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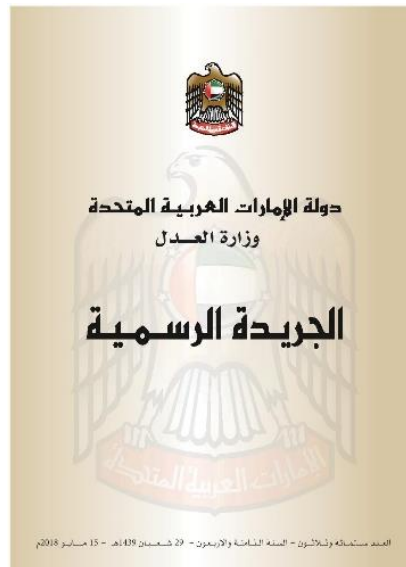
Preliminary Comments on the new UAE Federal Arbitration Act No. 6/2018

The United Arab Emirates offer a rare example of a country whose laws on arbitration are more used by foreign arbitrators and practitioners than by UAE-based colleagues. This is a tribute to the transformation of Dubai into an international arbitration hub in East-West, North-South and pan-Arab trade. Few would have bet on such a success amid an archaic chapter on arbitration in the Federal Code of Civil Procedure of 1992 and unsupportive local courts. Only strong-willed, experienced arbitrators had the determination to quell guerilla tactics. All others became the unwitting hostages of antagonistic applications, sometimes targeting the arbitrator herself. Yet, the number of cases, the amounts in dispute, and the quality of counsel and arbitrators involved in Dubai-seated arbitration never dwindled. There was always a way for justice and common sense to prevail.

Any lasting uncertainty is now over with the enactment of the long-awaited Federal

Arbitration Law. The changes that the new Law brings to domestic and international arbitration in the UAE are overwhelmingly favorable compared to the previous chapter

on arbitration in the Federal Law on Civil Procedure. While some of the new provisions in the new Law that are not sourced in the UNCITRAL Model Law may raise questions as to how they ought to be construed and applied, it is hoped that the expected Executive Order to be issued in due course will provide the necessary guidance.



Immediate effect. The new Law was published in the UAE Official Gazette No. 630, Year 48, on 15 May 2018. Pursuant to article 61 of the Law, it comes in effect on 16 June 2018, one month after its publication. Thereupon, the new Law will apply with immediate effect to ongoing proceedings even though the arbitration agreement and the initiation of the proceedings might have preceded the new Law (article 59).



INSIGHT

June 2018

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The vast jurisdictional powers vested by the new Law in the arbitral tribunals to rule on all procedural matters, and the lifting of many unnecessary limitations, in line with other modern arbitration laws in the world will likely lead to dilatory applications being set aside more readily and to proceedings being wrapped up more rapidly at a significant decreased costs to the Parties.

A few highlights of the new Law are listed below. Many of them can be traced to the UNCITRAL Model Law on International Arbitration. Others are the product of idiosyncratic features of arbitration in the UAE. The legislative package will be welcomed by international arbitrators and practitioners involved in arbitration in the UAE.

1. The separability of the arbitration agreement is acknowledged (article 6) and the validity of an arbitration agreement incorporated by a reference

to another agreement or to general terms and conditions is confirmed (article 5).

2. The majority of the new provisions in the new Law apply only absent agreement of the parties to the contrary. Institutional rules (ICC, DIAC, etc.) are one form of such an agreement.

3. Arbitral tribunals are granted the necessary jurisdictional empowerment to rule the proceedings and to issue the necessary orders and awards. In particular, a petition to the court in the UAE in relation to the validity or the scope of the

arbitration agreement, or a challenge of an arbitrator, does not suspend the arbitral proceedings (article 8 and 15 respectively). Neither does a criminal complaint unless the arbitral tribunal considers that the determination of the complaint by the criminal court is

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دولة الإمارات العربية المتحدة
وزارة العدل

