



Overview on the Judicial Application of the UAE

Arbitration Law

نظرة عامة على التطبيق القضائي لقانون التحكيم الإماراتي

by

HONGTAO LI

Dissertation submitted in partial fulfilment

of the requirements for the degree of

Construction Law and Dispute Resolution

at

The British University in Dubai

August 2023

Declaration

I warrant that the content of this research is the direct result of my own work and that any use made in it of published or unpublished copyright material falls within the limits permitted by international copyright conventions.

I understand that a copy of my research will be deposited in the University Library for permanent retention.

I hereby agree that the material mentioned above for which I am author and copyright holder may be copied and distributed by The British University in Dubai for the purposes of research, private study or education and that The British University in Dubai may recover from purchasers the costs incurred in such copying and distribution, where appropriate.

I understand that The British University in Dubai may make a digital copy available in the institutional repository.

I understand that I may apply to the University to retain the right to withhold or to restrict access to my thesis for a period which shall not normally exceed four calendar years from the congregation at which the degree is conferred, the length of the period to be specified in the application, together with the precise reasons for making that application.

A rectangular box containing a handwritten signature in black ink. The signature is written in a cursive style and reads "Hongtao Li".

Signature of the Student

Copyright and Information to Users

The author whose copyright is declared on the title page of the work has granted to the British University in Dubai the right to lend his/her research work to users of its library and to make partial or single copies for educational and research use.

The author has also granted permission to the University to keep or make a digital copy for similar use and for the purpose of preservation of the work digitally.

Multiple copying of this work for scholarly purposes may be granted by either the author, the Registrar or the Dean only.

Copying for financial gain shall only be allowed with the author's express permission.

Any use of this work in whole or in part shall respect the moral rights of the author to be acknowledged and to reflect in good faith and without detriment the meaning of the content, and the original authorship.

Abstract

The almost 12-year long-awaited UAE Arbitration Law, being its historical first stand-alone arbitration law which repealed and replaced articles 203 to 218 of the UAE Civil Procedures Law, was enacted in the Official Gazette on 15 May 2018. The UAE Arbitration Law inaugurates a new chapter in the UAE's arbitration legislation, giving it is the first stand-alone arbitration law in its history. This thesis, under such a background, discusses and analyzes, the key new features of the UAE Arbitration Law comparing to the old arbitration law stipulated in the UAE Civil Procedures Law; how the new provisions or mechanisms stated in UAE Arbitration Law have been judicially applied, by reviewing certain number of the UAE Courts' precedents, focusing on some key new provisions such as appointment of arbitrators, arbitration agreed by reference, jurisdictional competence and challenge, interim and precautionary measures, recognition and enforcement, award challenge or nullification etc., to better understand how the true intention and tenet of the UAE Arbitration Law in theory, with a focus on the new provisions or mechanisms stipulated in the UAE Arbitration Law, has been interpreted and implemented in judicial practice, in an effort attempting to provide some guidance and recommendations on practicing of the same and to identify issues arising out of applying the same in the practice so that giving suggestions on how the UAE Arbitration Law may probably be improved and how the legal provisions should be better implemented in practice, with highlights to the legal practitioners in the UAE.

Keywords: UAE Arbitration Law, jurisdictional competence, precautionary measures

خلاصة خلاصة

إن قانون التحكيم لدولة الإمارات العربية المتحدة، الذي طال انتظاره لما يقارب 12 سنة وتم إصداره في الجريدة الرسمية في 15 مايو 2018 أول قانون تحكيم قائم بذاته في تاريخها، قد ألغى المواد 203 إلى 218 من قانون الإجراءات المدنية للدولة وحل محلها ، وفتح فصلاً جديداً في تشريع التحكيم في حدودها نظراً لكونه أول قانون تحكيم وفي ظل هذه الخلفية تقوم هذه الأطروحة بمناقشة وتحليل السمات الجديدة الرئيسية لقانون التحكيم. مستقل في تاريخها الإماراتي مقارنة بقانون التحكيم السابق المنصوص عليه في قانون الإجراءات المدنية ، وكيفية تطبيق الأحكام أو الآليات الجديدة المقررة فيه قضائياً من خلال مراجعة عدد معين من سوابق قانونية لمحاكم الإمارات مركزاً على بعض الأحكام الحاسمة الجديدة بما فيها تعيين المحكمين ، والتحكيم المتفق عليه بالإحالة ، والاختصاص القضائي والارتياح، والتدابير المؤقتة والاحترازية ، والاعتراف والتنفيذ ، والارتياح في الحكم أو إبطاله وما إلى ذلك ، هدفاً إلى فهم كيفية تفسير النوايا والمبادئ الحقيقية الكامنة نظرياً في قانون التحكيم الإماراتي وتنفيذها في الممارسة القضائية محاولة لتقديم بعض الإرشادات والتوصيات في تطبيقها، وإلى تحديد القضايا الناشئة عن ممارستها عملياً بحيث يمكن تقديم اقتراحات تلقت أنظار الممارسين القانونيين في حدود الإمارات حول كيفية تحسين قانون التحكيم الإماراتي وتنفيذ أحكامها بشكل أفضل.

