising on construction projects in the GCC, Ethiopia and Georgia. She has acted on disputes across arbitral bodies, including ICC, LCIA, DIFC, SIAC, as well as on domestic arbitrations within the GCC. She has extensive experience litigating disputes in court, both at the High Courts of England and Wales, and in working alongside local co-counsel on disputes before the local GCC courts.

Mohsen Mostafa has over 40 years experience during which he has represented contractors and agents working in the region on contractual disputes. His specialism is property disputes in which he represents developers, buyers and investors. He is a member of the American Bar Association and the Egyptian Lawyers' Association.

JURISDICTION BY JURISDICTION

Arbitration

Beau McLaren and Jane Miles of HFW look at the approach taken on arbitration across the Gulf region.



MIDDLE EAST REGIONAL POSITION

Arbitration remains popular for dispute resolution across the Middle East, particularly for technical and complex disputes. Regional arbitrations are increasing in number, with record caseloads in many jurisdictions. Accordingly, to appear arbitration-friendly and increase investor confidence, regional jurisdictions have modernised their legislation to promote arbitration across the Middle East. Arbitration is attractive for several reasons. Perceived benefits include confidentiality, expert decision-makers, international enforcement and, generally, the prospect of recovering costs if successful. As a result of these benefits, certain industries, such as construction (which is a key regional sector and a fertile ground for disputes in a volatile market), view arbitration as their traditional forum for dispute resolution: many common standard-form contracts include arbitration by default. The rise in arbitration is set to continue in the short-term within the region, but this is not without challenges. The cost of arbitration remains a concern, particularly for larger disputes common in this region, and third-party funding is likely to become more prevalent. Competition is also increasing: Arbitration is a business and the region has seen a proliferation of new institutions competing for cases. At the same time, the regional courts are improving their ability to handle complex, technical disputes, matching many of the benefits associated with arbitration. Alternative dispute resolution, such as mediation, continues to attract focus as a lower-cost alternative. That said, while the options for dispute resolution are greater than ever, Middle East arbitration is likely to see continuing improvement as parties and processes become more sophisticated, putting the region at the forefront of global developments in arbitration.

SAUDI ARABIA

Despite acceding to the New York Convention nearly 25 years ago, arbitration has historically been treated with circumspection in Saudi. Enforcing arbitral awards was typically lengthy and difficult, as decision-makers often examined the merits of a dispute when considering enforcement applications. Recently, however, Saudi has made significant changes to its arbitration landscape to position itself as an arbitration-friendly jurisdiction. In 2012, it enacted a new Arbitration Law, which, in 2013, was complemented by an Enforcement Law allowing a streamlined process for enforcing domestic and foreign arbitral awards. In 2016, the Saudi Centre for Commercial Arbitration (SCCA) opened introducing its own Arbitration Rules. The Arbitration Law, Enforcement Law and SCCA Rules are all based upon UNCITRAL's Model Law and Rules, with some changes to reflect Sharia Law and Saudi public policy. Initial signs are that these changes are having a positive impact and arbitration is becoming more popular. In the 12 months to September 2018, applications for enforcement of foreign arbitral awards reached a record of over 250, with a value of nearly USD 1bn. Growth of foreign and domestic investment in Saudi is likely to facilitate continued arbitration growth. However, given Saudi's historical approach to arbitration, some investors may remain cautious about arbitrating disputes and enforcing awards there.

OMAN

Oman introduced a modern arbitration law, Oman Royal Decree No. 47/1997 (as amended by Oman Sultani Decree No. 3/2007), over 20 years ago. It is based on the UNCITRAL Model Law and provides parties with considerable flexibility and a robust legislative framework. The comprehensive nature of Oman Royal Decree No. 47/1997 has meant the use of institutions for administrative purposes has, historically, been minimal. Parties have managed to agree which procedures to adopt by reference to provisions in that law. However, as disputes become more international, a recent trend has seen parties seeking directions of tribunals for the introduction of additional procedural steps not required under this law, such as witness statements or disclosure. Oman has now recognised the need for a local arbitration institution with comprehensive arbitration rules to administer more complex disputes. Oman Royal Decree No. 26/2018 has indicated that an Oman Commercial Arbitration Centre will be established and affiliated with the Oman Chamber of Commerce and Industry. There is no date by which the Centre will be operational but, it is expected to be the default administrative centre for all Omani arbitrations, with its own international-standard arbitration rules. Oman is a signatory to the New York Convention.

KUWAIT

Arbitration is relatively uncommon in Kuwait, but gaining in popularity. Kuwait Decree Law No. 38/1980 (the Civil Procedure Law) which governs arbitration in general and Kuwait Law No. 11/1995 (the Judicial Law) governs it through the Court of Appeal. Neither is based on the UNCITRAL Model Law. The Kuwait Mediation and International Arbitration Centre (KMIAC) is the main arbitration institution. If an arbitration agreement does not specify an arbitration institution, the arbitration council of the Kuwait Court of Appeal will assume jurisdiction to arbitrate civil and commercial disputes, applying the Judicial Law. The Civil Procedure Law requires arbitration agreements to be explicit, in writing and executed by someone with specific authority to agree to arbitration; general capacity to contract is insufficient. Awards are final unless the parties have expressly agreed they can be appealed. Enforcement of domestic awards is through the court that originally had jurisdiction over the case. The court will verify there was a valid arbitration clause, that the time limit for the right of appeal (if any) has expired and there are no justifications to refuse enforcement, but it cannot reconsider the merits of the case. Foreign awards may be enforced under treaties to which Kuwait is a party (e.g. the New York Convention) or under the Civil Procedure Law.

UAE

The UAE is a signatory to the New York Convention and has 'onshore' and 'offshore' jurisdictions. Onshore, the new Federal Law No. 6/2018 has modernised the legislative framework. Based on the UNCITRAL Model Law, it brings the onshore regime significantly in line with international best practice. Scope for challenges to enforcement (a concern under the previous regime) are potentially limited. This law has been bolstered by changes under Cabinet Resolution No. 57/2018, streamlining enforcement of foreign awards. Other recent developments include the repeal, in September 2018, of arbitrators' potential criminal liability for a failure (or perceived failure) to act with 'objectivity and integrity'. The primary 'offshore' jurisdictions are the DIFC and ADGM. Both have dedicated arbitration laws, based on the UNCITRAL Model Law, and courts which take a pro-arbitration approach, particularly on enforcement. The UAE is also home to over 12 of the region's major arbitration institutions alone. Onshore, DIAC and the Abu Dhabi Commercial Conciliation and Arbitration Centre are the most well-known. At the time of writing DIAC's new rules were expected this year. Offshore, the main centre is the DIFC-LCIA Arbitration Centre, which introduced new rules in 2016. The Emirates Maritime Arbitration Centre was recently established in the DIFC, with its own rules, and specialises in shipping disputes. The ADGM currently has no dedicated institution, but is home to an ICC representative office.

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Enforcement: An International Success Story

Dr Mahir Al Banna of the American University in the Emirates looks at the impact of the New York Convention on international arbitration and the UAE's approach to the area.

Under international law, arbitration is mostly used to settle disputes between states or between states and non-state entities, such as multinational corporations, which is known as a 'mixed arbitration'. Arbitration between foreign investors and states falls within the scope of bilateral investment treaties which are treaties between two states and are intended to promote and reciprocally protect investments made by nationals from one state in the territory of the other. These treaties provide investors who are covered by them with a wide range of legal rights which are directly enforceable against the host state through international arbitration.

INTERNATIONAL ARBITRATION AND BORDER DISPUTES

International arbitration as a legal means of dispute settlement plays a significant role in solving disputes involving border issues and sovereign rights. In fact, modern arbitration began with the 1794 Jay Treaty between the USA and the UK, which sought to resolve trade disputes between the two countries, and required arbitral decisions to be reasoned and based on evidence.

Arbitration then became more popular after the Alabama Claims case in 1872, again between the USA and UK. There have also been a number of case studies involving arbitration under public international law, including the 1941 Trial Smelter Case (involving the USA and Canada), the 1911 Savarkar Case (between the UK and France) and 1928 Islands of Palmas case (involving Netherlands and the USA which is one of the most influential precedents dealing with islands territorial conflicts).

INTERNATIONAL ENFORCEMENT

One advantage of using arbitration over other forms of dispute resolution is the ease with which awards can be enforced in other states. The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which is the primary tool for enforcement has been ratified by 159 countries (with Sudan depositing its accession instrument on 26 March 2018). This Convention deals with international arbitral awards and non-domestic awards. The wide acceptance of the New York Convention across the world's industrialized countries is seen as one of the greatest achievements of public international law, and the most important and successful United Nations Treaty on international trade law, according Renaud Sorieul, Secretary of the United Nation Commission on International Trade Law (UNCITRAL) who has called it , 'the cornerstone of the international arbitration system'.

This convention is extraordinary, as it is universally accepted, even though if it was suggested today, it would probably fail, as states would wish to jealously protect their sovereign right to determine the rights of citizens under their laws.

As a result of it an agreement between parties will be held and any resulting decision will be implemented in 80% of the world's countries. If it were not for this, it is unlikely arbitration would be seen as the preferred method of resolving cross-border disputes, as knowing that an arbitral award can be enforced by the coercive powers of the courts in countries around the world which encourages voluntary compliance, and according to a respected academic study nine out of 10 awards are satisfied without the need for enforcement proceedings.

As the New York Convention is an international treaty, the court when called upon to apply it, must do so in good faith, in accordance with the rules of interpretation of international treaties, codified in Articles 31 and 32 of the Vienna Convention on the Law of Treaties 1969.

STATE APPROACHES TO ENFORCEMENT

After the states have fulfilled the formal requirements for making an international treaty legally binding on them, the next question is how will they enforce it in their legal system. For example, can the ratification of the New York Convention be considered sufficient to enable an award creditor to have its award enforced against the award debtor?

MONISM OR DUALISM

International law suggests that the answer to this type of question will depend on whether the state subscribes to the theory of monism or dualism.

According to monist theory, international law and domestic law constitute a single system in which an act of international law is applied within a given legal system without the necessity for it to be transformed into domestic law by legislation. Whereas under the dualist theory, in contrast, the state considers international and domestic law to be two distinct legal orders.

This means, for example, ratification of a treaty by a state imposes an obligation on it at an international level, but it has no effect on the State's domestic law unless the legislature has also enacted a new law giving effect to the adopted treaty at an internal level.

TREATY CATEGORIES

There are two different categories of treaties for enforcement purpose. They can either be a 'self-executing treaty' or a 'a non-self executing treaty'. The New York Convention is a non-self executing treaty which requires adoptive legislation which is compatible with the principles laid down in the treaty.

As a result UNICTRAL has issued a Model Arbitration Law, part of which is intended to simplify the process for ratifying states who wish to implement the New York Convention into their domestic legislative systems.

RECOGNITION AND ENFORCEMENT PROCEDURE

The procedure for obtaining recognition and enforcement under the New York Convention is straightforward and expressed briefly and clearly in Article 4.

A party wishing to obtain recognition and/or enforcement must supply:

1 the duly authenticated original award or a duly certified copy;
2 the parties' original arbitration agreement; and
3 if the award or the agreement is in a language which is foreign to the state where enforcement is sought, there must also be a translation of these documents into the local language.

REFUSAL OF ENFORCEMENT

Under Article 5 of the New York Convention there are a number of grounds on which arbitral awards can be refused enforcement by national courts. These are:

1 a party is suffering from incapacity;
2 the arbitration agreement is invalid;
3 the party against whom it is invoked had not been given proper notice in order to appoint an arbitrator or present their case;
4 the award is not yet binding;
5 the arbitral tribunal did not follow the applicable law in the parties' agreement;
6 the award has been set aside;
7 the subject of the dispute is not capable of settlement by arbitration; or

8 the recognition or enforcement of the arbitral violates the state's public policy.

UAE'S DUALIST POSTION

In dualist states, the constitution requires the enactment of domestic law in order for the ratified international treaty to have binding force in the domestic legal system, and this is the position which has been adopted by UAE.

The UAE ratified the New York Convention on 19 November 2006, without any reservation to facilitate the process for resolving disputes among international businesses within the global market as an effective vehicle, which ultimately encourages and attracts investments in UAE.

UAE ENFORCEMENT

The enforcement of an arbitral award in the UAE, requires the submission of a request for the issue of a confirmation of the award and the enforcement order. As a result of the new UAE arbitration law, (Federal Law No. 6/2018), enforcement proceedings are then carried out directly before the UAE Federal or local Court of Appeal. In the past they were carried out before the Courts of First Instance. However, the decision in the new Arbitration law to by-pass the Court of First Instance has reduced the time and cost of procedures for challenging an Enforcement Order.

Federal Law No. 6/2018 applies to all arbitrations conducted in the UAE unless the parties have agreed to submit to another arbitration law. The UAE's new arbitration law is an adaptation of the UNICTRAL Model Law.

Requests for enforcement should be accompanied by the original award or a certified true copy of it, a copy of the arbitration agreement, a certified Arabic translation of the arbitral award, and a copy of the transcript of the filing of the judgement with the court. The court should confirm and enforce the arbitral award within 60 days, unless there were one or more grounds for the revocation of the arbitration award, as mentioned in Article 53 of Federal Law No. 6/2018.

> "The UAE ratified the New York Convention on 19 November 2006, without any reservations to facilitate the process of resolving disputes among international businesses."

In order to challenge an Enforcement Order or reject it, the claim must be completed within 30 days of the notification date.

In conclusion, international arbitration is supported by several private and public institutions who actively promote it.

After having proved its efficiency, international arbitration has become widespread in the handling of complex disputes and is of great importance.

In this context, it is not surprising that parties use all legal and procedural weapons available to win litigation. This does not however, negate the fact that international arbitration remains the most appropriate solution in many cases. ■

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Chenshan Liu v Dubai Waterfront LLC

Case Detail
Chenshan Liu v Dubai Waterfront LLC.
Citation: [2016] ARB 004
Court: DIFC Court of First Instance
Hearing Date: 23 May 2016

Dr Gordon Blanke discusses a case where a DIFC-Dubai Judicial Tribunal ruling had the potential to impact a request to enforce an arbitration award in the DIFC.

This case dealt with an application to the Dubai International Financial Centre (DIFC) Court of First Instance for the offshore recognition and enforcement of a DIAC award rendered in a Dubai-seated arbitration for onward execution onshore. The DIFC Court of First Instance granted an order for recognition and enforcement in 2016. The award debtor then filed an application for setting aside before the DIFC Courts and moved for nullification of the award before the onshore Dubai Courts. In both proceedings, the award debtor raised, among other things, the purported invalidity of the arbitration agreement as a ground for a successful challenge. Around September 2016, following the establishment of the Dubai-DIFC Judicial Tribunal (see Dubai Decree No. 19/2016 Establishing the Dubai-DIFC Judicial Tribunal), the award debtor challenged the jurisdiction of the DIFC Courts before the JT (see JT Case No. No. 2/2016 – Dubai Water Front LLC v Chenshan Liu), arguing that Article 42 and 43 of DIFC Law No. 1/2008 did not apply to DIAC awards. The JT found in favour of the onshore Dubai Court's jurisdiction to annul and enforce the award. The DIFC Court of First Instance then stayed its proceedings and in 2017, the Dubai Courts rejected the award debtor's application for nullification, on appeal and cassation and the award creditor applied to the DIFC Court of First Instance to re-instate the original 2016 DIFC Court Order for recognition and enforcement.

CONTROVERSY AND THE JT DECISION

The JT remitted the case for judgment to the onshore Dubai Courts and ordered the offshore DIFC Courts to stop entertaining the case. It departed from the premise that it was seized to resolve a conflict of jurisdiction by determining which of the two courts, the onshore Dubai or offshore DIFC Courts, had proper jurisdiction to 'enforce or annul' the award. In doing so, the JT disavowed the application of the 1958 New York Convention and attributed jurisdiction to the onshore Dubai Courts on the basis of 'the general principles of law embodied in the procedural laws'. Importantly, the DIFC minority of the JT dissented. They argued the DIFC Courts acknowledged the exclusive jurisdiction of the onshore Dubai Courts as the courts of the seat to hear an action for the nullification of the award, but the DIFC Courts had 'compulsory and exclusive jurisdiction' to entertain an application for recognition and enforcement within the DIFC; and each Court was free to deal with the applications before it in accordance with the laws applicable to such applications. The controversy around the JT decision in this case revolved in particular around the attribution of general jurisdiction for both nullification and enforcement to the onshore Dubai Courts in complete disregard of the statutory rules of jurisdiction applicable to the DIFC Courts. The JT failed to identify the source of the Dubai Court's purported general jurisdiction apart from making a half-hearted reference to 'the general principles of law embodied in the procedural rules'. It ignored that there was no hierarchy between the onshore and offshore courts and each had its own rules of jurisdiction upon which they operated. Each court was obliged to recognise the respectively other court's judicial instruments, including ratified awards, under Aricle 7 of Dubai Law No. 12/2004, which lays the foundation for the operation of an area of the free onshore-offshore movement of those judicial instruments and is based on a regime of mutual trust and recognition between the onshore

and offshore courts. The DIFC Courts also benefit from their own statutory rules which assist in the determination of their own jurisdiction. Therefore to give exclusive jurisdiction for recognition and enforcement to the onshore Dubai Courts ignored that each court, i.e. both onshore Dubai and the offshore DIFC Courts, have their own spheres of jurisdiction, which co-exists within and by virtue of the regime established by Article 7 of Dubai Law No. 12/2004 as amended.

