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United Arab Emirates

Andrew Mackenzie,¹ Lina Bugaighis² and Nour Sabbah³

A. Legislation and rules

A.1 Legislation

A.1.1 Legislation Onshore UAE

A.1.1.1 The New UAE Arbitration Law – Federal Law No. 6 of 2018

One of the major legislative developments to have occurred in the field of arbitration in the UAE in the last year has been the enactment of the UAE’s first stand-alone Arbitration Law under Federal Law No. 6 of 2018 (the “Arbitration Law”). The new Arbitration Law embodies a more modern and favorable approach to arbitration, with fewer restrictions imposed on both parties to the arbitration and the arbitral tribunal. The Arbitration Law entered into force on 14 June 2018, one month after it was published in the UAE’s Official Federal Gazette No. 630 on 15 May 2018. It has expressly repealed and replaced the provisions of the arbitration chapter, contained at articles 203 to 218 of the UAE Civil Procedures Law No. 11 of 1992 (the “CPC”). The new Arbitration Law automatically applies to all future arbitrations seated in onshore UAE, including any arbitrations which

¹ Andrew Mackenzie is a partner and head of international arbitration at Baker McKenzie’s Dubai office. He has been based in Dubai since 2009. He works extensively across the Middle East, Africa and Asia, acting for governments and international corporations on complex commercial disputes under a variety of civil and common law systems and under all the major arbitral institutions, including ICSID, ICC, LCIA and SIAC.

² Lina Bugaighis is an associate in Baker McKenzie’s Dubai office qualified in England & Wales. Lina focuses on arbitrations across a variety of industry sectors including construction, commercial and consumer goods and has experience of cases under major arbitration forums including ICC, LCIA, DIFC-LCIA and DIAC.

³ Nour Sabbah is a paralegal in our International Arbitration Practice. Nour has worked on arbitrations relating to construction, oil and gas, commercial, insurance and agency disputes in the Middle East, under the aegis of arbitration institutions including DIAC, ICC, LCIA and DIFC-LCIA.

are ongoing at the time of its entry into force, whether it arises out of a previously existing arbitration agreement signed before the law or whether its proceedings commenced under the provisions of the old arbitration chapter of the CPC. Arbitral proceedings that have been concluded under the CPC prior to the entry into force of the new Arbitration Law remain valid.

The new Arbitration Law has introduced a number of changes which contrast with the old position under the repealed CPC provisions. We set out below a summary of the most significant changes.

- (a) **Scope of Application** - Under the CPC, no distinctions were made between a domestic and foreign arbitration. By contrast, the new Arbitration Law now distinguishes between the two and importantly, makes it clear that it applies to both domestic and foreign arbitrations. The UAE Courts have interpreted this distinction when enforcing arbitral awards. Certain Courts have indicated that the enforcement provisions of the Arbitration Law only apply to domestic arbitral awards and that foreign arbitral awards should be enforced under the New York Convention through the old procedure that existed prior to the Arbitration Law coming into force. The Arbitration Law is still propagating and thus we expect the courts to confirm their position on this critical issue throughout 2019 as more awards are brought to the courts for enforcement.

- (b) **Developments in respect of the Arbitration Agreement** - (i) first, the new Arbitration Law expressly states that an arbitration agreement must be concluded by either (1) a natural person who has the legal capacity to dispose of his or her rights, or (2) a representative of a judicial person authorized to enter into an Arbitration Agreement. It is therefore still vital, as was the case under the CPC, to consider whether or not an individual has the capacity to enter into, or the authority to bind a company to, an arbitration agreement. The distinguishing factor of the new Arbitration Law is that the



legal capacity of an individual entering into an arbitration agreement will now be determined in accordance with the law governing his or her capacity, which may not necessarily be the laws of the UAE.

(ii) Second, the new Arbitration Law is more flexible in relation to the form of an arbitration agreement which can be (1) agreed upon prior to the dispute, either in a separate agreement or as a clause within a contract; or (2) agreed upon after the dispute arises, even if a case has already been filed before a court in relation to the dispute; or (3) agreed upon by reference either in a contract or any other document which includes an arbitration clause, provided that the Parties expressly indicate that such a clause constitutes part of the contract.

(iii) Third, the new Arbitration Law has clarified the existing requirement that the arbitration agreement must be in writing. It expressly recognizes that an arbitration agreement will be valid if it is (1) included in an instrument signed by the parties, (2) included in correspondence between the parties, (3) in electronic form in accordance with the UAE laws on electronic transfers, (4) confirmed by a court order during the course of court proceedings where parties agree to arbitration, (5) included in a written contract by way of reference to provisions of a model contract, international convention or any other document that includes an arbitration clause.