Acknowledgements

I would like to express my deepest gratitude to my supervisor, Omar Alhyari, for his invaluable guidance, unwavering support, and insightful feedback throughout the entire process of this dissertation. Their expertise and encouragement have been instrumental in shaping this work.

I am indebted to the British University in Dubai for providing the necessary resources and facilities that facilitated the completion of this dissertation.

Special thanks go to my family for their love, encouragement, and understanding during this challenging journey. Their belief in me has been my strongest motivation.

Lastly, I extend my heartfelt appreciation to all participants and individuals who generously contributed their time and insights to this study.

Table of Contents

Chapter 1: Introduction and background about the UAE Arbitration Law.....	1
1.1 Introduction	1
1.2 Arbitration Concept.....	2
1.3 UAE Arbitration Law	4
Chapter 2: Overview and Key New Features of the UAE Arbitration Law.....	8
2.1 Overview	8
2.1.1 Definitions and Applicability	9
2.1.2 Arbitration Agreement.....	10
2.1.3 Arbitral Tribunal.....	15
2.1.4 Arbitral Proceedings	19
2.1.5 Arbitral Award.....	21
Chapter 3: Judicial Application of the UAE Arbitration Law	29
3.1 Applicability to Foreign Award	29
3.2 Capacity to Agree Arbitration.....	29
3.3 Arbitration Agreement after Action Taken before the Court.....	31
3.4 Arbitration Incorporated by Reference	31
3.5 Arbitration Agreement-No Objection to Arbitrate	34
3.6 Jurisdictional Challenge after First Hearing	35

3.7 No Appeal to Decision on Appointment of Arbitrator	35
3.8 Competence- Competence	36
3.9 Court of Appeal Decision on Competence-Not Subject to Appeal	37
3.10 Waiver of the Right to Object	37
3.11 Interim Measures	38
3.12 Procedures to be Followed.....	38
3.13 Arbitral Award on Agreed Terms	39
3.14 Arbitral Tribunal Decides to Extend Time Limit for Issuing Final Award	39
3.15 Exclusivity of the Reasons for Annulment of Award.....	40
3.16 Suspension due to Challenge for Forgery	42
3.17 Arbitration Costs.....	43
3.18 Notification of the Award	44
3.19 Non-Retroactivity of the UAE Arbitration Law	44
3.20 Nullification in Part.....	45
Chapter 4: Conclusion and Recommendations	46
4.1 Guidance and Recommendations.....	46
4.1.1 Capacity to Agree Arbitration	46
4.1.2 Arbitration Incorporated by Reference	47
4.1.3 Jurisdictional Challenge after First Hearing	49

4.1.4 Competence- Competence	49
4.1.5 Interim Measures	50
4.1.6 Arbitral Tribunal Decides to Extend Time Limit for Issuing Final Award.	50
4.1.7 Suspension due to Challenge for Forgery.....	51
4.1.8 Exclusivity of the Reasons for Annulment of Award.....	51
4.1.9 Arbitration Costs.....	52
4.1.10 Nullification in Part	53
4.2 Improvement and Recommendations	53
4.2.1 Interim Measures	54
4.2.2 Joining Third Party to Arbitration	54
4.2.3 Waiver of the Right to Object.....	56
4.2.4 Witness to Take Oath	56
4.2.5 Signing of the Arbitral Award	57
4.2.6 Confidentiality of Arbitration.....	58
4.2.7 Exclusivity of the Reasons for Annulment of Award.....	58
4.2.8 Suspension of the Award Enforcement under Serious Grounds	60
4.2.9 Non-Retroactivity of the UAE Arbitration Law.....	60
4.2.10 Arbitration Clause in Insurance Policy.....	61
4.2.11 Stay under UAE Bankruptcy Law	62

4.2.12 Applicability to Enforcement of Foreign Arbitral Award	62
4.2.13 Final Conclusion.....	63
References	65

Chapter 1: Introduction and background about the UAE Arbitration Law

1.1 Introduction

The UAE enacted its first standalone arbitration law in May 2018, replacing parts of the Civil Procedures Law. This law introduces new features to UAE arbitration. This essay examines these changes and their application in court cases, focusing on areas like arbitrator selection and enforcement. It aims to offer guidance for practitioners and suggest improvements to the law.