DIFC COURTS' DECISION

The DIFC Court of First Instance retained 'residual jurisdiction' for the award's recognition and enforcement on the basis of the original and exclusive jurisdiction accorded to the DIFC Court of First Instance over any claim or actions over which the Courts have jurisdiction in accordance with the DIFC laws and Article 24(1) of DIFC Law No. 10/2004, which gives jurisdiction to the DIFC Courts to ratify any recognised arbitral award. Sir Justice David Steel concluded, 'It is clear from [Article 2] (and Article 4) [of Dubai Decree No. 19/2016] which set out the jurisdictional limits of theJT] that the mischief which the Decree is intended to resolve is that of a conflict of jurisdiction [between the Dubai and the DIFC Courts]. Accordingly by virtue of Article 5, the Joint Judicial Committee [i.e. the JT] should suspend proceedings until the decision determining the competent court is made'. He also added, 'On one view there is no risk of conflicting decisions given the careful allocation of jurisdiction under the statutes. The only issue in the present that might have given rise to a conflict of jurisdiction and/or conflicting decisions was that of the validity of the Award. In according jurisdiction to the Dubai Courts on this issue the Joint Judicial Committee [i.e. the Judicial Tribunal] must be treated as having complied with the requirements of Article 4(3) of Dubai Decree No. 19/2016:. '[The Tribunal] adjudicates applications submitted as provided in the Decree in accordance with the legislation in force and the rules on jurisdiction prescribed in this regard'. He continued, 'There is nothing in Dubai Decree No. 19/2016 to suggest that the Joint Judicial Committee has executory power to override the statutory jurisdiction of either [the onshore Dubai or the DIFC] court. It follows that once the Court of Cassation had dismissed the Defendant's appeal and the administrative stay had been lifted, the Claimant was entitled to reactivate the recognition proceedings. I reject the submission that the DIFC Courts had no residual jurisdiction in the matter' ([2016] ARB 004, at paras 34-36) and reinstated the original DIFC Court Order for recognition and enforcement.'

Sir Justice Steel discarded the proposition that the onshore Dubai Courts had general jurisdiction in relation to the nullification and the enforcement of the award. In his view, the Dubai Court's reliance on the 'general principles of law' as a ground for its own jurisdiction was difficult to reconcile with the 'exclusive jurisdiction' given to the DIFC Courts under Article 5 of Dubai Law No. 12/2004 ([2016] ARB 004, at para. 30 d.) which meant by-passing the New York Convention which could result in a discriminatory treatment of domestic and foreign awards,and was contrary to the essence of the DIFC Court of First Instance's power to ratify both domestic and foreign awards under Article 24 of DIFC Law No. 10/2004. According exclusive jurisdiction for the recognition and enforcement to the Dubai Courts would 'lead to a black hole where it would be impossible to recognise and enforce an Award upheld by Dubai Courts within the DIFC, since there was no statutory mechanism for Dubai Courts to directly issue an order for enforcement of an Award within the DIFC except through the DIFC Courts. The DIFC Court of First Instance's approach in this case must be saluted as it revives the DIFC Courts' role as a conduit and delimits the proper jurisdiction of the onshore Dubai and the offshore DIFC Courts in relation to the recognition and enforcement of non-DIFC awards rendered in onshore Dubai. While the onshore Dubai Court's jurisdiction to nullify the award in its curial capacity is exclusive, both courts have concurrent jurisdiction to recognise and enforce. Where the onshore curial court is seized of an action for nullification, the DIFC court will suspend an action for recognition and enforcement before it and only re-activate that action if the onshore action for nullification fails.

If the onshore action for nullification succeeds, the DIFC Courts will be bound by that outcome under Articie 7 of Dubai Law No. 12/2004 and will have to discontinue the action for recognition and enforcement pending before it. In addition, it is worth bearing in mind the 30-day moratorium for an award debtor to mount a challenge under Article 54(2) of Federal Law No. 6/2018 self-evidently assists this process and supports a regime that offers award creditors a choice between recognition and enforcement directly onshore on the one hand and offshore recognition and enforcement through the conduit of the DIFC for onward execution onshore on the other. ■

Right First Time

Mohammed R. Alsuwaidi of Alsuwaidi & Company explains the secrets of ensuring you get it right first time when working with the tricky area of arbitration agreements in the UAE.

Last year, in response to the growing importance and preference for arbitration in the UAE, authorities here issued a new Arbitration Law, Federal Law No. 6/2018, which repealed previous provisions in this area found in Article 203 to 218 of Federal Law No. 11/1992 or the UAE Civil Procedure Code. With the new law, confirming arbitration's role as a preferred mode of dispute resolution and providing better guidance for arbitration in the UAE, it is worth taking a look at problems with enforcement and issues that can be caused when there is a defective arbitration agreement.

Arbitration, as a form of alternative dispute resolution, is an extraordinary remedy. It allows parties to confer jurisdiction on settlement of their disputes to an arbitral tribunal, and in the process, take jurisdiction away from the regular courts. However, as it is an extraordinary remedy, there can be a number of reasons why those who wish to use it might find this impossible in the end. The three most notable reasons are that the dispute involves a matter of public policy, there is a lack of capacity of the signatory, or that there was a defective arbitration agreement. In the past in the UAE, not pleading the existence of an arbitration clause at the first hearing was also treated by the Courts as waiver of the arbitration agreement, although fortunately this is no longer the case with the new Arbitration Law.

WHAT IS AN ARBITRATION AGREEMENT?

An arbitration agreement is defined in Article 1 of Federal Law No. 6/2018 as the agreement of the parties to refer a matter to arbitration. This agreement can be made either before or after the dispute arises. It can be contained in a particular contract in respect of all or some disputes that might arise between the parties, or in a separate agreement, or through an explicit referral where such a clause is considered a part of the main contract. As arbitration is largely by consent, it is possible for an arbitration agreement not only to be entered into after a dispute arises but to be entered into even if a claim is already before the courts and then proceed on this basis.

However, in order to enable the choice of arbitration as a form of alternative dispute resolution, there are a number of points that need to be considered when entering into the arbitration agreement.

POINTS TO CONSIDER

1 The dispute should be a matter where composition or settlement is allowed, and Article 4(2) of Federal Law No. 6/2018 stipulates that arbitration will not be permitted on matters that are non-conciliatory. As a result issues concerning public policy cannot be submitted for arbitration and issues involving areas such as employment and criminal matters are not arbitrable.

2 The arbitration agreement should only be entered into by a natural person who enjoys capacity to dispose of rights or the representative of a juristic person who is authorised to agree to arbitration. There are two capacity aspects to remember on this requirement of the law. Firstly, the person signing the agreement must have capacity to contract based on the law governing such person's capacity. For example, in the UAE, the capacity to contract without need of a guardian or court order

is available to nationals when they have reached the age of 21 (lunar years). This means that an Emirati below the age of 21, will not have the capacity to sign an arbitration agreement by themself. However, if for example, the party entering into the arbitration agreement is from another country such as the UK, UK laws will determine whether they have the capacity to enter into the arbitration agreement and they would be able to do that at 18. Article 53 (1)(b) of Federal Law No, 6/2018 confirms this requirement as it states that an arbitration award may be avoided if either party, at the time of concluding the arbitration agreement, lacked capacity according to the law governing their capacity. Another key point on the issue of capacity is whether the authority to enter into an arbitration agreement has been validly delegated. In the case of companies, it is necessary to refer to constitutional documents such as articles of association to ensure the signatory has the necessary capacity to bind a company to arbitration. This is confirmed by Article 53(1)(c) of Federal Law No. 6/2018 which provides that an arbitration award may be avoided if the person has no capacity to dispose of the disputed right according to the law governing their capacity. In the UAE, powers of attorney are usually presented to establish a person's authority to act on behalf of a juridical entity. Most powers of attorney and contracts are signed by the general manager, who usually has a wide range of authority to bind the company they represent. However, when entering into a contract with an arbitration agreement or a separate arbitration agreement, it is important to ensure that the signatory has the capacity to enter into the arbitration agreement. In this context, the constitutional documents may confer or limit the authority to bind a company in arbitration to a specific officer or person, or only for specific disputes or for disputes within a particular value. It is also possible that the constitutional document will dictate whether the authority to bind the company to an arbitration agreement can be delegated. Therefore, in order to ensure capacity, it is necessary to check the capacity to contract and the validity of any delegation of that capacity.

3 The arbitration agreement must be in writing as required by Article 7 of Federal Law No. 6/2018, or it will be null and void. This provision of law establishes the arbitration agreement as a formal contract which should be concluded in a written document. This requirement that arbitration agreement must be in writing reflects the intention of legislators to consider writing an arbitration agreement essential, and not merely a means of proof. As writing is a formative element in the agreement to arbitrate, the invalidity resulting from it is considered an absolute invalidity of public order. This means, it is not permissible to agree the contrary and the court must consider the matter even if the parties do not request them to do that. The details provided in Article 7(2) of Federal Law No. 6/2018 are helpful in order to understand when the requirement that the arbitration agreement is to be in writing is deemed satisfied. This includes when it is included in a signed instrument, stated in exchanged letters or a written means of communication such as emails, when it is in a written contract and a reference is made to the provisions of a standard contract, international convention, or any other document that has an arbitration clause and the referral is explicit, when agreed on while the dispute is being heard by the competent court and the court judges that an arbitration agreement is evident, and litigants are left to commence arbitration proceedings, and the claim is considered as not filed, or when requested in written submissions exchanged between parties during arbitration proceedings or when acknowledged before the courts, where either party requests referral to arbitration and the other party does not challenge the request in their response.

4 Arbitration Agreements are not or deemed terminated on death of either party, unless this has been otherwise agreed on by the parties. As a result, when entering into an arbitration agreement, it is important to keep in mind that the heirs or legal successors will also be bound by the arbitration agreement. If parties do not want this to be the case they will need to agree on this specifically so the arbitration agreement will not be valid against their legal successors.

Arbitration Agreements are the expression of the parties' intent to enter into arbitration proceedings. Arbitrations are often frustrated as a result of defective arbitration agreements, for example, if one of the signatories does not have the capacity or authority to enter into an arbitration agreement. With the new UAE Arbitration Law coming into force, these issues have been brought to the forefront and clarified providing parties with the opportunity to correct any defects in their arbitration agreements and ensure their validity. With arbitration looking set to become an increasingly preferred option for parties with legal claims to consider, as long as the issue does not concern public policy or the intervention of the judicial system, more parties may wish to consider it as it can provide an efficient, objective and more expedient way to achieve resolution. However, it is important to consider planning for arbitration as an option before entering any significant agreements and to make sure these points about the agreement are remembered. ■

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Investor Friendly Arbitration: Different Approaches

The UAE and Uzbekistan, two countries interested in encouraging foreign investment have recently reformed their arbitration laws. Diana Bayzakova of Merritz looks at their differing approaches.

Many governments including the Government of the UAE are currently actively putting forward new policies designed to encourage the expansion of trade and investment. However, there are generally three main legal questions investors and traders ask if they are about to enter into a new foreign market, and or invest substantial capital into a foreign country. These are:

1 does the country have a modern arbitration law, and what international standard or benchmark is that arbitration law based on?
2 is that country a signatory to a 1958 New York Convention on the enforcement of foreign arbitral awards?
3 is that country a signatory to the Washington Convention on the settlement of investment disputes between states and nationals of other states? (Although this only applies to 'legal disputes arising directly out of an investment between a Contracting State and a national of another Contracting State, where the parties to the dispute consent in writing to submit to the International Centre for Settlement of Investment Disputes, so is beyond the scope of this article.)

WHY THIS MATTERS?

The right of a party to enforce a decision of an arbitrator against a losing party in over 150 countries under the 1958 New York Convention on the enforcement of foreign arbitral awards is an advantage of the arbitral process, as this enforcement mechanism is not always available with court decisions.

Arbitration Comparisons

In addition, businesses and investors, particularly in those sensitive sectors like energy, infrastructure and construction industry, often prefer arbitration over local court litigation. So let's take a comparative look at the way this works in two jurisdictions, the UAE and Uzbekistan.

THE UAE INSTITUTIONS

The UAE's reputation as an arbitration-friendly jurisdiction, has been growing steadily, particularly with the introduction of its new Arbitration Law, Federal Law No. 6/2018.

As a contracting state to the 1958 New York Convention since 2006 and the Washington Convention since 1982, the UAE has gained in prominence internationally as a go-to jurisdiction for administering not only local but also regional and international disputes. The Dubai International Arbitration Centre (DIAC) which is established at the Dubai Chamber is considered the largest arbitral institution in the region as a result of its caseload. However, it has also been followed by a number of other arbitral institutions not only in Dubai but also in other Emirates, including the Abu Dhabi Commercial Conciliation and Arbitration Centre, the DIFC-LCIA Arbitration Centre, Emirates Maritime Arbitration Centre (EMAC), and Sharjah International Commercial Arbitration Centre (Tahkeem). This means there is a wide range of fora for resolving disputes out-of-court which provide potential users in the UAE various options and choices, and which also help ensure that all these institutions stay competitive.

UAE LEGISLATION

However, the UAE only recently adopted its new arbitration law (in 2018) which is modelled on the UNCITRAL text. Prior to that all arbitrations in the UAE were governed by just 16 articles in the UAE Civil Procedure Code (Article 203 – 218 of Federal Law No. 11/1992).

Most of the provisions in Federal Law No. 6/2018 are based on the UNCITRAL Model Law, but there are some notable variations or peculiarities. As a result, potential international investors in the UAE should note that the issue of authority to enter into arbitration agreements (and the resulting necessity to have a special power of attorney to bind a company to arbitration) which was a notorious way in which to cause an arbitral award to be annulled at the ratification stage by the UAE courts, has now been cemented in Article 4(1) of Federal Law No. 6/2018 and continues to be applicable.

Another interesting provision is found in Article 10 of Federal Law No. 6/2018. Although this provision states that any person irrespective of their nationality can be an arbitrator, it prevents members of an arbitral institution's board or any other administrative body of the institution which is responsible for the administration of the disputes to act as arbitrators in arbitrations which have their seat in the UAE.

The apologists of this provision, which I personally relate to and am actively promulgating in TIAC as its Director, argue that such a provision is necessary to avoid conflicts of interest. Indeed, one of the simplest examples of such a scenario could be when a person is appointed to act as an arbitrator under the rules of the institution they sit on the board, and a party raises a challenge against them, their fellow board members are faced with a situation, where they might have to opine or decide on the challenge against a colleague they work closely with. The opponents of such a provision refer to other jurisdictions, Singapore or France, for example, and the respectable arbitral institutions in those jurisdictions, which seem to strike that fine balance to ensure fair and unbiased dispute settlement. Another point of note is the somewhat groundbreaking provisions found in the UAE on the powers of the tribunals to order interim measures, including those of prohibitory nature. The new law has also removed the requirement for an arbitral award to be signed in the UAE. This is helpful too as in the past this was cumbersome and could create additional expense for the parties as at times arbitrators had to fly in specifically just for the signature of the award in the UAE.

AREAS WHICH MAY NOT HAVE CHANGED IN THE UAE

There are however, other areas which do not seem to have changed despite UAE arbitration reforms. In one of the latest arbitral proceedings, where I acted as a sole arbitrator, despite

the parties' extensive discussions on whether or not the new law had abolished the requirement for the witnesses to take an oath on their respective books of religion, both parties and I reached a unanimous decision to undergo the usual process of oath-taking, that we had all got used to in UAE seated arbitrations, in order to avoid any future enforceability issues. In order words, the procedural rule for oath-taking seems to have stayed intact, as no further elaboration of that rule was provided in Article 35 of Federal Law No. 6/2018.

OTHER NOTABLE PROVISIONS

Other notable provisions include relatively short time limits for submissions (14 days from the date the tribunal has been constituted for a party to submit its statement of claim, and 14 days from that date for a respondent to submit the statement of defence) and designation of a special court – the Supreme Court – to ratify, execute and annul the awards thereby removing one layer, the court of first instance, for a losing party to challenge the arbitral awards limiting it only to the Court of Cassation.

UZBEKISTAN AND BILATERAL AGREEMENTS

Uzbekistan is also a contracting party to the 1958 New York Convention on the enforcement of foreign arbitral awards, and a member state of the Washington Convention on the settlement of investment disputes between states and nationals of other states. 2016 marked a major milestone in Uzbekistan's history as there was a change of government, which was followed by political and economic reform. This led to a number of bilateral investment agreements being signed between the Uzbekistan government and other countries, and increased interest in investment from abroad. It is worth noting in this context, that in 2018 the UAE also signed a number of bilateral agreements with Uzbekistan, including an agreement to set up a USD 1 billion investment fund.

UZBEKISTAN LEGISLATION

Like the UAE, in order to comfort investors Uzbekistan is entering a new era, where international arbitration is being benchmarked with international best practices. Like the UAE, here too the decision has been made to model the new Uzbek law 'On international commercial arbitration' on the UNCITRAL text.