(c) Time efficiency - On the face of it, the new Arbitration Law has introduced a number of provisions that should allow proceedings to be conducted more swiftly and with a greater degree of certainty. Firstly, while the CPC allowed a party to submit a request for recusal of an arbitrator, it did not specify an efficient procedural timeframe for doing so. This has now been implemented in the new Arbitration Law at articles 15. Secondly, under the new provisions, any court proceedings in

relations to arbitration proceedings shall be launched in the UAE Court of Appeal rather than the UAE Court of First Instance. Thirdly, under the new Arbitration Law, arbitration proceedings shall not be suspended, even if court proceedings were previously existing or have been launched, except in two scenarios: (i) when the issue of the tribunal's jurisdiction is pending before the UAE courts (after the tribunal has already ruled on its own jurisdiction), or (ii) if some specific issues arise (e.g. criminal proceedings are commenced, a document is challenged on grounds of forgery, or a question outside the scope of the tribunal's competence arises) and the arbitral tribunal thinks that those issues must be settled before the merits of the dispute can be settled, the arbitral tribunal must suspend the arbitration proceedings until a final judgment is issued in respect of this issue.

- (d) Arbitration Hearings - The new Arbitration Law has provided for more flexible and practical rules in regards to the conduct of hearings. Those can be held anywhere, and not only in the seat of arbitration; they can be held via modern means of communication and electronically; witnesses can give testimony and can be cross-examined via modern channels of communication (e.g. video conference). This development will not only benefit clients in terms of the efficiency of the proceedings but also will enable them to save on costs.
- (e) Arbitral awards - Another aspect of the new Arbitration Law which will enable the Parties to save costs is the possibility for awards to be signed outside the seat of arbitration and electronically. In addition, arbitrators are not required to be in each other's presence when signing the award. The previous requirement was that an award had to be physically signed by the arbitral tribunal in the UAE in order for it to be recognized and enforced as a domestic award. This new development is very beneficial to parties as the requirements in the old CPC provisions resulted in delays to the issuing of the final award



as well as additional expenses resulting from the requirement of foreign tribunal members having to travel to the UAE solely for the purpose of signing the arbitral award.

Furthermore, the new Arbitration Law expressly states the binding force of an arbitral award upon the parties, as well as its *res judicata* effect and enforceability as a court judgment after the competent UAE court has recognized it.

Finally, in terms of enforcement, under the previous procedure, enforcement of an arbitral award could take a considerable amount of time as it had to begin with the UAE Court of First Instance and could progress through all three levels of the court system. In addition, the grounds for nullifying an arbitral award were not in line with international standards and best practice. The new Arbitration Law now imposes a positive obligation on the UAE courts to recognize and enforce awards and the grounds on which a party can seek the annulment of an arbitral award are now more limited and exhaustive. Enforcement proceedings of an arbitral award before the courts are now shorter and can commence directly in the federal or local Courts of Appeal, rather than in the Court of First Instance. The Court has to then render its decision within 60 days from the date of the enforcement request.

A.1.1.2 Amendment to Federal Law No. 3 of 1987 on criminal matters

The UAE has recently published a decree intended to end the long-standing controversy around the potential exposure of arbitrators and experts to criminal liability arising from acting in a manner that is inconsistent with their duty of impartiality and neutrality. Federal Decree Law No. 24 of 2018 (the “New Decree”) was issued on 23 September 2018 by the President of the UAE and came into force on 8 October 2018. It amends certain provisions of Federal Law No. 3 of 1987 Promulgating the Penal Code (“Penal Code”), including article 257, which was amended in October 2016. The New Decree further amends article 257 of the Penal Code, which had previously imposed criminal liability on arbitrators and experts who issue decisions or

opinions or present facts, in a manner that is inconsistent with their duty of impartiality and neutrality. article 257, as amended by the New Decree, removes the ambiguity which had existed under its previous wording by clearly defining its scope of application. It now applies to experts, translators and fact finders appointed by a judicial or administrative authority in a criminal or civil case, who knowingly and deliberately confirm a false fact or issue an untrue interpretation. Therefore, arbitrators acting within the auspices of arbitration institutions, including party-appointed experts in arbitration, are no longer exposed to criminal liability under this article of the Penal Code.