This essay mainly adopts doctrinal approach research methodology, courts' precedents study and analysis, i.e.,

(1) Discussing and analysing the new features of the UAE Arbitration Law by comparing the same to the old arbitration law stated in the UAE Civil Procedures Law, by referring to public available articles, journals, reports, literatures, legislations, books, etc..

(2) Reviewing and discussing the judgments issued by the UAE Courts dealing with the issues in relation to the UAE Arbitration Law with a focus on the key new provisions or mechanisms stated in the UAE Arbitration Law. In particular, by analysing and synthesizing the selected cases, paying attention to the facts, legal issues, judicial reasoning and outcomes, to analyse how the UAE Arbitration Law has been judicially applied in practice.

(3) Basing on the above, providing guidance and recommendations on practicing the UAE Arbitration Law in an effort to identify issues arising out of judicial application of the UAE Arbitration Law so that giving suggestions as to how the UAE Arbitration Law may probably be improved and how the legal provisions should be better implemented in practice, with highlights to the legal practitioners in the UAE.

1.2 Arbitration Concept

Arbitration is a widely recognised method of resolving disputes internationally. It has become a preferred choice for parties involved in international commercial disputes, serving as an alternative to the traditional court system, in this process, the involved parties agree to submit their disagreements to a trusted arbitrator for resolution. ¹According to the UAE Arbitration Law², this method is regulated by law, and a binding award is issued by the arbitral tribunal, which may consist of a sole arbitrator or a panel of arbitrators, as agreed upon by the parties. It states in the UK Arbitration Act 1996 the arbitration aims to achieve resolution of disputes through an impartial tribunal, while minimizing unnecessary delays and expenses.³ Compared to litigation in courts, arbitration offers several well-known advantages. Firstly, arbitration proceedings are kept confidential, ensuring privacy for the disputing parties; secondly, parties have the freedom to choose arbitrators with specific expertise relevant to the subject matter of the dispute. Finally, in most of the jurisdictions, arbitral awards are final and binding, eliminating the possibility of further appeal.

Arbitration can be broadly categorized into two types: ad hoc arbitration and institutional arbitration, depending on whether the arbitration process is established by the parties themselves or administered by a specialized arbitration institution. Overall, arbitration has proven to be an efficient and effective method of resolving disputes.

In ad hoc arbitration, the parties have the responsibility to design the entire arbitration procedure. On the other hand, institutional arbitration takes place under the guidance of dedicated arbitration institutions, such as the International Chamber of Commerce (ICC) International Court of Arbitration, the London Court of International

¹ Ess. H Martin (barrister And International Arbitrator), Redfern and Hunter on International Arbitration (Oxford University Press 2015), 2.

² Federal Law No. (6) of 2018 on Arbitration.

³ UK Arbitration Act 1996 first published 1996 reprinted 2001.

Arbitration, Dubai International Arbitration Centre etc. In arbitration, the dispute is resolved by one or more arbitrators, who then issue an arbitral award. This award is typically final and legally binding on all the parties involved. It can be enforceable in the local courts under domestic legislation, as well as internationally through reciprocal recognition and enforcement treaties. One of the most renowned international conventions on recognition and enforcement of arbitral awards is the New York Convention i.e. the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Contractual Basis of Arbitration

Arbitration serves as an alternative to the traditional court system in many jurisdictions worldwide, and its legitimacy relies on the parties' mutual agreement to arbitrate. The arbitration agreement is established through a contractual arrangement where the parties exchange promises, expressing their legal commitment to fulfil said promises.⁴ Therefore, a valid agreement to arbitrate forms the essential foundation of the arbitration process, without which the courts would typically have jurisdiction over the dispute. For instance, article 8 under UNCITRAL Model Law⁵ applies only when there is an explicit agreement between the parties to submit all or certain disputes to arbitration. Similarly, the New York Convention's Article II applies to an agreement where the parties commit to arbitration. The UK Arbitration Act of 1996 defines an arbitration agreement as an agreement to submit present or future disputes, whether contractual or not, to arbitration. In most of the jurisdictions, an arbitration agreement could be established either before the dispute arises or after it occurs.⁶ This agreement may take the form of a separate, standalone contract or be stipulated within a specific contractual arrangement. Either way,

⁴ Onyema E, International Commercial Arbitration and the Arbitrator's Contract (Routledge 2012),9.