There is a universal agreement among experts in the field that the UNCITRAL text was drafted in such a way that it is as neutral as possible to the various cultural characteristics of states that might adopt the law. Uzbekistan has realised the benefits of adopting the UNCITRAL text as a benchmark for its new arbitration law which is scheduled to be passed later this year. Currently, however, the legal framework for arbitration in Uzbekistan is largely based on a law called 'On arbitration courts' which was passed in 2006 and the Presidential Decree, 'On the establishment of the Tashkent International Arbitration Centre (TIAC),' which was signed on 5 November 2018 .

RESTRICTIONS IN UZBEKISTAN

Before 5 November 2018, there were two major hurdles to the development of arbitration in Uzbekistan, which were the restrictions on the involvement of foreign arbitrators, and restrictions on the applicability of foreign law as a substantive law to resolve disputes. This meant local companies and foreign investors had to largely refer their disputes to foreign arbitral institutions, despite the existence of local arbitration centres in Uzbekistan. This meant they had to incur additional travel costs for local representatives and/or they had to engage foreign arbitration practitioners. Those local companies which were unable to afford to resolve their disputes with their foreign counterparties for the reasons above, would simply drop their grievances and decide not to pursue possibly legitimate rights in foreign fora. In addition, the absence of a workable legal framework for international arbitration led to a lack of widespread interest in arbitration in Uzbekistan and a lack of local talent who were capable of handling complex disputes with a foreign element as either arbitrators or counsel.

CHANGES FOLLOWING THE TIAC DECREE

Fortunately, the TIAC Decree which came in on 5 November 2018, has brought in a number of changes. Firstly, parties to a dispute can now engage foreign arbitrators and they can also agree to resolve their dispute in accordance with the substantive law of other jurisdictions, and not just Uzbekistan. Local courts are also able to assist arbitrators in granting the interim reliefs, on the collection of evidence and the enforcement of arbitral awards. In addition, there are also a number of additional incentives which have been granted under the TIAC Decree. For example, no VAT charges are applicable for arbitration services rendered by the TIAC and foreign arbitrators' fees are also exempt from income tax. There are also no licensing requirements for foreign advocates or counsel who are willing to act in arbitral proceedings in accordance with the TIAC's Arbitration Rules and in court proceedings which are related to challenges to arbitral awards in the local courts. In addition, smart arbitration, or the conducting arbitration hearings and other procedural meetings with, say witnesses, online is also permitted. Finally, it has been confirmed disputes relating to blockchain issues and intellectual property are also now arbitrable which is another positive change. ■

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Arbitration: The Next Generation

Hamda Ali Al Blooshi tells us about her work at the Sharjah International Commercial Arbitration Centre as a case manager and steps being taken to encourage the next generation of Emirati arbitrators.

The Sharjah International Commercial Arbitration Centre (TAHKEEM) was established by Sharjah Emiri Decree No. 6/2009. The arbitration centre which has its headquarters in Sharjah has a number of young talented Emiratis working at it across a range of specialites, including Hamda Ali Al Blooshi who works there as a case manager. Hamda initially joined the Sharjah Chamber of Commerce and Industry in 2014. While working there she gained an award for Outstanding Performance in the New Employee category as a legal researcher, while specialising in resolution and settlement of disputes through commercial mediation, reconciliation and arbitration, in addition to following up TAHKEEM cases, and working with arbitrators. However, in 2015, she moved to TAHKEEM as a Case Manager and her key roles and responsibilities that include managing arbitration cases and following up on case procedures. She also has to consider applications from arbitrators and experts and follows up on all related issues. In addition, she has to prepare arbitration training programmes, courses and participate in legal conferences and seminars and respond to legal queries.

WORK

However, that is not all. Hamda's work also includes commenting on and expressing opinions on proposed draft laws, and visiting other governmental entities in order to develop and improve bilateral cooperation with the various bodies which work alongside TAHKEEM. She also gets to contribute to amendments to TAHKEEM's regulations and systems. At the administrative level, Hamda registers and handles all the commercial arbitration cases. This includes receiving all the required documents from parties for referral to the relevant department. She also has to monitor the registration and progress of arbitration proceedings which means co-ordinating with the relevant authorities. Another of her tasks includes reviewing and analysing arbitration case statistics and making recommendations based on results for change to the Centre's systems. One such change, happened in 2016, when the centre launched an electronic registration programme for arbitrators, experts and arbitration requests in order to speed and streamline procedures at the centre which was based on one of her brightest ideas.

When Hamda began her work, arbitration cases tended to be limited to certain specific fields, such as construction, accounting and engineering. However, in recent years, TAHKEEM has been receiving totally different kinds of arbitration cases, including those involving the environment, media, production and investment. These days commercial arbitration is a wide and varied field with multi-faceted aspects.

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TRAINING FOR ARBITRATORS

On a personal professional level, Hamda had received awards from the Sharjah Chamber of Commerce & Industry in the General Employee category, excellence management team and quality team categories. However, as the UAE economy develops and diversifies, both she and TAHKEEM are looking to provide more professional training on arbitration so that they are prepared for these challenges. As a result, the centre has signed an agreement with the University of Sharjah (where Hamda herself is currently working towards a PHD in law) to establish a professional diploma programme on international commercial arbitration. Four groups of students have already completed the course, and in order to strengthen the programme and help new arbitrators develop their skills, Hamda has put forward the idea of diploma graduates being appointed as secretaries in arbitration cases, as she believes early practice in real cases is crucial to these graduates becoming successful arbitrators.

YOUTH INVOLVMENT IN ARBITRATION

She also feels strongly about promoting a strong arbitration culture among young people and as a result she is the Chairperson of Sharjah International Commercial Arbitration Centre for Youth, which was established to help promote arbitration and prepare a generation of young Emirati arbitrators. TAHKEEM has also helped to support the UAE National Agenda for Youth by acting as a representative body for young people working in the field of arbitration in the UAE. As a part of this process the centre promotes the role of youth and helps harness their talent. They are also investing in developing their decision-making skills, and ensuring their knowledge develops in line with the rapid global developments which are currently happening within arbitration. For Hamda what is important is the way the centre is providing an incubation environment by listening to young people's ideas, while underpinning their role in and contributions to Tahkeem and its activities. The Centre also plans to develop initiatives and projects which will address youth interests and help provide a unified and sustainable platform that engages them with decision-makers in youth-led institutions, in addition to connecting young people with leadership teams in both public and private sector institutions. The Centre is currently working on implementing several initiatives to help establish a national generation of young arbitrators and highlighting the role of arbitration as an effective solution to their disputes. These include but are not limited to an initiative to promote the culture of arbitration through introducing all aspects of commercial arbitration through social media platforms; an Entrepreneurs' Forum; and visiting governmental and private bodies to introduce them to arbitration. ■

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Hamda Ali Al Blooshi is a non-practising lawyer who is also involved in the work of the Supreme Council for Family Affairs, University of Sharjah. She is Head of the Alumni Association Affairs Committee and works within a number of its subcommittees, including the Alumni Happiness Committee which helps resolve alumni complaints. She is also the Chairman of the Sharjah International Commercial Arbitration Centre Youth Council.

Offshore Approaches: DIFC and ADGM

Daniel Brawn of Galadari Advocates & Legal Consultants looks at the different approaches available for those who head to the DIFC or ADGM to undertake their arbitration.

The UAE has begun a major initiative of updating its laws and procedures, by adopting best international practice to encourage both foreign direct investment and trade more generally within the country. This has led to a whole host of new laws being enacted in recent years, including a new Companies Law in 2015, a new Bankruptcy Law in 2016, tax laws in 2017, a new Federal Arbitration Law (Federal Law No. 6/2018) and Foreign Direct Investment Law (Federal Decree Law No. 19/2018) in 2018. In addition, there were also further amendments to the Companies Law as a result of Federal Law No. 18/2017 which has allowed the authorities to not apply the requirement for 51% local ownership of UAE companies.

The clear message being sent to the world is that the UAE is open for business, and there is a strong modern legal structure now in place in a form which is familiar to the big international players and which will help serve their business needs.

DIFC START

These changes started well before 2015. when Dubai realised early on it needed a modern system with which foreign parties would be familiar, and established the Dubai International Finance Centre (DIFC) as a free zone within Dubai. The DIFC has its own commercial laws in English, and the DIFC Courts were established in 2004 as English language courts using English common law procedure.

It is important to note that outside the DIFC and the ADGM, the UAE is a civil law jurisdiction.

The DIFC Arbitration Law (DIFC Law No. 1/2008) was passed in 2008, and in 2014 the DIFC Dispute Resolution Authority was created. Then in 2015 it entered into an agreement with the London Court of International Arbitration (LCIA) for management and administration of arbitrations under the DIFC-LCIA Arbitration Rules and the DIFC-LCIA Arbitration Centre was launched.

ADGM POSITION

Abu Dhabi came to the party a little later, establishing the Abu Dhabi Global Market (ADGM) in 2015, which also has its own laws, uses English and has common law courts.

The ADGM's Arbitration Regulations were passed in 2015 and the ADGM Arbitration Centre became operational in October 2018.

ARBITRATION IN THE DIFC

The DIFC Arbitration Law, DIFC Law No. 1/2008 is based on the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration of 1985 (the UNCITRAL Model Law), upon which all modern arbitration laws are based, in order to comply with best international practice.

The DIFC Arbitration Law applies where the seat of the arbitration is the DIFC, although certain parts apply even when enforcement is sought of an award that was made elsewhere. Therefore, enforcement may be sought in the DIFC Court for foreign and domestic arbitral awards, and there is a Memorandum of Understanding between the DIFC Courts and the mainland Dubai Courts whereby each will enforce decisions of the other.

For this reason, the DIFC Courts have become a conduit for such enforcement, without the need to have all the documents translated into Arabic by a certified legal translator, as would be the case in the onshore Dubai Courts.

The DIFC Arbitration Law (DIFC Law No. 1/2008) is in a form that is easily recognisable to arbitration practitioners. It provides for party autonomy; kompetenz-kompetenz; electronic communications; and support from the DIFC Courts where necessary. There are also no nationality restrictions on the choice of arbitrator unless the parties agree otherwise. If the parties do not agree on the number of arbitrators, the default position is a sole arbitrator. In addition, if the parties do not agree on the appointment of an arbitrator, the appointment is made by the DIFC Court of First Instance. The seat of the arbitration will be the DIFC if the parties so agree or if the dispute is governed by DIFC law.

In addition, the tribunal may order interim measures; and enforcement of an arbitral award may be resisted on grounds which are reflected in the UNCITRAL Model Law, under the New York Convention (to which the UAE became a signatory in 2006) and Federal Law No. 6/2018.

Significantly, the costs of the arbitration may include the reasonable costs of legal representation of the successful party, which is not always the case in civil law jurisdictions.

THE ROLE OF DIFC-LCIA

The DIFC-LCIA Arbitration Centre administers commercial arbitrations under contracts which incorporate the DIFC-LCIA Arbitration Rules. These Rules are also in a form which is readily familiar to arbitration practitioners.

The Arbitration Centre appoints the arbitrator(s); and unless the parties agree the number of arbitrators, the default position is a sole arbitrator. If the parties cannot agree on the appointment of an arbitrator, or if two party-appointed panel members cannot agree the presiding arbitrator, the Arbitration Centre decides for them. As for nationality, where the parties are of different nationalities, a sole arbitrator or a presiding arbitrator may not be of the same nationality as one of the parties, unless that party agrees in writing.

There are also provisions for expedited and emergency arbitration, and for joinder of third parties and consolidation of arbitrations where all parties agree.

The DIFC-LCIA Arbitration Centre requires payment in advance on account for costs and centre fees and those of the arbitrator(s).

The arbitral tribunal may also order one party to pay another's reasonable costs of legal representation, based on

> “There are modern arbitration centres in both the UAE’s major cities and legal structures in place to help make arbitration work.”

the ‘English Rule’ that the award of costs should reflect the parties’ relative success and failure on the issues decided in the arbitration.

ADGM ARBITRATION

However, arbitration in the ADGM Arbitration Centre is different, because the Centre does not administer arbitrations and has no arbitration rules of its own but merely provides a venue and facilities for holding arbitration hearings. Instead, the ADGM Arbitration Centre has an agreement with the International Chamber of Commerce (ICC), which has established in the ADGM the first ICC Court’s Representative Office in the Middle East to service the increasing demand for arbitration in the region.

Despite not administering arbitrations, the ADGM does provide a venue for holding hearings, with state-of-the-art facilities including video-conferencing and cutting-edge software for case presentation, available to any party which wishes to resolve their disputes through arbitration at the ADGM. As a result, the ICC Representative Office can accept the registration of cases under the ICC Arbitration Rules, which are administered by the ICC Court of Arbitration, and the hearings are held in the ADGM.

The ADGM Arbitration Regulations 2015 are also based on the UNCITRAL Model Law, with modifications to reflect best international practice. Part 3 of the Regulations are the operative provisions for arbitrations where the seat is ADGM or the arbitration agreement incorporates the Regulations.

Part 4 applies to the recognition and enforcement of awards. The Regulations provide for party autonomy; kompetenz-kompetenz; supervisory functions of the ADGM Court; electronic communications and a default position of a sole arbitrator. There are no nationality restrictions on who can serve as arbitrator unless the parties agree otherwise. There are also provisions covering interim measures; consolidation of arbitrations and the joinder of third parties.

Award of legal costs is possible if the successful party has claimed them, and enforcement of awards may only be resisted on the limited grounds which are reflected in the Model Law, the New York Convention and Federal Law No. 6/2018.

Under Article 18(3) of the Regulations, where the parties do not agree on the appointment of an arbitrator, the appointment is made by the arbitral institution administering the arbitration, or by the ADGM Court if there is no such institution.

As for the seat, under Article 33, if the parties do not agree this, ‘the seat of the arbitration shall be determined by (a) any arbitral or other institution or person vested by the parties with powers in that regard, or (b) by the arbitral tribunal …’. This suggests that it could be either, and neither takes precedence.

Clearly, if parties intend to use the ADGM Arbitration Centre as a venue for their arbitration, it makes sense to adopt the ICC Arbitration Rules and have the arbitration administered by the ICC Court.

If the parties choose to have an ad hoc arbitration, there will be no institution to administer the proceedings, but the ADGM Court may provide support.

SIMILARITIES AND DIFFERENCES

The DIFC and ADGM Arbitration laws are similar and conform to modern standards.

However, there are difference as the DIFC-LCIA Arbitration Centre administers arbitral proceedings and has its own Arbitration Rules, whereas the ADGM Arbitration Centre has no arbitration rules and does not administer arbitral proceedings, although it does have wonderful facilities and works with the ICC, who do administer arbitral proceedings and also have their own arbitration rules.

Any award rendered in the DIFC or ADGM may be ratified through the DIFC or ADGM Court respectively, as may foreign awards. Either way, there are modern arbitration centres in both the UAE’s major cities, and legal structures in place to help make arbitration work. ■

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Daniel Brawn has focused particularly on arbitration as a means of resolution for technical disputes, drafting pleadings and advising on the level of proof required in breach of contract claims, extensions of time, liquidated damages, the valuation of variations and loss and expense, the effects of delay and prolongation. He has a wide experience of the construction industry, both from a contentious and non-contentious perspective.

The Role of the Arbitrator

Arbitrators have more freedom than judges in some areas due to the principle of competence-competence. Dr Shaaban Raafat legal adviser to Sharjah Chamber of Commercial and Industry compares the approach taken internationally and in the UAE to this matter.

Most modern legislation recognises the principle of the Autonomy of the Arbitration Clause, which has its legal basis on another principle (competence de la competence), which in turn gives the arbitral tribunal the right to adjudicate its jurisdiction. It is a principle which was confirmed by the Washington Treaty establishing the International Bank of Reconstruction and Development IBRD, in Article 41, which states that: 'The court shall determine its jurisdiction.'

WHAT THIS MEANS FOR THE ARBITRATOR?

This means that the arbitrator in the modern legal systems enjoys freedom from interference by the State judiciary. There is an absence of guardianship and they are able to develop their mandate to completion.

In fact, the arbitrator enjoys wider freedoms than the state judge. As unlike the state judge, the arbitrator has the power to consider their competence and freedom to conduct the proceedings, and this is enshrined in modern arbitration laws around the world regardless of their different economic and political environments.

COMPETENCE-COMPETENCE

The principle of 'competence-competence' means that the arbitral tribunal is competent to consider whether it is competent to deal with a dispute before it or not, and if the authority has such jurisdiction, even if it is prompted by the absence, nullity, invalidity or demise of an arbitration agreement. In considering its jurisdiction, the arbitral tribunal will examine the existence, absence, validity, demise and viability of the arbitration agreement and everything which is related to the determination of the scope of the arbitral tribunal's jurisdiction.

EXAMPLES IN INTERNATIONAL LEGISLATION

In Egyptian Law, the principle of 'competence-competence' is found in Article 22(1) of Egypt Law No. 27/1994, as amended by Egypt Law No. 9/1997, which states, 'The arbitral tribunal shall decide on defences concerning its lack of jurisdiction, including defences based on the absence, fall or nullity of the arbitration agreement.' In addition, Article 6(2) of the International Chamber of Commerce (ICC) rules on arbitration state, 'if the respondent does not respond to the request for arbitration or the effects of a payment relating to the existence, validity or scope of the arbitration agreement, the International Court of Arbitration may examine the appearance of an agreement to invoke the existence and decide to continue the arbitration proceedings without prejudice to the acceptance or validity of such defences, in which case the arbitral tribunal shall take any decision relating to its jurisdiction. If the International Court of Arbitration does not reach this conclusion, the parties shall be informed that the arbitration is not possible.'

