

Arbitration in the Middle East

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How important is international arbitration in the Middle East?

The vast majority of construction work in the Middle East is state procured, and therefore for the purposes of this note, it is more appropriate to consider arbitration in the Middle East from the perspective of the contractor.

International contractors and engineering companies bidding for large and complex construction infrastructure projects in the Middle East generally insist on international arbitration clauses that provide for arbitration in London or Paris and will usually be governed by English law.

However, the current state of the market means employers have the upper hand and therefore they may increasingly insist on contracts being subject to local law and the jurisdiction of their local courts or to domestic arbitration.

References: [UNCITRAL](#)

If the employer is reluctant to agree to international arbitration and is also insisting upon local law as the governing law of the contract, contractors may want to consider a middle ground. In return for the employer's acceptance of international arbitration seated in Paris or London, contractors could agree to make the local law the applicable law of the contract. Local laws are often more favourable to contractors because they seek to balance contractual rights with principles of fairness. This may provide an opportunity for contractors to claim their entitlements in circumstances that may not be available to them under English law or under a strict application of the contract terms.

Is arbitration accepted in the region?

It is sometimes suggested that arbitration is not accepted in the Middle East. Not so. Arbitration, or Tahkim, is reported to have been used by the Arabs as early as the seventh century. In many countries, therefore arbitration is part of local custom.

Historically, however, there was difficulty with international arbitration because of several arbitration awards in the 1950s and early 1960s that were unfavourable to state governments.

As a result, Arab countries became suspicious that international arbitration would not provide them with a fair means of resolving their disputes. Even today in Saudi Arabia, state entities are forbidden by law from agreeing to arbitration clauses without obtaining government consent. However, the global trend towards international arbitration and various conventions in favour of international arbitration have substantially eroded this hostility and increased its acceptance. This is evidenced by the increasing number of local arbitration centres and the growing number of arbitrations in the region, particularly in Dubai.

Local arbitration centres-another good compromise?

Traditionally, arbitration centres across the Middle East have been part of the local chamber of commerce. Their expertise varies considerably and, on the whole, they have not yet built a track record for dealing with the large and complex disputes likely to arise on construction projects where hundreds of millions of dollars may be at stake.

While there is movement across the Middle East to reform arbitration laws and to adopt laws based on the United Nations Commission on International Trade Law (UNCITRAL) model, there is still another hurdle to overcome. If arbitration requires assistance from the local courts - for example, where the court's enforcement powers are required in respect to interim measures or even to begin the arbitration process (as in Saudi Arabia) - then progress is likely to be slow, affecting the conduct of the arbitration. Despite this, substantial advances have been achieved in international arbitration across the Middle East. The following centres are especially noteworthy:

References: [UNCITRAL Arbitration Rules](#)

The Cairo Regional Centre for International Commercial Arbitration

This is perhaps the most established arbitration centre in the Middle East, with over 30 years' experience. It attracts many arbitration cases, mainly those connected with Egypt and North Africa.

Dubai International Arbitration Centre (DIAC)

None of the centres in the Gulf has attracted more cases than DIAC, which has established itself as probably the leading centre in the Gulf. The DIAC has the advantage of new rules that were published in May 2007, which are inline with other major arbitration centres around the globe.

Dubai International Financial Centre and the London Court of International Arbitration (DIFC - LCIA)

Dubai's reputation as a regional arbitration centre was further bolstered in February 2008, with the opening of a joint venture between the Dubai International Financial Centre (DIFC) and the London Court of International Arbitration (LCIA). The alliance added LCIA's expertise in administering arbitrations. Yet another boost to the centre's reputation came with the enactment in October 2008 of the new DIFC Arbitration Law 2008, which, in principle, enables parties anywhere in the United Arab Emirates and beyond to choose the DIFC as the seat of their arbitration. Thanks to the new law, a DIFC award, once ratified by the DIFC Court, is theoretically enforceable without any opportunity for challenge in the Dubai courts, unlike an arbitral award obtained outside the DIFC. The advantage of a DIFC award is clearly significant but it remains to be seen how the Dubai courts will deal with such awards as a matter of practice.

References: [DIFC - LCIA](#)

Other centres in the Gulf

There are a number of other less established arbitration centres situated throughout the Gulf states. These include Doha, the capital of Qatar, which is home to the Qatar International Conciliation Arbitration Centre. In Bahrain, the Bahrain Chamber for Dispute Resolution has teamed with the American Arbitration Association since 2009 to provide dispute resolution services in and beyond Gulf. In Abu Dhabi, the Abu Dhabi Commercial Conciliation and Arbitration Centre has been in operation for many years.

Enforcement of arbitral awards

Enforcing arbitration awards in the Middle East may be problematic, particularly in Libya and Yemen, which have not yet signed onto the New York Convention. Even where the New York Convention is in place, most Arab countries will decline enforcement on the basis of its public policy exemption, if the award contravenes domestic public policy.

Enforcement is particularly difficult in Saudi Arabia, where the enforcement of foreign awards will be declined if it is inconsistent with Sharia law. There are no formal statistics but very few awards have actually been enforced in Saudi Arabia solely on the basis of the New York Convention.

However, in the UAE, two foreign awards were enforced last year in accordance with the New York Convention. This is seen as evidence of the increasing trend in favour of arbitration in the UAE.

If there are assets outside the Middle East, the best course probably is to start enforcement there. If enforcement is to take place in the Middle East, however, in order to increase the chances of successfully enforcing an award, the conduct of the arbitration and the pleading of claims should be done in a way that, as far as possible, is careful to avoid falling foul of procedural and substantive local law.

Conclusion

Contractors will know from experience that, in complex projects, the process of enforcing entitlements does not always start with a dispute. However, the absence of an effective deterrent to disputes, in the form of proper dispute resolution machinery, may lead to more disputes arising. Therefore, Arbitration remains a key means of avoiding disputes in the Middle East by acting as a deterrent and, if amicable resolution cannot be achieved, a means of achieving an appropriate resolution.

Choosing a local arbitration centre in the Middle East may be a good compromise, but careful consideration needs to be given to all project circumstances before signing a contract that provides for this.

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