

## Work Remains In Elevating Dubai's Int'l Arbitration Status

By **Caroline Simson**

*Law360, New York (March 25, 2016, 7:13 PM ET)* -- Dubai's rise as one of the Middle East's economic powerhouses has brought with it a push by foreign investors for a more predictable system of arbitrating disputes arising in the region, and while recent measures taken by the city are a step in the right direction, more work remains before it's likely to be considered a major arbitral seat.

While arbitration isn't a new concept in the Middle East, international arbitration hasn't always been something that companies there embraced. Many of the region's large family companies have typically relied on the local courts, which are more familiar and "tried and true," said Reed Smith LLP partner Paul Taylor.

But as Middle Eastern governments like Dubai's have taken steps to increase outside investment, and those investors push to be able to resolve their disputes through arbitration, many local companies have gradually begun to embrace the concept.

"Gone away is the perception that international arbitration is just a Western instrument designed to obtain awards which are in favor of the foreign party without regard to the Arab party. Increasingly, Arab parties are regularly relying on international arbitration to successfully enforce their entitlements," said Raid Abu-Manneh, the global co-head of Mayer Brown LLP's international arbitration group.

Pair that with the the rise of the Middle East as a major global economic player, he said, and arbitration in a local seat such as Dubai isn't so uncommon anymore. In fact, his firm is about to open an office in the city, Abu-Manneh said.

"Until about 10 years ago, I would say that most international corporations would not agree to have their arbitrations in the Middle East or apply local law, but would insist on arbitration in London or Paris under English or French law," said Abu-Manneh. "But now with the shifting of the economic might of the Middle East ... countries in the Gulf have increasing economic firepower."

As a result, he said, there's a fair chance that businesses doing a major project or transaction in the region will find the the applicable law or the dispute resolution mechanism within their agreements to provide for local arbitration.

It wasn't always so. In 2004, the United Arab Emirates' highest civil court set aside an arbitration award issued to International Bechtel Co. in a dispute with the Directorate General of Civil Aviation of the Emirate of Dubai because the witnesses in the arbitration had not been sworn. It was a decision Abu-

Manneh referred to in a 2009 article as a low point for arbitration in the Middle East, and was a large part of the reason why in 2006 the UAE ratified the New York Convention, also known as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

That was a step in the right direction, but more work remains to be done.

According to Irina Tymczyszyn, a partner in Bryan Cave LLP's London office, "Emirates is very keen to be positioned as a major arbitration player. ... They actively promote Dubai as a seat ... and as a convenient forum. Obviously they have money and a desire to achieve that, [but] again, they're competing against places that are more arbitration friendly."

One of the biggest hurdles is the UAE's use of civil law. Common law principles, such as adopting previous court judgments as legal precedents, are generally not recognized in the UAE, according to the U.S. Consulate General in Dubai. In addition, only local firms can appear as counsel before a court.

"It's much less flexible than the law of Singapore, for example, or English law for that matter," said Tymczyszyn, who noted that she was recently obligated to sign an award in person that was issued by an International Chamber of Commerce tribunal seated in Abu Dhabi. "It comes down to a question of choice. Why would you choose something so inflexible? Obviously, they need to work on that if they want arbitrations to be seated there."

One step that the government of Dubai took in 2004 was to establish certain free zones such as the Dubai International Financial Centre, which is an independent jurisdiction within the UAE that operates under its own common-law based legal system and regulatory framework. Within the DIFC is the Dispute Resolution Authority, which in November formalized its relationship with the London Court of International Arbitration to form the DIFC-LCIA Arbitration Centre.

The DIFC-LCIA administers arbitral proceedings under the United Nations Commission on International Trade Law arbitration rules and acts as an appointing authority under those rules, while the competing Dubai International Arbitration Centre only acts as an appointing authority under those rules.

"The DIFC-LCIA has made a concerted effort to bill itself as a new alternative," said Taylor, noting that parties using the venue are able to use the DIFC courts, which provide for the independent administration of justice in the DIFC, to have their awards recognized. "You have a piece of paper that says you're entitled to X million dollars, but getting it ratified through the local courts has always been an issue here."

Mohamed El Ghatit, director and registrar of the DIFC-LCIA, noted that once parties have secured their judgment through the DIFC courts, they can then export that DIFC judgment to any neighboring Arab jurisdiction, where it's treated as an Arab judgment. That enables parties to avoid having to use local courts, which may be persuaded to set aside or refuse to enforce an award based on quirks in the local law.

Akin Gump Strauss Hauer & Feld LLP partner Hamish Lal said that while the jurisprudence around UAE law is maturing, there is still a fair amount of unpredictability compared to common law systems when it comes to certain articles within the country's Civil Procedure Law of 1992, which is the law that currently deals with arbitration. One example of that is a provision within the DIFC law providing for the setting aside of an arbitral award if it is in conflict with the public policy of the UAE, he noted.

It's not necessarily a problem that's going to be resolved overnight, he said.

"They're not simply able to say we're going to do away with the UAE civil code and we're going to replace it with common law. So there are certain things that are fixable, and there are certain things that are immovable," he said. "Sure in Dubai things are getting more efficient, more commercial, more international, but there's still some distance when you compare it to places like London, Paris or Singapore."

Even so, for years the UAE has been sitting on a draft arbitration law that's meant to modernize its legislation and bring it more in line with the model UN Commission on International Trade Law. Until then, arbitration will continue to fall under the Civil Procedure Law. But there's no question that the government needs to finalize the law before the country can be considered a major arbitral seat, said Abu-Manneh.

"The challenge is to bring arbitration laws up to international standards, just like Singapore has done, if progress is to continue," he said. "If you want to attract international arbitration and be perceived as arbitration friendly, you need to continue to update the law. ... That's essential, for example, if Dubai wants to be recognized as a regional arbitration center and compete against other major financial centers."

--Editing by Mark Lebetkin.

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