Article 41 of the 19865 Washington Convention also states, 'The arbitral tribunal shall determine its terms of reference'.

THE UAE POSITION

The legislator in the UAE has followed the international approach in this area and this principle is also provided for in Article 19 of Federal Law No. 6/2018, where it is stated first, 'The arbitral tribunal shall decide on any payment relating to its lack of jurisdiction, including payment based on the absence of an arbitration agreement, invalidity or non-inclusion of the subject matter of the dispute, and the arbitral tribunal may decide to do so either in an interlocutory decision or in the final arbitration award issued on the subject'.

> “The arbitrator in the modern legal system enjoys freedom from interference by the State judiciary.”

This Article then goes on to add, ‘If the arbitral tribunal decides in a preliminary decision that it is competent, any of the parties within 15 days of the date of its declaration of that decision may request the court to rule on that matter, and the Court shall decide on the application within 30 days from the date on which the application is pending before the Court and its decision is not subject to appeal. The arbitral proceedings are pending the determination of such an application unless the arbitral tribunal decides to continue it at the request of one of the parties’.

Article 20 of Federal Law No. 6/2018 also specifies the period for which the parties must uphold the jurisdiction of the arbitral tribunal in respect of the dispute and states that, ‘The payment of the jurisdiction of the arbitral tribunal shall be upheld no later than the date of submission of the defence, referred to in Article 30 of this law, and in the case of payment where the arbitration agreement does not cover the issues raised by the other party during the consideration of the dispute, it must be upheld by the next session. For the hearing in which this payment was made, or if the right is to be lost, the arbitral tribunal may if at all possible accept the late payment if it considers that the delay was for an acceptable reason’. It also states, ‘The appointment or co-appointment by one of the parties shall not entail the loss of the right to present any of the defences referred to in section 1 of this article’.

The purpose of this principle is to avoid the invocation of a defect in a direct way of an arbitration agreement by a party as a ground impeding the arbitral proceedings by granting the arbitrator the power to adjudicate on the question of their jurisdiction while at the same time facing subsequent control by the competent national jurisdiction.

THE AUTONOMY CLAUSE

There are several consequences of the arbitration clause’s autonomy from the original contract. Firstly, the arbitration agreement is not affected by invalidity, dissolution or termination of the original contract. If the contract is invalidated, the agreement remains in place, if the condition is true in itself, but the position is different if the arbitration clause is not true in itself. However, in such cases, only the condition will stop and disappear and not the rest of the contract terms.

Secondly, the arbitration clause is not subject to limitations established by national laws, in particular those which relate to conflict rules.

Thirdly, the arbitral tribunal is competent to deal with matters which relate to the validity of the original contract, and whether to invalidate, annul or terminate a valid arbitration clause, which is defined as the jurisdictional principle. The law by which the original contract is governed also differs from the law by which the arbitration agreement is governed. The original contract may be governed by the law of the judge or the law determined by the conflict-of-laws rules of the judge’s state, while an agreement may be reached between the parties to submit the arbitration agreement to a different law.

Modern arbitration legislation is designed to free the arbitrator. An arbitrator who is denied jurisdiction by the parties cannot abandon their consideration of the dispute and may decide on the question of their jurisdiction, the existence and validity of the arbitration agreement, or the existence and validity of the contract to which this agreement is part.

States often refuse arbitral tribunals the jurisdiction to consider their unilateral proceedings, either in substantive changes in their national legislation in the area of arbitration or in the ways in which they have resorted to revoking the contract with the foreign party that contains the arbitral agreement, but the state is treated contrary to its intention.

The arbitral tribunal shall relinquish its jurisdiction in application of the principle of jurisdictional competence on the one hand and to achieve the principle of continuity of contractual relations in order to ensure and balance the parties and make a distinction where the arbitration is settling disputes of states with foreign contracting persons. When the parties to the contract agree to include the arbitration clause in the original contract or in the arbitration party, one of the parties is precluded from terminating the arbitration clause until the other party consents. ■

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Safety First

With the UAE's first specific product safety law due to come into force shortly, Benjamin Smith, Rebecca Hilton and Noor Al Kooheji of Clyde & Co explain what suppliers can expect.

A new Federal Law on product safety, Federal Law No. 10/2018 is due to come into force in July 2019. Its aim is to ensure the safety of products supplied in the UAE and help facilitate trade between the UAE and international markets. Although the UAE has had consumer protection legislation such as Federal Law No, 24/2006 in place for many years, this is the first law that deals specifically with product safety.

The UAE Cabinet is expected to issue Executive Regulations to the new law by July 2019.

WHO IS IMPACTED?

Under this new law, various obligations are imposed on 'suppliers' of products.

Suppliers are widely defined to cover local manufacturers, commercial agents of foreign manufacturers, importers, and others involved in the supply chain whose activities impact product safety.

ESMA may supervise implementation of this new law in coordination with UAE customs authorities and other relevant local authorities.

WHAT WILL THE EXECUTIVE REGULATIONS COVER?

The Product Safety Law states that the Executive Regulations will contain more information on a number of areas including product recall; methods for disseminating information about product safety issues; and restricting the import into the UAE of unsafe products.

WHICH PRODUCTS ARE COVERED?

The Product Safety Law applies to products that are manufactured in, or imported into, the UAE, including the free zones in the UAE. Certain products are excluded from the application of the law, such as human and veterinary medicines, artefacts and some types of second-hand products.

WHAT DO SUPPLIERS NEED TO DO?

Suppliers will need to ensure they do not introduce unsafe products into the UAE. They will also need to make sure their products remain safe during normal use and that they take remedial measures if a product becomes unsafe during the normal use.

WHICH STANDARDS WILL APPLY?

Suppliers will need to ensure their products comply with any applicable standards issued by ESMA, or by a foreign regulator that has been approved by ESMA. If no such standards are in place, a risk assessment in relation to the product must be filed with ESMA.

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Ben Smith is a corporate and commercial lawyer, and has been practising in Dubai since 2008. He first moved to the region in 1989. He specialises in foreign direct investment and advises clients on expansion into, and operations in, countries throughout the Middle East. He advises on the establishment and structuring of new entities and group restructurings. He has knowledge of the legal, regulatory and practical environment businesses operate in within the region.

WHAT HAPPENS IF A PRODUCT IS DECLARED UNSAFE?

If a product is deemed unsafe by ESMA, the supplier will be able to file a grievance with them.

If a supplier wishes to appeal a decision that its products are unsafe, they must submit their objection in writing to ESMA within 10 working days from the date of the decision that is being appealed.

They will also have to attach documents supporting their appeal and confirm that they will comply with ESMA's original decision until such time as a different decision is issued.

ESMA will consider the appeal and will have to issue its decision in respect of it within 10 working days.

That decision will be final and may not be further appealed or challenged under the mechanism provided for in the Product Safety Law.

WHAT ARE THE PENALTIES FOR A BREACH?

Those who breach the Product Safety Law may be subject to fines of up to 3 million AED and could also potentially face imprisonment. The fact that a consumer is aware of the unsafe nature of a product is not a defence under the law.

The courts may also order the seizure or destruction of products (at the supplier's cost), closure of businesses for up to six months, and revocation of trading licences. ■

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Interview with...His Excellency

Humaid Mohamed Ben Salem

Secretary General
UAE Chamber of Commerce

His Excellency Humaid Mohamed Ben Salem became Secretary General of the UAE Chambers of Commerce & Industry (FCCI) in 2013. It is a body which was set up to increase coordination and cooperation between the UAE's different Emirates on their work in trade and investment. As Secretary General of one of the biggest Federal institutions, he also acts as an official representative of the UAE private sector and is a formber member of the UAE National Assembly. He was the Director General of the UAQ Chamber of Commerce and Industry for 20 years, during which time he helped local chambers and the UAE private sector achieve their goals. In addition, he has been board director of International Chamber of Commerce United Arab Emirates (ICC-UAE) since 2009 and was elected Chairman of that body (now serving a second term) which has a network of 500,000 companies and is the largest national representation of commercial, industrial and business enterprises, and supports and protects the interest of the business community in the UAE.

> "The ICC has helped to build and strengthen bridges and communication channels between the different parts of the UAE economy, ICC Member chambers and the ICC International Secretariat in Paris."

"Since its foundation in October 2002, the ICC-UAE has been eagerly highlighting the country's economic position," he states, "Our events have also helped to enhance and increase the number of partnerships between the UAE and its counterparts worldwide. in addition, the ICC has helped to build and strengthen bridges and communication channels between the different parts of the UAE' economy, ICC member chambers, and the ICC International Secretariat in Paris."

The UAE Business Environment

"I believe the UAE will continue to be the world's best country in terms of stimulating creativity and innovation and encouraging entrepreneurs to establish new projects, while also continuing to develop a proper environment for living, work and investment," Ben Salem states. "This helps achieve our ultimate goal of being the happiness icon for investors and their families from all over the world through our commercial and residential development projects. In the UAE, there are a set of incentives and facilities for registering companies and also awareness programmes and access to feasibility studies which can help entrepreneurs. Support is given in particular to small and medium-size enterprises."

"It is also being given to Emirati companies which wish to invest overseas," Ben Salem continues. "For example, the UAE International Investors Council within the Ministry of Economy, serves

as a link between UAE investors and the governments of the countries, in which they are investing."

ICC's Work

"The Federation of UAE Chambers and all the local chambers are members of ICC-UAE," Ben Salem states. "The ICC organises a large number of economic activities which are conducted by major associations, corporates, and institutions trading in both the local and international business sectors."

"The ICC's main aims are to promote international trade, services and investments and overcome the obstacles which may be hindering these areas," Ben Salem adds. "It also helps develop a market economy, based on free and fair competition among all businesses and to foster the development process in developing and emerging economies. In addition, the ICC represents the UAE's commercial, professional, service and industrial institutions within the international community, and helps to coordinate the commercial community's activities in the UAE."

"It also represents their interests in national and international transactions involving international trade," he continues. "Another of the ICC's areas of activities in the UAE is promoting industry self-regulation (ISR) in the business and corporate

> "Another area of the ICC's areas of activities in the UAE is promoting industry self-regulation in the business and corporate sector to enable the UAE business community to play an active role in formulating international trade transaction and investment policies."

sector to enable the UAE business community to play an active and influential role in helping to formulate international trade transaction and investment policies."

FCCI's Work

"The FCCI has been in existence for 43-years as it was established in 1976," Bin Salem states. "Its board's strategy has been that FCCI's role is to enhance the contribution of the private sector in boosting the UAE's economic performance."

"As part of this the FCCI provides services for its member chambers, which achieve high levels of satisfaction and its work to date has encouraged the growth of the business and corporate sectors in the UAE."

FCCI's Achievements

"Since its establishment the FCCI has had a whole host of impressive achievements, some regulatory in nature, some institutional," Ben Salem states. "For example, it established both the Industrial Bank and the Real Estate Bank. It also drew up regulations for the industrial sector and led to the regulation of taxi drivers. Another of its areas of work has been the regulation of employment relations."

"In addition, it is responsible for the regulation of foreign traders and employee departures. It also created the Unified Commercial Register. Other innovations brought in by FCCI have included commercial attaches and the establishment of the Emirates Business Women 's Council."

Economic Studies

"The FCCI has also formed a committee which studies economic conditions in the UAE, " states Ben Salem. "Its Information Department prepares economic data and indicators about the UAE with the support of a number of relevant bodies, including the Federal Customs Authority, Federal Competitiveness and Statistics Authority, Information Centre in the FCCI of the United Arab Emirates, the Emirates Industrial Bank, and Ministry of Economy. "

"As well as carrying out research, it is also involved in education and the spread of information," he continues. "It also issues economic periodicals and other publications, which provide information to local and foreign authorities and visiting or departing delegations. For example, our latest commercial research looked at the impact of the VAT on the gold and exhibitions sectors."

"We are responsible for publishing a whole host of publications too, including a series of directories such as the UAE Commercial Directory, Industry Directory, Yellow Pages, Tourism Directory and the UAE Quality and Excellence directory."

"In addition we run a number of journals including the UAE Journal of Economics, the Finance and Business Journal and the Scientific Afaq Journal. Our other titles include the Book of UAE Economics and the Book of UAE - The Achievements Era which is now in its sixth edition."

Work of Committees

"As a representative organisation the FCCI has also taken steps to ensure the voices of those involved in businesses are being heard through the establishment of a number of specialist committees," Ben Salem states. "These include the permanent committee of national industries, permanent committee of contractors, permanent committee of industry and services and committee of national exports development."

"From these committees have sprung several other industry specific committees including the tiles and marble manufacturers' committee, the committee of cement manufacturers, committee of travel and tourism agents, committee of dairy and products manufacturers and the committee of poultry producers."

"These committees have been able to discuss problems and obstacles which were being faced the private sector, and have submitted recommendations to the authorities, some of which have been implemented, including the unification of certificates of origin at state level , steps taken to strengthen trade relations, and the establishment of the UAE Exhbition and Economic Partnership Gatherings."

Coordination and Collaboration

"The FCCI is an umbrella organisation which provides a supportive framework for the directions being taken by individual chambers and the business sector, helping to coordinate work locally and internationally," Ben Salem continues.

"Our organisaiton encourages collaboration between the FCCI on one side and the official bodies and authorities involved in facilitating the work of private sector corporates and institutions on the other."

" This has helped enhance the FCCI's leading role as the representative of the private sector."

"The FCCI is also trying to enhance the quality and quantity of its services and meet the needs of corporates and the broader business community and complement the services provided by government departments and institutions," Ben Salem adds.

> "The FCCI is an umbrella organisation which provides a supportive framework for the directions being taken by individual chambers and the business sector, helping to coordinate work locally and internationally."

"We would also like to increase participation and enhance the presence of the FCCI at local and international events and the participation of corporates and the business community in FCCI organised events."

FCCI's Future

"At present, we are working on a number of areas," states Ben Salem. "These include proposals for a new organisational structure for the FCCI which will support its aspirations and the work of similar federations and councils in the countries which are looking to achieve growth in this area,"

"The reason for this is we want to make sure the FCCI is able to play a prominent role in supporting and developing the UAE economy. In addition, we are proposing a law that summarises the most important changes required in applicable laws and legislation to enable the FCCI to play its role in contributing to the development of the local economy according to the proposed administrative structure."

"It is important we clarify the main legal discrepancies facing the FCCI, which may interfere with the duties of local and federal institutions."

"Our work also includes monitoring and analysing sectorial changes in the UAE and the implications of these on the local economy."

"We are also highlighting the FCCI's activities and events at local and international levels through their direct impact on the UAE's economic policies," Ben Salem continues.

FCCI's Arbitration Role

"However, a major and ongoing part of the FCCI's work is arbitration," states Ben Salem. "The FCCI has a permanent committee for commercial arbitration in line with Article 34, Chapter Four, of the Executive Regulations of Federal Law No. 22/2000. This permanent Committee has seven members who are chosen by the FCCI Board of Directors."

"The Committee uses mediation to resolve disputes between parties which belong to more than one chamber or between the FCCI chambers and others from outside the UAE, provided the dispute is brought to the FCCI by agreement of the relevant stakeholders and the disputing parties accept the Committee's decision in advance," Ben Salem states. "It is also able to provide advisory opinions according to what is proper and known in commercial cases which have been brought to FCCI or on those regarding administrations, insti-

tutions and FCCI member chambers which request the FCCI to do so."

Importance of Arbitration In the UAE

"Arbitration is particularly important in the UAE which has the most arbitration centres in the Arab World, eight in total."

" These are the Abu Dhabi Commercial, Conciliation and Arbitration Centre (ADCCAC), Dubai International Arbitration Center (DIAC), Dubai International Financial Centre (DIFC) - London Court of International Arbitration (LCIA) (DIFC-LCIA Arbitration Centre), the International Islamic Centre for Reconciliation and Arbitration (ARCII), Sharjah International Commercial Arbitration Centre, (TAHKEEM), Ras Al Khaimah Centre for Reconciliation and Commercial Arbitration, Ajman Centre for Commercial Conciliation and Arbitration and Abu Dhabi Global Market Arbitration Centre (ADGMAC)."

"Dubai also houses the region's largest arbitration centre," Ben Salem states. "This reflects the importance of the UAE's commercial sector and the fact local and foreign parties prefer to use the UAE's arbitration centres to the regular judiciary."

A Global Destination for Arbitration

"One of the most important steps in Dubai's journey to becoming a global destination for arbitration has been the issue of Federal Law No. 6/2018 (the Arbitration Law)," states Ben Salem. "This is considered a modern arbitration law which generally mirrors the best legislative practices adopted worldwide and will help to ensure we have the highest level of investors' confidence in the UAE economy, especially as the UAE has successfully established itself as a centre for multinational enterprises operating in the Middle East."

The Strategic Hub and Arbitration Centre

"As a result, the UAE has ideally positioned itself as a regional hub for many major international enterprises, thanks to its strategic location, which allows corporates to expand their businesses to wider geographical areas in the Middle East, Africa, the Indian Subcontinent, Eastern Europe and other parts of the world."

