

## UAE Federal Law on Arbitration in Commercial Disputes - worth the wait

### Introduction

The UAE took a significant step forwards in 2006 when it acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. An updated domestic framework was expected to follow shortly thereafter to complement and continue this process of modernising arbitral practice in the region. It may have taken slightly longer than anticipated, but approximately 12 years later, the President of the UAE has signed Federal Law No. 6 of 2018 (the “**Law**”). The Law will come into force 30 days after it is published in the Official Gazette and is largely based on the UNCITRAL Model Law. It demonstrates the UAE’s continued efforts to open its doors to modern-day international arbitration and welcome new businesses and users to the region. For this, the new Law should be applauded and is most certainly worth the wait.

### The previous framework in the UAE

Prior to the introduction of the new domestic framework, there was no federal law dedicated to governing arbitration in the UAE. Instead, the procedure for arbitration was amalgamated into the UAE Civil Procedure Code, specifically Articles 203 – 218 of Federal Law No. 11 of 1992 (as amended). The principal focus of these rules is court litigation and so a small chapter on arbitration, consisting of 15 articles, illustrates the previously underdeveloped nature of this area in the UAE. This statutory underdevelopment was mitigated as far as reasonably practicable by the courts, but the codification of these decisions in the new Law will only aid certainty for international users.

### The new Law

The Law governs all aspects of arbitration in the UAE at both local and federal level. It is largely based on the UNCITRAL Model Law and consists of a number of important improvements. Key aspects of the Law are set out below.

#### APPLICABILITY

Article 2 deals with the scope of the Law and states that it applies to every arbitration in the UAE unless both parties agree that they want to apply another arbitration law. This is naturally subject to the condition that the alternate law does not contradict public policy.

Article 61 states that the Law applies with immediate effect from 4 June 2018. However, what is perhaps more interesting is that Article 59 notes that the Law applies to ongoing proceedings even if the arbitration agreement was concluded before the Law came into effect.

#### THE ARBITRATION AGREEMENT

Article 5 confirms the validity of an arbitration agreement incorporated by reference in different circumstances, including to another agreement and where there has been a claim made in any court.

Article 6 acknowledges the separability of the arbitration agreement by stating that if the main contract was void, breached or ended between the parties then the arbitration agreement would survive.

Importantly, Article 7 requires an arbitration agreement to be in writing, but recognises that this may be achieved by an exchange of communications and/or by modern methods such as email correspondence.

## ARBITRATOR APPOINTMENT

Article 10 notes that the parties are free to choose their own arbitrators and that there is no particular requirement of gender, nationality or religion. The important consideration is the arbitrators impartiality and independence.

## JURISDICTION

Significantly, Article 19 recognises the *kompetenz-kompetenz* principle, affording the tribunal the power to rule on its own jurisdiction. This provision also allows a party to challenge before the Court (defined as the Federal Courts of Appeal or the local courts as agreed by the parties) the tribunal's decision on its jurisdiction. In such a situation, the tribunal is barred from proceeding with the arbitration until a judgment is rendered by the Court, unless a party requests that the tribunal proceeds in any event.

## INTERIM RELIEF

The new Law explicitly provides for interim relief. Article 21 states that the tribunal is able to issue interim measures upon request by a party or on their own initiative whenever they deem it necessary.

Similarly, the court is able to provide interim relief, by way of Article 18, which provides the court with powers to order measures (both temporary and discretionary) based on what is deemed necessary for the arbitral process. In further support of arbitration, Article 36 provides the court with the power to order a party to provide evidence to support the arbitral process.

## CONFIDENTIALITY

As is common practice within the arbitral community, Article 48 states that the arbitral award will remain confidential unless both parties agree otherwise in a written agreement.

## EFFICIENCY

The new Law overrides previous costly and unnecessary formal requirements and contributes to increased efficiency. Article 28 provides that the tribunal may convene meetings and hearings anywhere it considers suitable, including a venue outside of the seat. Further and most importantly, awards can now be signed outside the seat, including by electronic means, meaning that it is now unnecessary for arbitrators to travel to the UAE exclusively for the purpose of signing the award.

## ENFORCEABILITY

Article 52 states that an arbitral award has the same effect as a court judgment and both parties should abide by it. For these conditions to apply the award must be confirmed by the Court. This is similar to the concept of *res judicata*, although the Courts in the UAE are given the final say as to whether the arbitral award has this *res judicata* effect.

The grounds for challenging an award are contained in Article 53 and are not dissimilar to those found in the UNCITRAL Model Law. Notably, as detailed in Article 56, challenging an award does not prevent the enforcement of that award in the interim.

## Conclusion

The Law is expected to bolster confidence in the arbitration regime of the UAE and its modernisation will be welcomed by business parties, both local and foreign, that wish to arbitrate their disputes within the jurisdiction. This is a positive development and will undoubtedly assist with attracting foreign direct investment to the UAE. It is fair to say that the Law took some time to come to fruition, but now that it has, it will play an important role in further establishing the UAE as a hub for both local and international arbitration.

If you have any questions or comments in relation to the above, please contact the below or your usual Mayer Brown contact.

***Raid Abu-Manneh***

Partner, London  
rabu-manneh@mayerbrown.com  
T: +44 20 3130 3773

***Dany Khayat***

Partner, Paris  
dkhayat@mayerbrown.com  
T: +33 1 53 53 36 31

***Tom Thraya***

Partner, Dubai  
tthraya@mayerbrown.com  
T: +971 4 375 7161

***Farid Haroun***

Associate, London  
fharoun@mayerbrown.com  
T: +971 4 375 7165

***Ali Auda***

Associate, London  
aauda@mayerbrown.com  
T: +44 20 3130 3035

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