⁵ 1985 UNCITRAL Model Law on International Commercial Arbitration (as amended in 2006).

⁶ Article 5 (1), (2) of the UAE Federal Law No. (6) of 2018 on Arbitration; article 12 (1) under DIFC LAW No. 1 of 2008 on Arbitration.

it is the agreement between the parties that enables the arbitration process to be invoked and provides the basis for resolving disputes.

1.3 UAE Arbitration Law

General Background

Although the United Arab Emirates (UAE) was established in 1971, no legislation regulating arbitration was in place until the UAE Civil Procedures Law was promulgated in 1992. There were only 16 articles, namely, articles 203 to 218 of the UAE Civil Procedures Law (**Old Arbitration Chapter**), govern arbitration in the UAE.⁷

Obviously, arbitration law was not sound, and the space of arbitration was small in the UAE Civil Procedures Law, but this does not mean that arbitration is not popular in the UAE. On the contrary, it is a very common and popular method of dispute resolution in the UAE. It is truly regrettable and incredible that in a place where arbitration is so prevalent, mainly these simple 16 law provisions regulating arbitration have been in place for nearly 27 years before a relatively robust arbitration law, the Federal Arbitration Law of the UAE⁸ (**UAE Arbitration Law**), was enacted in 2018.⁹

Brief Introduction

The UAE Arbitration Law inaugurates a new chapter in the UAE's arbitration legislation, giving it is the first stand-alone arbitration law in its history. A draft of the UAE Arbitration Law was proposed in 2006 when UAE acceded to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (**New York**

⁷ 'The In-House Lawyer: Arbitration under UAE Law: Towards a Modern Legal Framework?' (The In-House Lawyer | The Legal 500) <<https://www.inhouselawyer.co.uk/legal-briefing/arbitration-under-uae-law-towards-a-modern-legal-framework/>> accessed 10 April 2022.

⁸ The UAE Federal Law No. 6 of 2018 on Arbitration.

⁹ Alhyari OH and Al Ani AR, 'Annulment of Arbitral Awards: A New Adoption of the UNCITRAL Model Law's Legal Framework', (2020) Journal of Legal Affairs and Dispute Resolution in Engineering and Construction.

Convention),¹⁰ “the UAE is the last Member State of the Gulf Co-operation Council to joint it”,¹¹ however, it was not promulgated in the same year and there were various drafts being prepared in order to improve the draft of the UAE Arbitration Law, whilst it had been imminent to promulgate a stand-alone arbitration law since the UAE’s accession of the New York Convention which made it extremely necessary for UAE to enact such a stand-alone arbitration law attempting to reach the level of the best international standards and practice.

This almost 12-year long-awaited UAE Arbitration Law being its historical first stand-alone arbitration law which repealed and replaced articles 203 to 218 of the UAE Civil Procedures Law. This is a significant development of the arbitration in the UAE. The UAE Arbitration Law was enacted in the Official Gazette on 15 May 2018 and entered into force one month following the date of its publication in accordance with article 61 of the same, namely, on 15 June 2018. It constitutes of 6 chapters containing in total 61 articles, it is mainly drafted on the basis of the United Nations Commission on International Trade Law (**UNCITRAL**) Model Law on International Commercial Arbitration,¹² the Egyptian Arbitration Law¹³, the UAE Courts’ precedents as well as some provisions under the repealed Old Arbitration Chapter.¹⁴ Almost eighty (80) countries’ arbitration legislations are based on UNCITRAL Model Law including those worldwide well-known arbitration jurisdictions, for instance, Singapore, the United Kingdom and the United States of America; and, in Middle East, Bahrain, the Kingdom of Saudi Arabia and Oman, reflecting

¹⁰ Alhyari OH, ‘Does the “New” UAE Arbitration Law Need to be Modified?’(2020) International Arbitration Law Review. The UAE acceded to the New York Convention without reservation by its Federal Decree No. 43/2006, which was published in the Official Gazette on 28 June 2006.