"The enforcement of a modern arbitration law, which generally reflects the best legislative practices which have been adopted around the world, will also contribute to ensuring the highest investor confidence in the UAE economy.," Ben Salem states.

"This new law is set to provide clear guidelines on the enforceability and grounds for appeal for the UAE judiciary which will help boost confidence in the arbitral awards, which are one of the desirable objectives of all dispute settlement processes."

"Federal Law No. 6/2018 should also contribute to establishing the UAE's position as a regional arbitration centre.," Ben Salem adds. "It will also encourage disputing parties to resort to arbitration as an effective means of settling commercial disputes, which will eventually enhance confidence and security in the business world and help support the the country's efforts to become a global hub for investment and successful businesses worldwide."

Legislative Developments

"Laws are also a key factor in developing the economy and making comprehensive developments," states Ben Salem. "The more flexible the laws are, the higher the movement of the economy and investment levels will be."

"Laws are also the first means of protection for consumers and national investors, so it is important well-developed legal thought emerges, which take sinto account the periodic requirements of consumers from a global economic perspective," Ben Salem continues. "There are a number of new UAE laws issued in the last five years which have had a positive impact on UAE business, including the Foreign Direct Investment Law, the Corporate Law, the Small and Medium-Size Enterprises Law and the Arbitration Law."

"When it comes to the Foreign Direct Investment Law, this law is consolidating the UAE's position as a favorite destination for investment on the global map," states Ben Salem. "The UAE is currently one of the top 10 attractive destinations for foreign direct investment, and what is important is that for the first time, this law is enabling international investors to own their entire projects in a range of specific sectors according to the conditions prescribed by that law."

"This is expected to attract huge international companies which wish to have a presence in the UAE so they can use the country's geographical location as a starting point for accessing a regional market of over two billion people, while benefitting from the UAE's secure and stable investment environment and ease of doing business."

Advice to Smaller Businesses

"There are a number of points new businesses in the UAE should consider" states Ben Salem. "Competition from big business can make it difficult to achieve success. Therefore, my main advice is that new businesses keep up with any changes or developments in both the local and international markets, and keep searching for any new technology which is available in their field of business, in order to help improve the quality and quantity of their production and they continue to compete with other companies. ■

Lawyers' Hub
Ali Al Aidarous
Al Aidarous Advocates & Legal Consultants

Ali Al Aidarous Managing Attorney and founder of UAE specialist arbitration firm Al Aidarous Advocates and Legal Consultants talks about how arbitration has developed in the UAE during a career which spans over 30 years.

TELL US ABOUT YOUR BACKGROUND?

I come from an ordinary family, but one known for its wisdom. I have nine brothers and sisters. My father was a civil servant and my mother a house wife. Although my parents were not highly educated, they had a strong belief in education. As a result, all my brothers are successful in their various fields (one is a businessman, another a Finance Director, and I have a brother who is a TV Director, one who is an Agronomy Engineer, and another is a Naval Commander). I went to school in Dubai before attending Al Ain University, where I was among the first batch of graduates in both law and Sharia, and graduated with distinctions. I did post-graduate studies in Clermont-Ferrand, France, where I majored in commercial law and also took specialist courses in finance in the UK. I was admitted to the local bar in 1986 and my career began in the oil industry, After which i moved into finance and joined Emirates Industrial Bank, before going into private banking. I was probably the youngest Emirati inhouse counsel, at United Arab Bank, which is a subsidiary of Société Générale S.A. (SocGen), one of France's largest banks.

WHAT WERE YOUR MOST IMPORTANT CAREER MILESTONES?

I began practicing law in my own firm in Abu Dhabi in 1986, although up until 1990 I was also working as an inhouse counsel. Back then there was a limited number of qualified UAE national lawyers, so I was allowed to practice law and work as an inhouse counsel at the same time. However, this changed when the Advocacy Law, Federal Law No. 23/1991, was promulgated which stated that practicing members of the legal profession, could not combine their practice with another post, even as an inhouse counsel. That was a challenging point in my life, as I had to abandon a well-paid position, and start a full-time career as a practicing lawyer, particularly as I was married with three children to support. When Federal Law No. 23/1991 came in force in 1992, I decided to resign as an inhouse counsel and worked with a national firm for five years. This firm was quite general in its practice and I introduced corporate practice to it. Finally, in 1998, I decided to set-up my own firm, as the partner in the previous firm, did not share my vision in setting up a corporate international law firm, something I knew I could achieve. The first five years were very difficult, as I had decided not to practice general law, i.e. handle areas like civil, criminal, matrimonial and immigration law, which is what young lawyers normally do at the start of their career, but from day 1, to focus on corporate matters, which was extremely difficult, as most clients normally would not trust their affairs to a young lawyer. Fortunately, this changed in the years that followed. Although I faced some tough times in my first 10 years in practice, and on several occasions, was tempted to go back to being an inhouse counsel for one of the many corporate bodies, which would have offered me very attractive pay, I resisted. I can confidently say now that it was the right decision, and if I was to go back in time, I would make the same choice again.

WHAT WERE THE MAIN DIFFERENCES BETWEEN YOUR WORK INHOUSE, AND WORK NOW?

Inhouse counsel and external counsel or independent lawyers are two different parts of legal profession. Although they share the same field, each has its own challenges. In my opinion the main challenge inhouse counsels face is accommodating the requirements of their business in the most secure legal way, as they always face pressure from commercial managers to give them the go ahead for their various ventures. The inhouse lawyer has to advise them on the risk associated with any business venture, it is up to the commercial manager or directors to take the business decision after calculating the risk. On the other hand, external lawyers, theoretically, may not face this challenge, as they are independent professionals, with more freedom. However practically speaking, corporate lawyers cannot tell their client they cannot support their project, instead they have to find a solution for the client's legal difficulties. In doing so, they can be viewed as a reference point for an inhouse counsel. Therefore, they have to take responsibility for their advice. I am fortunate to have had

both experiences, which has helped me understand the decision making process in the corporate world and the best way to work with inhouse counsels, in terms of assuring them that we are all members of the same legal team and are not competing with each other. In this way, you can get a lot of cooperation from inhouse counsels which helps you advise more efficiently.

WHAT ARE YOUR FIRM'S SPECIALISMS?

We are a corporate law firm heavily involved in transaction and litigation. For a number of years these areas of the practice were generating equal revenue. However, in the last 15 years, our firm has become recognised as specialists in high volume and complex litigation. Over the last 10 years, our firm has increasingly also been recognised as specialists in international arbitration, particularly as I, the firm's founder, sit in many international arbitration cases, including ad hoc, regional and international institutional ones, and our firm represents many parties in international arbitration.

Our firm is also associated with a leading international Asian law firm based in Singapore (WongPartnership LLP) with a network that covers the Far East (including common law jurisdictions such as Singapore and Malaysia, and civil law ones likes Indonesia and Japan), the Middle East and certain major capitals around the world. We also have very strong ties with many international law firms looking for a local firm to support them in litigation before UAE courts or in international arbitration, where we normally provide expert opinions on UAE law issues before international arbitration panels and/or foreign courts, especially those operating under the common law system, such as England, USA and Australia.

WHAT MAKES YOUR FIRM DIFFERENT FROM OTHER UAE LEGAL PRACTICES?

The trend in the UAE is that when firms grow and start to handle complex corporate matters and serve international clients, they establish distinct divisions, e.g. a division that handles international business whether in terms of transactions, litigation or arbitration. These services are normally handled by western lawyers, trained mainly in common law jurisdictions, and when they require the services of local advocates to represent the client before the local courts, they transfer the case to the firm's other division which handles local advocacy. Generally, there is limited or no coordination between the two divisions and the client suffers, as the lawyer in direct contact with the client is not actually handling the matter before courts. From day 1, I have seen this as a challenge, and so our firm works as one technical unit, combining both local and Arab advocates, with the rights of audience before the court, and western advocates with various background (both common law or civil law), as one team. I also encourage discussions among the team to help provide the client the best service. Debates among the lawyers, within the team, achieve the best result for the client. Our firm's slogan is 'Local Expertise, Global Reach' which reflects my ambition to set up a UAE national firm, which specialises in corporate law, and is able to serve corporate clients (whether local or international) to the highest standards. In this context, I and another leading UAE lawyers (Mr Essam Al Tamimi) launched an initiative called the Civil Law Focus Group (CLF) five years ago, mainly to bridge the gap between arbitration practitioners coming from the two main legal systems, common and civil law, and increase awareness of common law practitioners of the UAE legal system's

features in general, and arbitration in particular, as our legal system is based on civil law and highly influenced by Sharia principles. We also aim to increase awareness of young national arbitrators of the challenges they could expect to face when dealing with an arbitration panel conducting the arbitration in the common law style. We conduct two seminars a year, one in the region and another in one of the major capitals, normally on the margins of the IBA annual conference.

WHAT WAS IT LIKE BEING THE UAE REPRESENTATIVE AT THE ICC IN PARIS?

I served as a UAE representative at the ICC Court of Arbitration, representing the country in general meetings with the Court which take place almost monthly. As a Court member, I was expected to attend every quarter. Then if you are selected as part of the committee for reviewing the award, you have to actively participate in the work of the committee, which is made up of only three members, who are carefully selected by the Court. After I joined as a Court member, I was selected as a committee member quite often. However, it is quite a challenging assignment, as you have to scrutinise and review several arbitral awards produced by arbitral tribunals from around the world belonging to different jurisdictions, and to ensure confidentiality is protected, the ICC normally sends a draft of the award just a few days before the committee takes place in Paris, so you have to review these awards in a very short time, even though some are quite lengthy. You also have to formulate your opinion and debate with the other committee members, who may simply approve the award or refer it back to the tribunal to address concerns and clarifications raised by the reviewing committee. However, it is because of this high-level scrutiny of awards that the ICC has become the most reputable arbitration centre for resolving international commercial disputes. Despite how challenging this was, it was an exciting experience, to review awards coming from different jurisdictions around the world and it gave me a deep understanding of how tribunals in different parts of the world's approach the same issue, especially from the common law perspective.

TELL US ABOUT YOUR WORK AS AN ARBITRATOR?

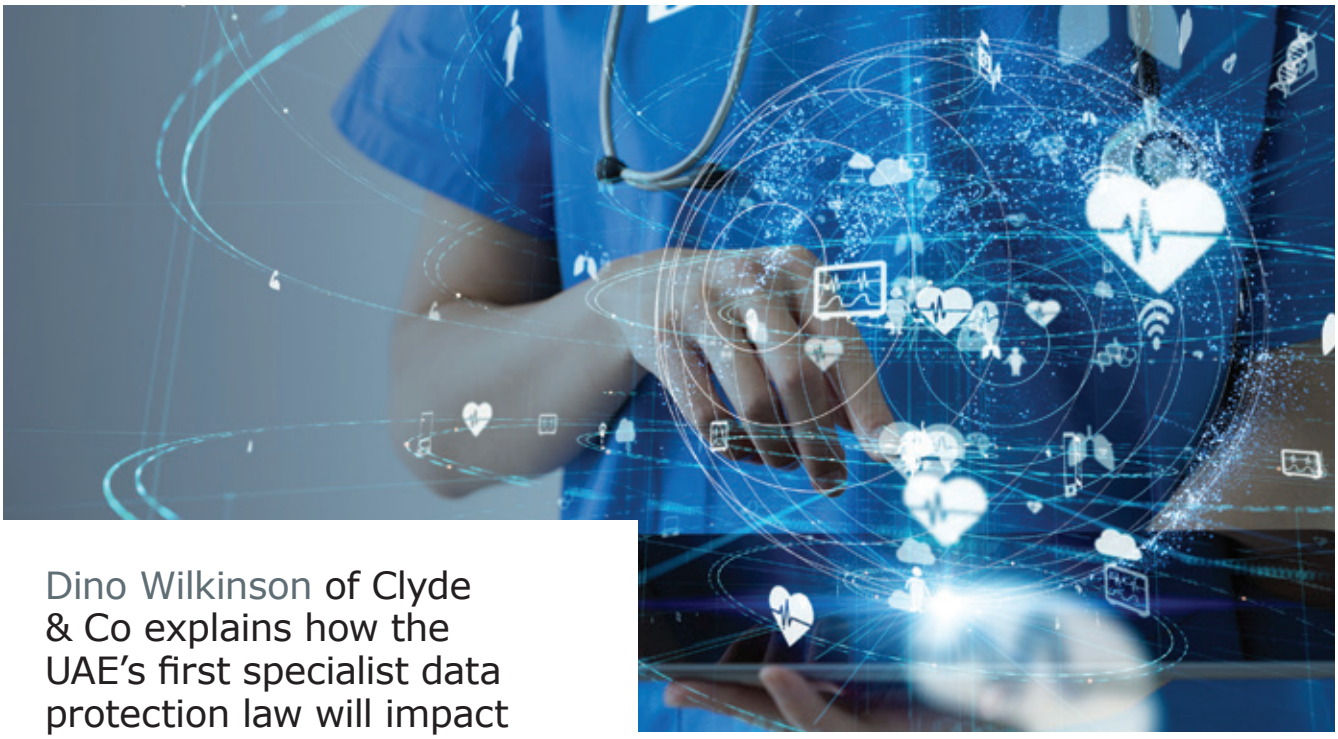
Although arbitration is relatively new here, the UAE has been committed to making it an option available to the business community to solve their commercial disputes. This is reflected in the UAE's decision to ratify the New York Convention on enforcement of foreign arbitral awards and its first standalone arbitration law, Federal Law No. 6/2018, based on the UNCITRAL Model Law. The growth of arbitration in the last two decades has been phenomenal, and recent ICC statistics rank the UAE, at no. 8 among the nations using their services. Arbitration is common in many fields in UAE, but most of the arbitration here deals with infrastructure projects, real estate developments, oil and gas, and as a player in the market, I flow with the market.

I have seen tremendous progress in UAE arbitration since I began working in this area, including the UAE's development into a regional arbitration hub, and changes in the state courts' attitude towards arbitration. In 2000, the courts had quite a hostile attitude to arbitration. By 2010 that had changed, and they had become less hostile, and in recent years they have begun to issue quite progressive decisions supporting arbitration, purely as a result of the judiciary's awareness of the important role arbitration plays in enhancing the country's economy. With Federal Law No. 6/2018 enforcement of awards has now became much easier, as judges can order enforcement based on a simple application opposed to previous practice where the ratification or award enforcement process required a fully-fledged trial starting from the Lower Court to Supreme Court which would take several years. Recent experience indicates that the courts are issuing these orders relatively quickly, say within 30 days, and the judgement debtor may challenge the decision before the Court of Appeal, which takes a few months to be ultimately decided. However, an appeal will not necessarily stay the enforcement process. In my view, the most serious challenge encountered by arbitrators in UAE is the lack of a legislation protecting them from malicious prosecution, as quite often, parties who want to delay proceedings deploy guerrilla tactics, including initiating action against the tribunal. Fortunately, these are usually civil actions but they still cause serious concern to arbitrators. In fact, Article 257 of Federal Law No. 3/1987 (the UAE Penal Code), before its recent amendment, even rendered arbitrators subject to criminal proceedings. Fortunately, this article has been recently re-amended to exclude arbitrators from its scope. One of the most significant features of arbitration in this region in general, particularly in the UAE, is the common challenge of the validity of arbitration agreements, on the basis that it was not executed by a party with specific power to agree on arbitration. This is because laws in the region consider arbitration as an exceptional way of resolving disputes, rather than a natural venue of the state courts. Therefore, arbitration agreements are viewed as disposing the parties' rights to bring their dispute before the state court, or as some sort of waiver, and an agreement to arbitrate requires specific authority to dispose of that right. Unfortunately, this has not been changed by Federal law No. 6 /2018.

WHAT WOULD YOUR ADVICE BE TO YOUNG ARBITRATORS?

Representing a client in arbitration is in fact the next level of advocacy before the courts. Therefore, the field of arbitration is going through advocacy, and so a young lawyer, who wishes to develop a career in arbitration, must be trained in a corporate firm, handling complex litigation before the courts and representing client in arbitration. ■

The Healthier Approach to Technology



Dino Wilkinson of Clyde & Co explains how the UAE's first specialist data protection law will impact use of technology in the healthcare sector.

A new UAE law, Federal Law No. 2 /2019 which regulates the use of technology in healthcare, comes into effect in May 2019. It will regulate the use and storage of electronic data in the UAE healthcare sector, although certain functions have been devolved to local Emirate health authorities. It will also have an impact on a wide range of businesses, including healthcare providers, insurers, companies delivering healthtech solutions in the UAE and more general ICT service providers.

KEY FEATURES

1 It establishes a central IT system and interoperability standards for the health sector.
2 It creates a national IT strategy for healthcare.
3 It creates data protection obligations and restrictions; in particular, in relation to confidentiality, integrity, sharing, storage and retention and processing outside the UAE.

4 It allows derogations from restrictions to promote research and allow necessary exchange of information with the insurance industry.
5 It establishes disciplinary committees within each Emirate.

IMPACT

Federal Law No. 2/2019 is highly significant as it is the first piece of Federal legislation in the UAE that directly addresses data protection principles. In addition, it is widely recognised globally that healthcare data is a powerful tool to improve healthcare outcomes for patients and it is important for countries to have a strategic and well developed approach to realise the necessary benefits.