الجدول الرسمية

القوانين الاتحادية	
٩	قانون التجاري رقم (5) لسنة 2018، بشأن الإفلاس.
٢٧	قانون التجاري رقم (6) لسنة 2018، بشأن التحكيم.
المراسيم الاتحادية	
٥٩	مرسوم اتحادي رقم (84) لسنة 2018، بالتصديق على اتفاقية بين حكومة الدولة ومنظمة الألفية والفرقة لتأميم المتحدة (الفاي) بشأن تعديل الاتفاق التزم بشأن مكتب المنشقة شبه الإقليمي لفرع مجلس التعاون الخليجي واليمن.
٦٩	مرسوم اتحادي رقم (85) لسنة 2018، بالتصديق على اتفاقية بين حكومة الدولة وحكومة جمهورية كرواتيا لتجنب التفتت الأزدواج العمومي فيما يتعلق بالضرائب على الدخل.
٧٢	مرسوم اتحادي رقم (86) لسنة 2018، بالتصديق على اتفاقية بين حكومة الدولة وحكومة جمهورية مولدوفا لتجنب الأزدواج العمومي ومنع القبول المتالي فيما يتعلق بالضرائب على الدخل.
٧٣	مرسوم اتحادي رقم (87) لسنة 2018، بالتصديق على اتفاقية بين حكومة الدولة وحكومة جمهورية بولندوفا لتجنب الأزدواج العمومي والحماية المتبادلة للاستثمارات.



INSIGHT

June 2018

Preliminary Comments on the new UAE Federal Arbitration Act No. 6/2018

necessary for the resolution of the dispute (article 43).

4. Arbitral tribunals are empowered to issue interim measures upon being petitioned by a party or on their own initiative whenever they deem it necessary. To that end, they may require the provision of an appropriate security (article 21). The Federal Courts of Appeal are directed in the Law to support the arbitral proceedings in terms of ordering interim and other evidence collection measures as may be requested by the arbitral tribunal (articles 18 and 36).
5. Particularly welcome are the multiple references throughout the new Law to the use of modern telecommunications means. Notices by email are valid notifications (article 24), as are hearings and deliberations conducted by video or telephone conferences (article 28).
6. Many of the costly interpretations of the former chapter on arbitration are no longer to be. Specifically, the new Law

empowers an arbitral tribunal to convene meetings and hearings anywhere it deems suitable even if the venue is not the legal seat (article 28). Likewise, awards can be signed outside the seat, including electronically (article 41§6). Thus, there is no longer a need to delay the issue of an award until an international arbitrator is able to schedule a flight to the UAE to sign the award onshore.

7. Finality, bindingness and *res judicata* are normal effects of the award as affirmed in the new Law (article 52), in line with international standards. The award is stated to have the same executory effect as a court judgment as from its recognition by the competent court in the UAE. Grounds for annulment are limitatively listed in article 53. They reflect international consensus. The procedure for recognition is fast-tracked (60 days) and substantially simplified (article 55).
8. Article 25 asserts a general estoppel rule that bars objections on grounds of



INSIGHT

June 2018

Preliminary Comments on the new UAE Federal Arbitration Act No. 6/2018

a breach of law or of the arbitration agreement if those objections are not asserted within seven days from being known. While the general principles of procedural fairness would be expected to lead to a similar result, the strict time limit is a welcome feature in the arsenal of anti-guerrilla measures.

Some of the questions raised by the new Law that merit clarification are as follows:

A. Article 19§2 allows a party to challenge before the competent court in the UAE an arbitral tribunal's procedural order upholding its own jurisdiction. The new Law provides that the arbitral proceedings may proceed if the other party applies to the tribunal to proceed with the arbitration notwithstanding the pending challenge. Yet, the possibility for the challenging party to petition the court on the basis of a procedural order, not an award, is uncustomary and may lead to legal uncertainty and abuse;

B. The reference in article 37§1 to the application of the "rules of law" agreed between the parties contrasts with the reference in article 38§1 to the application of the "*substantive rules of the law that is most closely connected with the dispute*". The latter seems to exclude the possibility for the arbitral tribunal to apply non-statutory rules of law such as the general principles of law, trade usages, or even the rules of *Shari'a* as the governing law if the parties have not chosen such rules. If that restriction were to be confirmed in the Executive Order, it would be a regrettable limitation.

The expected Executive Order should clarify the few ambiguous points in the new Law. The future of arbitration in the UAE merits it.

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