¹¹ J. Kwan and E. Teale , ‘Arbitration in the United Arab Emirates: the traps, the tricks and tips for the unwary’, (2006), International Arbitration Law Review.

¹² 1985 UNCITRAL Model Law on International Commercial Arbitration (as amended in 2006); (The new United Arab Emirates Arbitration Law - Cleary Gottlieb) <https://www.clearygottlieb.com/-/media/files/the-new-united-arab-emirates-arbitration-law--a-step-toward-2018_06_04-pdf.pdf>; accessed 12 May 2022.

¹³ Egyptian Arbitration Law No.27 of 1994 (as amended by Law No.9 of 1997 and Law No.8. of 2000).

¹⁴ *ibid*, P 255.

the international adaptable feature of the UNCITRAL Model Law. Notwithstanding the above, there are differences between the UNCITRAL Model Law and the UAE Arbitration Law which are discussed in the next chapter of this paper.

Before the UAE Arbitration Law was enacted, over 60 specialists were consulted on its drafts and the same were discussed with the Federal National Council.¹⁵ Undoubtedly, the intention of the enactment of the UAE Arbitration Law is to enhance the arbitration in UAE and consolidate the international arbitration hub position of the UAE. Whilst the UAE Arbitration Law generally applies to all UAE seated arbitration, it is worth noting that there are some free zones in the UAE, such as, Dubai International Financial Centre and Abu Dhabi Global Market, in which, independent arbitration law or regulations were issued, and the UAE Arbitration Law is usually not applicable there. For instance, DIFC Arbitration Law¹⁶ and ADGM Arbitration Regulations¹⁷. However, the focus of this paper is on the UAE Arbitration Law and the discussions in this paper does not intend to cover the DIFC Arbitration Law and ADGM Arbitration Regulations unless otherwise expressly stated.

The UAE Arbitration Law, therefore, not only just filled in the historical void of no stand-alone arbitration law to more completely and systematically regulate the UAE seated arbitrations, but also contained the best international arbitration practice and standards which have modernized the arbitration law of the UAE.

As such, after the UAE Arbitration Law has been enacted for more than four (4) years, the provisions of which have been applied and interpreted by UAE Courts and arbitral tribunals, the UAE Courts have started to issue judgments on the UAE Arbitration Law interpretation and implementation related issues, it is quite important and meaningful

¹⁵ *ibid*, P 254.

¹⁶ DIFC LAW No. 1 of 2008; However, the DIFC-LCIA Arbitration Centre and the Emirates Maritime Arbitration Centre (EMAC) has been annulled by Decree No. 34 of 2021, and the assets and operations of which were folded into the Dubai International Arbitration Centre.

¹⁷ ADGM Arbitration Regulations 2015.

to review how the UAE Arbitration Law is being applied in the judicial practice although the judicial application of the same is still in its beginning stage.

It has always been the case, in the most of the jurisdictions if not all, that the judicial application of the law and the legal theory contemplated in the same mutually affect and benefit each other in the way, on one hand, the legal theory contemplated in the law guides the true intention and tenet of the law to be correctly and better reflected and implemented in the judicial practice of the law, on the other hand, the judicial practice of the law tests the legal theory contemplated in the same to better improve and perfect the provisions of the law.

This study will discuss and analyze how the UAE Arbitration Law has been judicially applied to better understand how the true intention and tenet of the UAE Arbitration Law in theory, with a focus on the new provisions or mechanisms stipulated in the UAE Arbitration Law, has been interpreted and implemented in judicial practice in an effort attempting to provide some guidance on practicing of the same and to identify issues, if any, arising out of applying the same in the practice.