The New Decree also introduces another interesting development with the new article 236, which states that arbitrators, experts and fact-finders shall be considered as public employees for the purpose of the application of articles 234 and 237 as amended. article 234 and 237 are the provisions dealing respectively, with the criminal liability of public employees, foreign public employees and employees of international organizations arising from requesting, accepting or obtaining undue direct or indirect benefits (i.e. bribes), and with those who promise, offer or give the same to the aforementioned categories of individuals.

While articles 234 and 237 provide clear criteria for the acts constituting the crimes of accepting and offering bribes, article 236 of the new Decree is not clear on whether it applies to all arbitrators and experts (including those appointed in *ad hoc* or private institutional arbitration proceedings), or only refers to arbitrators, experts and fact finders appointed by a judicial or an administrative authority.

While the newly amended article 257 is a positive and welcome development towards instilling confidence back into arbitration proceedings conducted in the UAE, the general wording of article 236 is likely to cause a new controversy on whether it is intended to apply to all arbitrators and experts or merely those who are appointed by a judicial or an administrative authority.



A.1.1.3 Abu Dhabi Administrative Court Order No. 21 of 2018

This decision by the Abu Dhabi courts established new specialized divisions within the court of appeals of Abu Dhabi and Al Ain in order to deal with all arbitration-related cases.

A.1.2 Legislation offshore UAE

International arbitration in the Dubai International Financial Center (“DIFC”) continues to be governed by the DIFC Arbitration Law No. 1 of 2008, as amended in 2013.

In respect of the Abu Dhabi Global Market (“ADGM”), the ADGM Arbitration Regulations of 2015 continue to govern arbitration proceedings within ADGM and provide for the procedure of recognition and enforcement of arbitral awards in ADGM Courts.

A.2 Institutions, rules and infrastructure

There are no significant developments in respect to arbitral institutions and their rules. The three main arbitration institutions in the UAE are (i) the Dubai International Arbitration Center (DIAC), (ii) the DIFC-LCIA Arbitration Center and (iii) the Abu Dhabi Commercial, Conciliation and Arbitration Centre (ADCCAC). Their respective arbitration rules currently in force are the DIAC Arbitration Rules of 2007, the DIFC-LCIA Arbitration Rules of 2016 and the ADCCAC Rules of 2013.

The current DIAC Arbitration Rules, which came into force in 2007 are currently being revised to become more in line with the UAE’s continuous desire to ensure that businesses have access to sophisticated methods of resolving cross-border disputes in line with international norms and standards.

In 2016, DIAC, following an initiative of the Dubai Chamber of Commerce and Industry (DCCI), opened its first representative office in the DIFC. This allowed Parties to a DIAC arbitration to turn to either the Dubai Courts or the DIFC Courts in order to recognize and

enforce their arbitral award. This mechanism has created instances of conflicts of jurisdiction and judgments between the DIFC and Dubai Courts, which led the Ruler of Dubai to establish through Decree No. 19 of 2016, a judicial committee formed of judges from both Dubai Courts and DIFC Courts (“Joint Judicial Committee”) whose mission is to resolve these types of conflicts. The ICC opened a representative office in ADGM in 2017.

B. Cases

There have been no significant final and binding court judgments concerning arbitral proceedings issued in 2018 as at the date of this publication.

C. Diversity in arbitration

Arbitral institutions in the UAE are alive to the issue of diversity and inclusion - particularly in age and gender. The DIAC and Dubai Chamber of Commerce and Industry (DCCI) have been involved in promoting the support of young arbitrators in the Middle East and North Africa. Indeed, DIAC launched the “DIAC 40/Young Practitioners Group” in 2015, the aim of which is to support and assist members of the arbitration community under 45 years to develop their skills, learn from their peers and build contacts across the MENA arbitration and legal communities. The Group is open to all young practitioners and members of the arbitration community under 45 years. Moreover, between 2010 and 2015, 40% of the arbitrators appointed by the DIAC Executive Committee were below 45 years and 30% were women.

Further, the question of gender diversity and non-discrimination based on gender is also something that was factored in by legislators while drafting the new Arbitration Law. The wording of the new Arbitration Law does not employ the term “he” alone but rather includes the pronoun “she.” The new Arbitration Law includes reference to both men and women throughout (e.g. article 10 of the new Arbitration Law states that



the Arbitrator must be a natural person who is not a minor and who is not placed under guardianship or divested of his or her civil rights as a result of (i) declaring bankruptcy, unless he or she is discharged ...

While the impact that this will have in practice may be limited, it does demonstrate a sensitivity to the important issue of female representation in the arbitral community.