The Law applies throughout the UAE, including in the special economic zones. Therefore, entities based in such zones will need to continue complying with applicable 'offshore' law, but will also have to ensure they comply with this new Law.

The requirements of this Law could have a material impact on how businesses conduct their operations.

DATA PROTECTION OBLIGATIONS

1 **Confidentiality and Security:** Businesses will need to keep data secured and confidential. These requirements are in keeping with international data protection norms and are increasingly reflected across the Middle East.
2 **International processing and storage:** The Law prohibits the storage, processing and generation outside the UAE of health data related to health services provided within the UAE. This prohibition can be lifted by a resolution issued from the local Emirate health authority in coordination with the government Ministry. This restriction could clearly present challenges for any businesses which currently rely on data storage or processing outside the UAE, e.g. via cloud or hosting services, and for businesses which currently offer such services into the UAE.
3 **Retention period:** Healthcare bodies are required to retain all health data for at least 25 years following the most recent point of contact with the patient. This could create an increasing storage burden for businesses and businesses will need to ensure they have the capability and systems to comply with it.

CENTRAL IT SYSTEMS

1 **Data Collection and Dissemination:** The Ministry of Health and Prevention will develop and control an IT system for the collection and exchange of healthcare data, to enable healthcare organisations to access data in a uniform and secure way, subject to the controls determined by the government. The creation of a secure method for healthcare data exchange and a set of common interoperability standards is to be welcomed. Future advances in healthtech will be highly data-reliant and it has been recognised globally that interoperability, consistent data standards and confidentiality, are key elements in developing a high-tech and state of the art healthcare environment. complying with any applicable standards issued by ESMA, or by a foreign regulator that has been approved by ESMA.
2 **System Access:** Direct access to the system will be restricted to organisations authorised by the local health authority under executive regulations. It will be important for the health industry that the regulations are clear on who is authorised, and indeed required, to use the central system. If there are quality-control thresholds or other certification requirements that businesses must meet before being given access then it will be important that these are set at the right level to protect patients' rights and interests, without impacting on competition in the market. It will be interesting to see if providers of ICT services to the industry can obtain direct access to the system or if such access would only ever be granted to actual

healthcare providers (and if so, whether such access can in turn be delegated to contractors).

3 **Access Cost:** Typically, access to centralised systems, such as the planned healthcare system, is facilitated by open APIs (application programme interfaces) being made available to third party suppliers of IT systems which will need to access the system. Technical changes will usually be needed to existing systems. Suppliers will typically look to pass on the system change and integration costs to their customers. Ultimately, this cost would then be passed on to the end user consumer (the patient). The publishing of open integration standards and the need for legacy systems to be updated or replaced may, however, stimulate increased competition amongst system suppliers. A competitive market for healthcare IT system suppliers will be important for cost control and avoiding lock-in over longer periods. Therefore, finding the balance, will be an important challenge for the executive regulations.

SANCTIONS FOR BREACH

Disciplinary sanctions include the potential suspension or withdrawal of the licence to use the central IT system. Presumably such a loss would render a healthcare provider unable to lawfully run a practice. It is therefore vitally important that businesses which are active in this area familiarise themselves with the Law, follow the development of the executive regulations and take all possible opportunities to communicate and consult with the ministry and the local health authorities.

COMPARISONS WITH EUROPE

This new Law has parallels with the position in Europe. The data protection principles introduced here are consistent with some of the key principles of the General Data Protection Regulation (GDPR) (the data protection law which has direct effect across all EU member states), in particular those on accuracy, integrity and confidentiality and accountability.

The GDPR applies to all personal data, however there are some permissive provisions and exceptions which allow for personal data to be used in ways related to public health. In addition, member states have the ability to influence the way health data is used by defining the powers and responsibilities of their own healthcare bodies (although such powers need to be exercised in accordance with data protection law).

For example, in the UK, NHS Digital (the national information and technology partner to the health and social care system) has statutory powers and duties related to the collection and dissemination of healthcare data. This helps ensure that a high quality and consistent national health dataset is maintained, assists in matters of public health and facilitates clinical research throughout the UK. Principles of data minimisation (collecting or sharing only that which is necessary) are strongly adhered to and security standards are enforced to ensure that the data is protected and only shared with appropriate counterparties.

In the UK, however, the market for IT system suppliers to doctors' surgeries is highly concentrated with two principal suppliers dominating. This has been identified by the UK government as having caused a lack of innovation, problems with access to data, and lock-in to long-term contracts that have meant outdated IT systems have remained a barrier to innovation. A situation where access to the central IT system becomes contingent on lock-in with one or two powerful suppliers is one that the UAE authorities may seek to avoid as the regulations providing the further detail under the Law are developed.

COMPARISONS WITH THE US

In the USA there is no general Federal-level data protection law but a number of states have passed their own privacy law.

In the healthcare sector, the Health Insurance Portability and Accountability Act (HIPAA) was passed in 1996. Amongst other things, this directed the Department of Health and Human Services (HHS) to establish national standards for processing electronic healthcare transactions. It also requires healthcare organisations to implement secure electronic access to health data and to remain in compliance with privacy regulations set by HHS. In particular healthcare providers must provide transparent information to patients with respect to any parties with which the healthcare provider shares the patient data, and patients are given a right to access their data (similar to a data subject access right under GDPR).

The new Law therefore also has some similarities with the concepts of controlled, centralised information standards found in HIPAA.

WHAT IS THE NEXT STEP?

A key question is whether this new law will be followed by more general changes to data protection law in the UAE. There is a clear trend for the introduction of data protection laws across the Middle East and North Africa.

In addition to the UAE's special economic zones, Bahrain, and Lebanon have passed data protection laws and Egypt has announced that it will do so soon. Further federal legislation dealing with data protection in the UAE is also widely expected, either through additional sector-specific legislation or via a more general Federal privacy law. ■

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Dino Wilkinson has advised clients throughout the region on critical contracts, sourcing and technology projects, data protection and related issues for over 10 years. He has also worked with regional governments and regulators on a number of significant legislative developments in this area, including the drafting of electronic commerce laws, data sharing policies and privacy legislation.

Business Hub
Elizabeth Williamson
Accenture

Elizabeth Williamson a Corporate Counsel at global management consulting firm Accenture explains the Government's vision is a key factor their presence in the UAE.

TELL US ABOUT YOUR FAMILY, EDUCATION AND CAREER?

I'm the eldest of three children, and was born, raised and educated in the UK. My parents and grandparents had long careers in the UK's National Health Service and public sector, so when I decided to study Law and German and then join a US-headquartered corporate law firm in the City of London, I had no real idea what to expect. However, it has been a great adventure so far. I have had experiences I could never have imagined and opportunities to meet and work with brilliant people from across the world.

My first job was in a well-known supermarket in the UK which taught me the importance of building relationships and trust and really getting to know your customer. The staff discounts were pretty good too.

After graduating, I worked in law firms for 10 years, before moving in-house to Accenture. Accenture had been a client when I was in private practice and I'd always admired their thought leadership, strong commitment to ethical business practice and their mission to apply technology to improve the way the world lives and works.

The biggest change from my roles in private practice has been the opportunity to collaborate with so many different stakeholders, who bring a broad range of backgrounds and experience, and all approach issues in a very different way. It is also quite an adjustment when your client sits next to you in the office.

At Accenture there is a really strong culture of learning and a focus on skills development outside of your core area of expertise. We're encouraged to be curious and invest time in understanding the innovation, new technologies and business methodologies our organisation is bringing to market. In a world where we constantly need to evolve, where children are already so much more tech-savvy than their parents, this helps me stay relevant in my personal and professional life.

Although, my career has always been in the corporate world, I'm really passionate about giving back and I've worked pro-bono on asylum cases in Africa reuniting children with their families, volunteered in a music for schools programme in deprived areas of the UK and supported Ramadan initiatives for blue collar workers in the UAE. I am also a member of Accenture's Inclusion and Diversity Committee, which is a huge priority for our firm globally and, gives us a platform to make a real impact and not just in a corporate context.

WHAT BROUGHT YOU TO THE UAE?

I first moved to the UAE in 2011. I had studied and worked in Europe and South Africa before qualifying as a lawyer and have always loved travelling and living abroad. After several years practising law in the UK, I really wanted to work internationally again. I was offered a job with one of the largest and most established international law firms in the UAE. When I arrived in the UAE, I faced a steep learning curve, but I joined a law firm that had been in the region for several decades, with partners who had grown up with the laws, so I was lucky to have great teachers and mentors. My role as a lawyer is fundamentally the same regardless of where I practice, combining legal knowledge and practical experience to identify solutions.

I didn't know the Middle East region well, but it quickly became clear to me that the UAE was a country with ambition and purpose and an infectious 'can do' mentality, which I loved. It is the diversity of the country that has kept me here all these years, the people, culture and opportunities.

It is not somewhere for those resistant to change, but for me that is a big part of its appeal. The most obvious changes here are physical , the landscape has transformed significantly since 2011 and continues to do so. Whole metropolises have risen from the desert. Roads change frequently as new infrastructure is developed. The UAE has this ambitious mentality to break records. It is an attitude that has helped it to envision and create some of the most impressive buildings and attractions in the world, and it's never complacent. Planning is underway for the construction of the next tallest tower. We've also seen an explosion in tourism, and even after eight years of trips to the UAE there are always new places and activities for visiting members of my family to explore.

The market has also matured. The economy has doubled in the past ten years, diversified away from dependence on oil and grown significantly in the technology, health and education sectors. The new opportunities and choices presented by this diversification are impressive. That maturity and diversification has also led to the expatriate population in the UAE being less transitory. Expatriates from around the world now see a long-term future for themselves in the UAE and are making their lives here.

There is also greater participation of women in the workforce. I can remember attending the courts when I first arrived in the UAE and being one of only a handful of women. That is no longer the

case, and last year I had a pleasure of meeting a number of female judges with busy, successful careers in the UAE courts. The Gender Balance Council is spearheading a host of programmes designed to help women grow their careers and mothers return to the workplace, and legislation is being implemented to support this, including facilitation of part time and remote working.

WHAT ARE ACCENTURE'S MAIN ACTIVITIES IN THE UAE AND WHY DID IT SET UP HERE?

The UAE is undergoing fast growth and complex transformation. It is an environment where the government has a clear vision for the future, bringing with it demand for the full spectrum of services which Accenture offers, including strategy, change management, digital and technology implementation, right through to business operations (outsourcing). The country's focus on designing integrated consumer experiences is also a key factor in Accenture's presence in the UAE, and the presence of Accenture Interactive and Fjord, our digital design teams.

A key pillar of the UAE's Vision 2021 is becoming the economic, touristic and commercial capital for more than two billion people, by transitioning to a knowledge-based economy, promoting innovation and research and development. Vision 2021 also provides a roadmap for UAE to become a leading technology and innovation hub. This is the perfect ecosystem for Accenture to partner with local and multinational organisations to co-create innovative, market leading solutions, create positive change, improve lives, and transform business and society. Our brand is now associated with the largest and most prestigious companies in the region. Our regional strategy is driven by our mission to ensure we always deliver the best of our global expertise, while ensuring we remain locally relevant. So we are constantly rotating our business to ensure we address our local clients' needs.

MANAGEMENT CONSULTING IS A PEOPLE BUSINESS, HOW DOES THIS IMPACT YOUR LEGAL WORK?

As an employment and immigration lawyer, it makes my role really interesting. Our people are our most important assets and I play an important part in shaping our people strategy. I have always enjoyed navigating the human and legal element to the employment relationship. The changing nature of work and the employment relationship also challenges our team to think more creatively and anticipate how the regulators may address new models of work.

ARE YOU PERSONALLY RESPONSIBLE FOR OTHER JURISDICTIONS?

I 'm directly responsible for the Middle East and Turkey, and also participate in a number of global strategic initiatives, including our Conduct Counts agenda and the employee aspects of our data privacy programme. The Middle East and Turkey is a very diverse region and each country is unique. While sometimes challenging, this

brings new perspectives and fresh ideas on how we might navigate an issue in one country because of what we have previously faced elsewhere.

HOW DOES YOUR BUSINESS DEAL WITH DISPUTE RESOLUTION?

I think our preference, and presumably that of all organisations, is for no disputes. Accenture's approach depends on the nature of the issue and the broader context. It is very difficult to provide a general statement on this. As labour and immigration issues are not currently within the scope of the arbitration law, the new law has not had a material impact on my day to day work. However, I am a strong advocate of finding alternative ways to resolve workplace disputes and so always look to incorporate principles of mediation. The new Arbitration Law is intended to help strengthen the UAE's position as the preferred choice for arbitration in the MENA region and to enable to the UAE to become more globally competitive as an arbitral seat of choice. This is certainly a positive step for the country and the legal profession here.

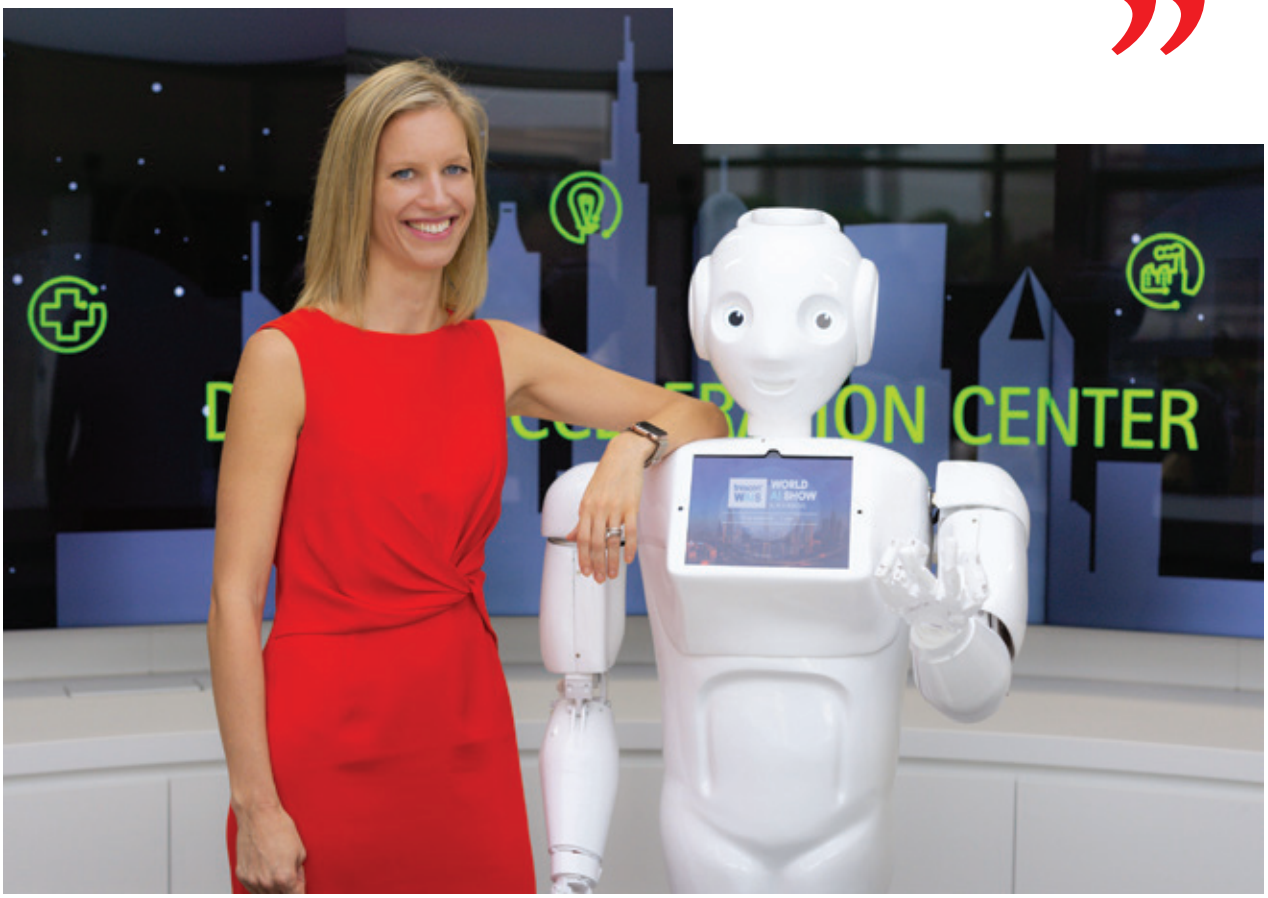
WHAT LEGISLATIVE AREA HAS THE BIGGEST IMPACT ON YOUR WORK?

In a people led business, where we leverage our global network of specialists, changes in immigration policy can have a significant impact. These are not always easy to anticipate but we have to be quick to react and, where necessary, design new resourcing models when they occur. The increasing global regulation around privacy is also already having a significant impact on the way multinationals operate and how they process data. With a number of privacy laws recently implemented or in the pipeline in the MENA region, this is set to continue and it will be an area we have to keep a close eye on.

WHAT HAS BEEN YOUR BIGGEST CAREER HIGHLIGHT TO DATE?

One of the best was the day I took a 12-year old girl to the airport in Johannesburg after she was granted derivative asylum to join her family in the US. This was the culmination of a year's work and an emotional journey with a very dedicated team of lawyers in South Africa and the US. However, in the last 12 months highlights have included designing an internship programme for female legal graduates in Saudi Arabia and the UAE; and the opportunity to be part of the team that launched Accenture's Digital Studio in Riyadh, which we hope will help bring more women to the forefront of digital transformation.

> "I'm a strong advocate of finding alternative ways to resolve workplace disputes and so always look to incorporate principles of mediation."



ACCENTURE DOES A LOT OF WORK ON BUSINESS TRENDS DOES THIS IMPACT YOUR WORK?

The research coming out of our Centres of Excellence, Labs and Innovation Studios, including Fjord Trends, gives our legal team significant insight into issues we may need to navigate from a legal perspective. We can use it as a blueprint for planning resourcing and priorities for the upcoming fiscal year and it helps us to be a future looking rather than reactive legal function.

WHAT TYPES OF TECHNOLOGY DO YOU THINK WILL HAVE THE BIGGEST IMPACT ON BUSINESSES IN THE UAE?

With AI growing in its reach, UAE businesses looking to capitalise on its potential must acknowledge the increasing impact it has on human lives. Many enterprises still treat AI as a software program, but it has become much more than that, often having as much influence as the people putting it to use, both within and outside organisations. As AI capabilities grow, UAE businesses will need to ensure they design and develop their AI to act as responsible, transparent and ethical components of business and society.

Technology is also creating a world of intensely customised and on-demand experiences, and companies must reinvent themselves to find and capture those opportunities. For UAE businesses, and those across the world, it is critical time is invested in looking to the future to ensure they stay relevant and agile. Immersive experiences are also changing the way people connect with information, experiences and each other. UAE businesses can tap into expertise in thousands of skills from anywhere in the world, and as XR-based remote control of physical systems becomes common, companies will be able to hire manufacturing, assembly and robotics expertise from a global pool of the best candidates, regardless of where they live. The result is an opportunity to redesign business without the limiting factor of distance, and for workers, eliminate geography-based constraints on opportunity.

People are also incorporating technology-driven capabilities alongside their existing skills and experience to do new kinds of work, in new ways. Organisations must now adapt their technology strategies to support the realities of working in the post-digital age.

I think one of the greatest current challenges for lawyers and business in many jurisdictions is that legal frameworks are struggling to keep up with technological change. Lawyers are increasingly required to anticipate the regulation of new technologies and their implications for business and society. So I'm excited to see what comes out of the joint collaboration between the Dubai Future Foundation and RegLab, which is aimed at developing new and flexible legislation for future technologies implemented in the UAE. I believe the adoption of AI, automation and machine learning will have a big impact on the way corporate counsels like me work. C-suite executives are rapidly investing in AI for the purposes of business operations and there is an unspoken expectation that legal departments will follow suit. There's a lot of scaremongering about robots taking our jobs, but I prefer to see it as an opportunity to make our role as in-house lawyers more diverse and interesting. There are huge productivity gains and cost savings available from freeing humans from routine tasks allowing people to focus on tasks that truly add value, things that computers really cannot do or do well. The adoption of AI for legal research and data analysis, machine learning and automation to support routine tasks like contract reviews and the development

of enterprise software that helps track matters, should mean in-house lawyers are able to become more embedded in their businesses and play a greater role as strategic advisers.

At Accenture, the deployment of our Code of Business Ethics Chatbot has been a huge success helping our people make responsible decisions, and has reduced the time our team spends on routine questions. It also allows employees to find answers to questions they might be less comfortable asking the legal team. If we want to future-proof the role of the corporate counsel it is important to invest time in learning how to maximise the benefits of these new technologies. They can be a great way to improve the performance of in-house legal departments, but even the most innovative systems are only as good as the people using them.

I also believe the type of legal advice required by our clients (whether internal or external) will change. This shift has already happened to a large extent at Accenture, but I believe there will be increasing demand for specialisation towards complex legal issues, including privacy and cybersecurity. One of the most interesting aspects of the way Accenture's legal team works and interacts with the business is the use of Design Thinking. This is different from other approaches I have used in the past to help clients understand their pain points and map out a future direction, because it requires us to really think about the services we provide from a client's perspective. It requires empathy, understanding and research. If we don't truly understand what our client's business requires, the solution we come up with will not work. It is iterative, and prototype driven. So you have to get used to the fact your first ideas and solutions are probably wrong, and move to a mindset where we keep challenging and reframing the problem. It is quite different from the training we receive as lawyers. We test, iterate, test and test again; and the earlier and more often, the better. It is also collaborative and involves multi-disciplinary teams in collaboration with the internal client, ideally working in a flat hierarchy. As a result, there is a level playing field, a safe space for everyone in an organisation to share their thoughts, ideas and concerns. It gives legal, the business and the technologists, a voice so we get the broadest spectrum of ideas and opinions, and as everyone is included in the design of new approaches from the start, it is easier to get buy-in to changes that might otherwise be resisted. ■

Crack Down On Crime

Damian Crosse and Mahmoud Selim of Pinsent Masons discuss the impact of a new law designed to strengthen the UAE's anti-money laundering and counter-terrorist financing regime.

Last year with the introduction of Federal Law No 20/2018, the new Anti-Money Laundering Law, the UAE took pre-emptive steps to align itself with international best practices and enhance its anti-money laundering and counter-terrorist financing regime in preparation for an upcoming evaluation, expected in June or July 2019 by the Financial Action Task Force (FATF). FATF is a French intergovernmental organisation which develops policies to help combat money laundering. Its last evaluation of the UAE was in 2008 and we believe recent Anti-Money Laundering changes in the UAE will significantly help maintain the country's position as a financial hub for firms in the region, provide further protection for the UAE market and pave the way for increased foreign investments. The current Basel Anti-Money Laundering Index, which is an independent annual ranking which assesses money laundering and terrorist financing risks in countries around the world, ranks the UAE as a medium-high risk. The 2019 MENA Financial Crime Report also noted there was a general perception of low enforcement in the MENA region. Therefore, it was important to strengthening the UAE's Anti-Money Laundering regime.

What is interesting is that Federal Law No. 20/2018 is not the only change likely to improve the position. There are also stricter corporate governance requirements which were put in place in with Federal Law No. 2/2015. In addition, Dubai has enacted a Financial Security Law, and the Financial Audit Authority has also been tasked with supervisory enforcement, which should help strengthen the money laundering regime there.

FUNDS AND INVESTIGATIONS

The first point of note is that Article 1 of Federal Law No. 20/2018 specifically defines 'funds' as assets in any form including in electronic rather than just digital form. Article 5 of Federal Law No. 20/2018 also gives the Public Prosecutor further powers to identify, track or evaluate and seize or freeze suspicious funds that may have been sourced or linked to a crime. These investigations are conducted without informing the alleged perpetrator. However, the alleged perpetrator may apply for a grievance against the Public Prosecution's decision to freeze or seize their assets.

THE FIU

Article 9 of Federal Law No. 20/2018 established the independent Financial Information Unit (FIU) who are competent to request information from financial and non-financial institu-

tions and professions, exchange information with their counterparts in other countries, and establish a database to record all available information. The FIU has been established within the UAE Central Bank following Cabinet Resolution No.. 10/2019 Concerning the Implementation of the New Anti Money Laundering Law, which should see a rapid improvement in the application and enforcement of this new legislation. Cabinet Resolution No. 10/2019 lists several tasks which the FIU must consider when preparing suspicious transaction reports (or STRs). The Public Prosecution may request an STR to be prepared by the FIU and ask for all related evidence. Subject to international conversations or on conditions of reciprocity, it may also exchange information relating to an STR with counterpart FIU's in other countries. In addition, Article 19 of Federal Law No. 20 /2018 allows competent authorities to request international cooperation on money laundering and combating terrorism finance. With FIU's establishment and the international remit of its work and Article 19's ability to request international judicial cooperation, it may also be advisable for institutions to try to ensure they have effective and proactive compliance programmes in place which are in line with both local regulatory laws and international requirements.

MAIN FOCUS ON LOCAL REGULATIONS

When it comes to ensuring local regulatory compliance there are two main areas to focus on. Firstly, it is important to ensure businesses have been set up and registered with the appropriate regulatory bodies (such as the Dubai Economic Department, the Capital Market Authority, the Dubai Municipality and the UAE Central Bank). It is also important to ensure institutions are complying with other applicable Federal laws such as the UAE Companies Law, Federal Law No. 2/2015 and if the institution is located in a UAE free zone, it is necessary to check it complies with the specific free zones' companies law, constitutions and regimes. Some free zone regimes have their own anti-money laundering legislation, e.g. the DIFC Regulatory Amendment Law has now enhanced its anti-money laundering and counter-terrorist financing and regime. The Dubai Financial Services Authority (which is solely responsible for regulating DIFC Financial Services) also expect further enhancements of their regime and the Abu Dhabi Global Market has launched a public consultation on proposed revisions to its anti-money laundering regimes. Although, these proposed enhancements are closely aligned with Federal Law No. 20/2018 and recommendations by the FATF.

PENALTIES

Penalties under this new regime will range from fines of 10,000 AED and life imprisonment depending on the type of crime committed. Article 20 of Federal Law No. 20/2018 also imposes penalties on financial institutions which violate this law of no more than 5,000,000 AED for each violation. (In comparison under the previous UAE Anti Money Laundering Law financial intuitions could only be fined up to 1,000,000 AED for each offence.) Given the stricter punitive measures and greater investigatory powers the competent authorities now have, financial and non-financial institutions should implement stricter anti-money laundering control systems and conduct further due diligence on third parties who are connected with them, especially if there appears to be potentially suspicious activity. It may also be a good idea to draw up internal training programmes for managers and/or staff members who may be exposed or susceptible to corruption risks and maintain an internal monitoring and assessment system. ■

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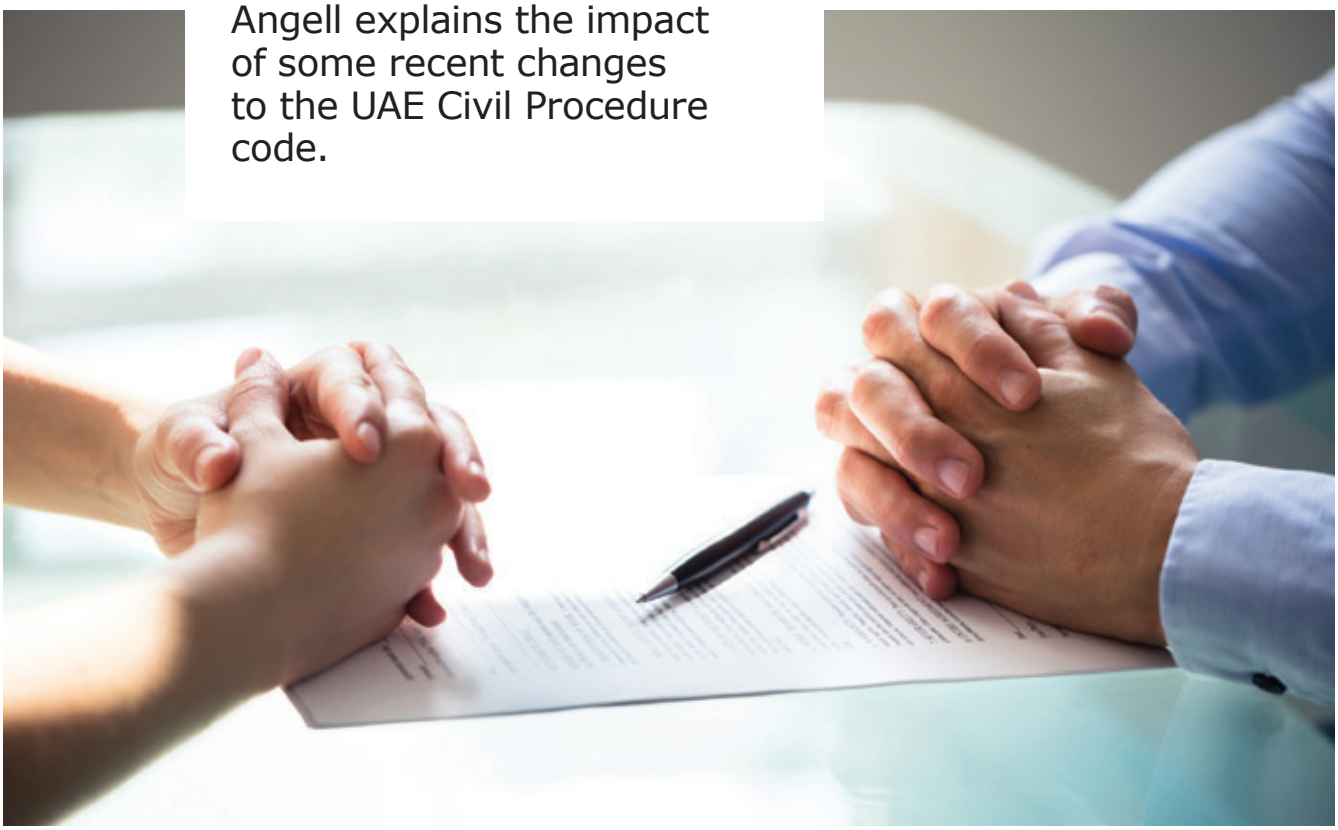
What's New in Civil Procedure?

Chatura Randeniya and Nazim Hashim of Afridi & Angell explains the impact of some recent changes to the UAE Civil Procedure code.



Significant changes to Federal Law No 11/1992 (the UAE Civil Procedure Code) came into effect on 16 February 2019. These changes were introduced through regulations issued under the Civil Procedure Code. The Regulations (in all, 193 articles) address a wide array of litigation procedures, from service of process, to enforcement of foreign judgments and arbitration awards, to execution procedures. Some of the Regulations codify practices which have already been seen in the UAE Courts. In this article, we give a high-level overview of some of the Regulations which will impact both litigants and practitioners.

SERVICE OF PROCESS

Under Article 3 of the Regulations, a court may permit a party or their attorney to serve process. Under the Regulations, process may be served between 7 am and 9 pm, unless served electronically, when these time limits do not apply. Article 6 of the Regulations states process may also be served by voice or video calls, text messages, fax, or any other alternative and technological means as may be determined by the Minister of Justice. Importantly, Article 5 of the Regulations states if the official language of the defendant is not Arabic, the plaintiff must provide an official translation of the court notice in English. However, the cost of translating the notice is recoverable by a successful plaintiff. Article 7 also states service on parties domiciled abroad may be through technological means, or private companies and offices, or as otherwise agreed between the parties, and if service cannot be so effected, process is served through diplomatic channels. Under Article 8, service is deemed to be effected on the date of sending the email or text message and on the date on which a voice or video call was made. Only process served by facsimile is deemed to have been served on the date of receipt.

REGISTRATION OF CASES

Article 16 of the Regulations requires that a Statement of Claim should include the details of the defendant(s) including information on the defendant's identification number, which is applicable with respect to individual defendants. The Dubai Courts' practice with respect to corporate defendants is to require a copy of the defendant's trade license at the time of registering the case. It is therefore important that parties have copies of their counterparties' ID and/or licensing documents with them, so obtaining this documentation should form part of best practice when entering into transactions.

Certain Regulations are evidently intended to speed up litigation procedures. Article 18, for example, provides that the period allowed for the defendant to appear in the Case Management Office or the court following registration of the case is 10 days, but it may be reduced to three days. Where summary claims are concerned (such as applications for provisional attachment) this period is 24 hours, and may be reduced to one hour if that notice is served on the defendant personally. While Article 18 goes on to carve out an exception for maritime claims, the scope of the exception is currently unclear. Proceedings in the UAE Courts are commenced by filing the plaint and supporting evidence (electronically or in person) with the relevant court. The Case Management Office of the court will then fix the court fee payable, and complete the registration of the case after receiving the payment and completing any documentary requirements which may be identified by the Case Management Office. As there can be a considerable time between filing the plaint and completing the registration in some instances, there has been some uncertainty about the date on which action was commenced, which is an important consideration in determining whether time bars and other time related deadlines under law have been complied with. Article 19 of the Regulations clarifies that the date of registration is deemed to be the date on which the case was submitted to the court system, and not the date on which the registration of the case was completed.

ASSESSMENT OF CASE VALUE

Assessment of case value is another important practical consideration, as it has a bearing on jurisdiction, appeal thresholds, and of course the court fees payable by a plaintiff. Article 23 of the Regulations provides that minor circuits (as set out in Article 30(1) of Federal Law No. 11/1992) will have jurisdiction over civil, commercial and labour claims not exceeding 1 million AED in value (the threshold previously was 500,000 AED), and counterclaims asserted in such cases irrespective of the value of the counterclaim. Decisions made by the minor circuit court in labour cases valued at no more than 20,000 AED and in all other cases valued at no more than 50,000 AED may not be subject to appeal. The current threshold is 20,000 AED for all types of cases. Article 23 also provides that the threshold (in terms of value) for appealing a judgment of the Court of Appeal to the Court of Cassation is 500,000 AED. The current threshold is 200,000 AED. Article 25 of the Regulations contains provisions for assessing case values in various types of disputes. For example, an action for the dissolution of a company and appointment of a liquidator is valued based on the company's capital at the time of filing action.

CONDUCT OF PROCEEDINGS

Certain claims may now be disposed of with only one hearing by a minor circuit court (Article 22). These include civil and commercial claims not exceeding 100,000 AED and claims for wages and salaries not exceeding 200,000 AED. The Case Management Office must fix a case which is to be disposed of under Article 22 for its first hearing within 15 days of the date of case registration, and this may be extended only once with an additional 15 days by the judge supervising the matter. However, Article 22 does not apply to cases where the State is a party.

Denying documents on the basis that they are copies (under Article 9(2) of Federal Law No 10/1992) is a position commonly adopted by parties, particularly defendants. However, under Article 20 of the Regulations denying documents simply on the basis they are copies is no longer acceptable, and the party seeking to deny documents must maintain that such documents are 'invalid' or were not in fact authored by the party to whom they are attributed. If a party has denied documents and the court finds their denial was unjustified they may be fined between 1,000 AED and 10,000 AED. Article 20 also states the court may inform the authorities regulating the legal profession in the UAE of the fine, and this impacts the advocates having conduct of litigation. Fines for frivolous denials of documents are not new, but this codification is a welcome development.

IMPROVED EFFICIENCY

The efficient conduct of litigation is a recurring theme in the Regulations and they require parties to plead their cases as completely as possible at the hearing before the Case Management Office (i.e. before the matter is transferred to a court). Under Article 32 if the plaintiff or defendant submits a document in a subsequent session which requires the court to adjourn the matter, and the court believes the document could have been submitted at the first hearing, the party submitting the document may be fined between 2,000 AED to 5,000 AED. However, Article 32 clarifies a party may produce documents in response to the defences and/or incidental demands of the other party without threat of sanction. Under Article 35 a court may allow the parties to submit documents, submissions and new evidence, and to amend the relief sought and assert counterclaims they were unable to submit to the Case Management Office. However, the court has discretion to deny such submissions if it believes they could have been made to the Case Management Office.

Article 37 also states a hearing may not be adjourned more than once for the same reason attributable to a party in the absence of a valid excuse. Where such a valid excuse exists, the second adjournment should not be more than two weeks. Article 48 provides that where the pleadings have been concluded, the court may issue its decision or reserve the matter for judgment in a period not exceeding two weeks. The date reserved for judgment may only be adjourned once, and for a period of no more than two weeks. So, judgment must be issued within a month of pleadings being concluded. Article 39 states that the court is no longer confined to using interpreters appointed or licensed by the Ministry of Justice, and may use interpreter s from another source or use 'approved technology', although the Regulations do not provide any guidance on what constitutes 'approved technology'.

MALICIOUS PROSECUTION OR DEFENCE

While the law and the Regulations provide that the court may award costs, in practice the UAE Courts do not award legal costs, except token sums. Court fees and experts' fees are however recoverable by a successful plaintiff. Article 56 of the Regulations states that even parties that are successful on the merits of the

case may have to bear a portion of the expenses if that party has among other things caused any 'futile expenses' or did not disclose documents which could have disposed of the matter to its opponents. Article 58 of the Regulations also states a party which submits a malicious motion, plea or defence may be subject to a fine between 1,000 AED and 10,000 AED..

PAYMENT ORDERS

Articles 62- 68 of the Regulations set out provisions on Payment Orders. These are not new and the relevant provisions can be found in Articles 143 to 149 of Federal Law No. 11/1992. Payment Orders may be applied for by a creditor who has a claim for a fixed amount of money or a movable of a known type and quantity, and where the creditor's right is confirmed. The Regulations enable possible confirmation by reference to electronic sources, and the option of applying for a Payment Order where the subject of the claim is the execution of a commercial contract, or if the creditor's entitlement arises out of a commercial instrument. Under Article 63 of the Regulations, the creditor must demand payment from the debtor and grant at least five days to make payment. If payment is not received, a Payment Order may be applied for. The application must include the details required of a Statement of Claim/Plaint (as set out in Article 16 of the Regulations), and have proof of the debt and evidence of the demand for payment attached to it. Article 63 states the order be granted (or presumably denied) within three days of the application being filed. If the application is denied, the judge must provide reasons. Before these Regulations, there was no requirement for the judge to provide reasons. A Payment Order may be appealed within 15 days by the debtor, and the court is required to determine the appeal within a week of the date of registration. An application for a Payment Order does not preclude the party from seeking provisional relief under the relevant provisions of the Civil Procedure Code.

FINES AND PENALTIES

Article 85 of the Regulations states an application to enforce a judgment or order of a foreign court shall be made to an execution judge, and that the judge must make their decision within three days. The execution judge must verify before issuing the decision that the UAE Courts do not have exclusive jurisdiction over the matter; the judgment or order has been issued by an authorised court under the law of the relevant foreign jurisdiction; the parties to the foreign proceedings have been summoned and represented; the foreign judgment/ order sought to be enforced is res judicata under the laws of the relevant foreign jurisdiction; and it is not contrary to a judgment or order of a UAE court, and is not contrary to the morals and public order of the UAE.

Article 86 states Article 85 provisions are also applicable to arbitral awards issued in a foreign jurisdiction. It adds that the subject matter of the foreign arbitral award must be arbitrable according to the laws of the UAE, and the award must be enforceable in the jurisdiction in which it was issued, in order to seek enforcement in the UAE.

The provisions of Articles 85 and 86 are without prejudice to the provisions of any treaties entered into by the UAE with respect to the enforcement of foreign judgments, orders or awards. The New York Convention is an example of such a treaty.

Overall, the Regulations are aimed at enabling quick and efficient litigation, and will be welcomed by both parties and practitioners.

However, they will put considerable time pressure on litigants, particularly on defendants, to ensure that their respective cases are pleaded fully within relatively short time periods. ■

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Having A Passport To Success

Tom Bicknell and Marie Chowdhry of Pinsent Masons explain how obtaining a license for domestic funds in the UAE has become easier.

In the past those wishing to obtain a license for domestic funds in the UAE could find the process quite bureaucratic as they were asked to submit multiple licensing applications. However, a recent agreement between the Emirates Securities and Commodities Authority (SCA) which regulates onshore UAE, the Financial Services Regulatory Authority (FSRA) of the Abu Dhabi Global Market (ADGM) and the Dubai Financial Services Authority (DFSA) of the Dubai International Financial Centre (DIFC) to implement rules on the passporting of licensing for the promotion of domestic funds in the UAE will make this process a whole lot easier. This agreement and the new rules will enable investment managers authorised by either SCA, the FSRA or the DFSA to market and sell their domestic funds to potential investors based anywhere in the UAE, including in one of the financial freezones. We refer to it here as the passporting agreement.

WHY HAS THIS HAPPENED?

The UAE financial regulators want to reduce the confusion which has existed in the market on which authority has responsibility for regulating the funds space; both within the financial freezones and onshore environment. Historically authorised firms understood that they could promote financial products (except insurance products) to customers across the UAE market, including when they were based in one of the financial freezones, such as the ADGM or DIFC. However, the enactment of Decision No.(3/R.M) of 2017 Concerning the Organisation of Promotion and Introduction by the SCA in 2017 effectively prohibited any form of promotion of a financial product in onshore UAE by those who did not have an SCA licence. As a result, product issuers, particularly in the funds space, were unclear as to where this left them, especially if they were based in one of the financial freezones. As we understand it, over the last 18 months there have been several rounds of consultation on this point between the UAE funds industry and the regulators. Industry feedback was that the new rules would limit the product range in the market and as a result reduce consumer choice.

However, from the regulators' perspective, the UAE has for some time had an issue with unregistered financial products being sold to customers in the market who were not clear about what it was they were investing in. There has also been significant media focus on what was perceived as a culture of mis-selling and a growing consumer demand that action needed to be taken

to better regulate the market. The regulators have responded (along with the Central Bank and Insurance Authority) by creating a much more stringent framework for the promotion and sale of financial products across the UAE.

WHICH REGULATORS AND TYPES OF FINANCIAL SERVICES PROVIDERS ARE AFFECTED?

A Passporting Agreement has been made between the DFSA, FSRA and SCA. The aim is to allow for the passporting of a range of activities related to investment funds, such as custodianship, investment management and financial promotion, and the management of investment funds so that if this activity is licensed by one of these bodies, it is effectively permitted by the other bodies. However, it is important to note, the Passporting Agreement and implementing rules only apply to activities involving domestic funds. As a result promoters and managers of foreign funds will not be able to avail themselves of the new regime.

WHAT IS NEW?

There is now coordination between several of the UAE's key regulators. There is also recognition of the ability of firms based in the financial freezones to conduct funds business in the domestic UAE market. However, the practical effects are likely to be fairly limited as the domestic funds regime in the UAE does not represent a large share of the market for funds products, as most funds and investment options promoted here are foreign-domiciled funds. However, the Passporting Agreement creates certainty for promoters of domestic funds that they can conduct their activities across the UAE market. It is also possible that foreign licensed firms may take more interest in establishing their fund offering on the ground in the UAE, particularly in the UAE's financial free zones. It is also a positive example of meaningful dialogue between the UAE's regulators and is also a sign of further coordination, the fostering of mutual recognition as a regulatory mechanism for the promotion and supervision of investment funds.

HOW DOES THE UAE'S POSITION COMPARE TO OTHER MAJOR JURISDICTIONS?

In comparison, the EU, for example, is known for having a passporting regime throughout member states which means that product issuers authorised and regulated in one EU state can sell their products into any other EU state (subject to certain notification requirements). However, it is neither fair nor accurate to compare the UAE to the EU. The EU's regime is complicated and arguably carries a lot of red tape with it. In contrast, the UAE is a much younger market, particularly with regard to savings and investment products. Its financial freezones also create a relatively unique interplay between what is effectively a foreign or offshore jurisdiction based within the geographic borders of a domestic and federal market. Therefore, a fine balancing act is always needed to accommodate what can be competing views of the future of the UAE's financial services market. That said, we believe that most market participants would welcome further regulation in this area provided it is clear, fit for purpose and helps to create a level playing field.

COULD THIS BE EXPANDED TO OTHER UAE REGULATORS?

In our opinion this is a case of mutual recognition (and compromise) between regulators and financial services businesses, and therefore probably does not go as far as most financial services businesses would want it to, as they would want the ability to sell foreign funds products across the UAE too. However, this has to be balanced with the UAE's aim of creating a robust domestic funds market. So at this stage we do not anticipate the Passporting Agreement will be expanded to other UAE regulators and in fact, it probably is not really appropriate for them to do so. ■

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How Arbitration began?

References to arbitration are found in the Old Testament, Islamic teachings and in ancient Greece. Historically, in the West the concept of commercial arbitration dates back to Medieval times when it was used by merchants at fairs and markets in both England and Europe. The charters of many guilds showed that merchants recognised the value of extra-judicial methods of settling disputes. Although, its increased use became possible after courts were given powers to enforce parties' agreements to arbitrate. One of the first laws enabling this was the 1889 English Arbitration Act and similar statutes were then adopted in most of the countries in the British Commonwealth.

After the 1889 Arbitration Act was passed in 1892, the City of London Chamber of Arbitration was formed which changed its name to the London Court of Arbitration in 1903.

In the US, arbitration had been used by native Americans to resolve disputes between tribes. However, the first colony to adopt a law supporting it, was Massachusetts in 1632. Interestingly, George Washington also included an arbitration clause in his will. An Arbitration Statute was then issued in New York state in 1920, which was followed by a Federal Arbitration statute in 1925. What was known as the Uniform Arbitration Act 1955 was then adopted by most US states and recommended by the US Bar Association.

However, modern International arbitration can be traced back to the Jay Treaty of 1794 between the US and Britain which established three arbitral committees to look at disputes arising from the American Revolution. International Arbitration was given a more permanent basis by the Hague Convention of 1899 on the pacific settlement of international disputes. A permanent court of arbitration was also established at this time. This is not a court in the traditional sense but provides an arbitral tribunal services to resolve disputes that arise out of international agreements between member states, international organisations or private parties.

Another landmark in the story of arbitration came in 1919, when the International Chamber of Commerce (ICC) in Paris was founded. This had an overriding aim of serving world business by promoting trade and investment, open markets for goods and services, and the free flow of capital. It was then decided that in order to achieve this they would need to provide a range of services, and as a result the International Court of Arbitration, was established in 1923.

While most other arbitration institutions are regional or national in scope, the ICC Court is truly international. The ICC's dispute resolution mechanisms have been conceived specifically for business disputes in an international context and the Court has administered well over 12 000 international arbitration cases involving parties and arbitrators from more than 170 countries and territories.

The development of international commercial arbitration was furthered by uniform arbitration legislation prepared by the UN Conference on International Commercial Arbitration in 1958 and by the Council of Europe and the Inter-American Judicial Committee of the Organisation of American states. The UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards seeks to provide common legislative standards for the recognition of arbitration agreements and court recognition and enforcement of foreign and non-domestic arbitral awards. The term 'non-domestic' appears to embrace awards which, although made in the state of enforcement, are treated as 'foreign' under its law because of some foreign element in the proceedings, e.g. another State's procedural laws are applied. ■

Remarkable

Lawyers often come across a client who is keen for their day in court but few have come across one as eager to come before a judge as Jonathan Lee Riches, a former US Federal prison inmate who has filed over 2600 law suits against a very strange mix of opponents.

This very long list of opponents is a diverse mix, including popstar Britney Spears, the coach of the New England Patriots, the founder of Apple Steve Jobs, US TV personality Martha Stewart and Somali Pirates. His other cases have included an action taken against the late President of Pakistan Benazir Bhutto (who he sued along with the Immigration and Naturalisation Service in 2007 to prevent himself from being deported to Pakistan) - although there was no evidence apart from what Riches had stated in the lawsuit of any actual attempt to deport him there or anywhere else.

Other unusual legal proceedings taken by Riches included a restraining order against the publishers of the video game Grand Theft Auto who it was claimed had contributed to the plaintiff committing identity theft. He even went as far as suing the Guinness Book of Records in order to stop them listing him as the 'most litigious individual in history' an action which like many of his others, was dismissed as the Guinness Book of Records didn't even have such a category of record. As a rule, unsurprisingly many of his law suits have been dismissed as 'frivolous', 'malicious' or in some cases for the more technical reason of 'failure to state a claim upon which relief could be granted'.

A US District Court Judge who dismissed Riches' suit against Vick as 'farcical,' felt that his lawsuits were clearly self-promotional. However, as per 28 U.S. Code § 1915(g), he has been barred from proceeding in forma pauperis (an exemption given to waive costs in the US for those lacking the funds to defend themselves). This was probably also the case in a suit taken against George Bush and another 783 defendants – which included not only long dead Che Guevara, Plato and Nostradamus but also more bizarrely some potential defendants who were not even human, for example the Eiffel Tower, Lincoln Memorial, Garden of Eden, the Holy Grail, the Roman Empire and the Dark Ages. In the end, however, someone did see the funny side of all this legal action as a collection of his law suits were published in a book called 'Comes Now the Plaintiff' to celebrate April Fools' Day in 2016.

BY DEFINITION

Anton Piller Order (English)
An order giving the applicant permission to search premises for evidence, inspect it and take it away.

Anton Piller orders (which are frequently misspelt as Anton Pillar Orders) are court orders to have the right to search premises and then seize evidence without warning. Their purpose is to avoid destruction of evidence, particularly in cases of trademark, copyright or patent infringements.

The name originates from the 1975 English case Anton Piller KG v Manufacturing Processes Limited, although the first such order was in fact granted earlier that year.

However, in England and Wales (since 1999), New Zealand, Australia and India they are now known officially as 'search orders' although the term Anton Piller order is still used in those jurisdictions. While in South Africa and Hong Kong where there are no statutory search orders they are still used.

These orders were used in Ireland in the 1998 case of William A Grogan (copyright owner of RAMDIS) v Monaghan Electrical Ltd & Michael Traynor but remain a grey area in that jurisdiction because of strong protection given to the family home in the Irish Constitution.

The orders tend to be used exceptionally only because they do not give the accused the opportunity to defend themselves. Generally, there has to be an extremely strong prima facia case against the defendant, actual or potential damage must be very serious and there must be clear evidence they have the documents or things being sought in their hands and there is a real possibility they will destroy them before an inter partes application can be made.

Around 500 such orders were made in England between 1975 and 1980 .

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The aim of this book is to provide reliable material on dispute resolution across the GCC countries. As well as an introductory overview written, the book includes a chapter on the dispute resolution practices in each of the GCC states written by particular experts from that country, and a chapter on dispute resolution in Egypt given the influence of Egyptian law and practice on the GCC.
There is also a specific chapter which explains the role of Islamic Sharia on regional dispute resolution practices.

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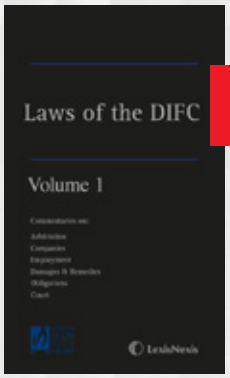

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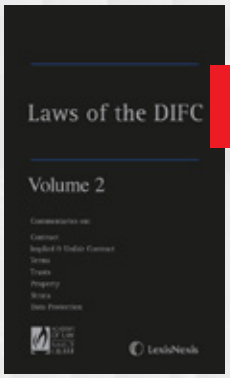

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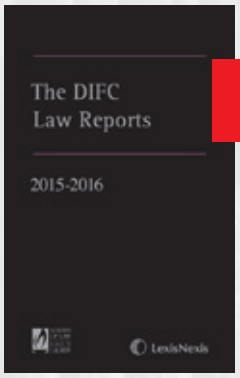

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