Chapter 2: Overview and Key New Features of the UAE Arbitration Law

2.1 Overview

As discussed in Chapter 1, the UAE Arbitration Law is mainly based on, inter alia, the UNCITRAL Model Law. Some of the critical distinctions between the two are, for instance, (i) the former stipulates that the commencement of the arbitration shall be the date after which the arbitral tribunal is formed unless otherwise agreed by the parties¹⁸ whereas the latter stipulates that, when the respondent receives the request for arbitration, the arbitration shall be considered commenced, unless otherwise agreed by the parties;¹⁹ (ii) arbitration hearing may be held via modern techniques is expressly stated in the former²⁰ but the same is not provided for in the latter; (iii) the arbitral awards shall be confidential is explicitly stipulated in the UAE Arbitration Law²¹ whilst the same is not available in the UNCITRAL Model Law; and (iv) the UAE Arbitration Law expressly provides that, only duly authorized person to sign the arbitration agreement may enter into an arbitration agreement, otherwise, the agreement shall be null and void,²² whereas the same explicitly is not found in the UNCITRAL Model Law. However, this does not change the fact that the enactment of the UAE Arbitration Law undoubtedly enhanced the arbitration in UAE and developed the UAE arbitration legislation in a positive way. The following sections of this Chapter will attempt to provide and summarize the overview and the key new features of the UAE Arbitration Law with a view comparing mainly to the Old Arbitration Chapter.

¹⁸ Article 27 of the Federal Law No. (6) of 2018 on Arbitration.

¹⁹ Article 21 of the UNCITRAL Model Law.

²⁰ Article 28 of the Federal Law No. (6) of 2018 on Arbitration.

²¹ Article 48 of the Federal Law No. (6) of 2018 on Arbitration.

²² Article 4 (1) of the Federal Law No. (6) of 2018 on Arbitration.

2.1.1 Definitions and Applicability

The UAE Arbitration Law defines, among other things, arbitration, arbitration agreement and arbitral tribunal whereas no definition as such was provided for under the Old Arbitration Chapter. The Old Arbitration Chapter did not stipulate the applicability of those legal provisions regulating arbitration, whilst the scope of application is expressly stated in the UAE Arbitration Law which is an important point to address as it provides guidance towards its applicable scope. It is worth noting that the scope of the UAE Arbitration Law's applicability is broad not only substantively but also timewise. Particularly, in accordance with article 2 of the UAE Arbitration Law, it shall apply to (i) any arbitration proceeded within the UAE unless different arbitration law is chosen and agreed to be applied, provided that it is not in contradiction with the UAE's public policy and public morals; (ii) any international commercial arbitration proceeded in the UAE should the parties so agree that the UAE Arbitration Law shall govern such arbitration; and (iii) a contractual or non-contractual dispute arising out of and/or in connection with any legal relationship which is governed by the UAE current applicable laws and which lead to arbitration proceeding unless otherwise stipulated by a special article. Furthermore, it is necessary to point out that the UAE Arbitration Law stipulates, under what circumstances, an arbitration should be considered an international arbitration even if it is processed within the UAE, whereas no definition of international arbitration was provided for under the Old Arbitration Chapter. However, one wonders why the UAE Arbitration Law does not expressly state that it does not apply to the free zones such as ADGM in which independent arbitration laws should be applicable.

Timewise, although the UAE Arbitration Law was enacted on 15 May 2018 and became effective on 15 June 2018, it can be applicable to any commenced arbitration proceeding which is continuing when the UAE Arbitration Law becomes effective, even if

the above-mentioned proceeding is based on an arbitration agreement signed much earlier, provided that any previous legislation upon which the arbitration proceeding was commenced shall remain valid.²³ This undoubtably shows the arbitration-friendly attitude of the legislator as it is usually not common to find a new legislation having such effect in the UAE, whilst it does not affect all those proceedings that have taken place before the UAE Arbitration Law became effective. To the contrary, most of the new laws in the UAE does not have such effect.

2.1.2 Arbitration Agreement

It is quite remarkable that writing requirements of an arbitration agreement are specifically stated in the UAE Arbitration Law in article 7 (2). It requires that the Arbitration Agreement is considered valid in the following circumstances:

- a. If it's included in a signed document, written communication (including electronic mail as per relevant regulations), between parties.
- b. If a written contract refers to a model contract, international agreement, or similar document with arbitration clauses, treating them as part of the contract.
- c. If an arbitration agreement is reached during a court case, the court confirms it, and both parties' initiate arbitration while the court declares the lawsuit null.
- d. If included in written submissions during arbitration or acknowledged in court when one party proposes arbitration and the other doesn't object in response. By contrast, the Old Arbitration Chapter only simply stated "*An arbitration agreement may be proved only by writing.*" which does not give a clear indication as to what may be seen as or deemed to satisfying the writing requirements. Parties in dispute over such writing requirements often have wasted a lot of time in arguing, for instance, whether the

²³ Article 59 of the Federal Law No. (6) of 2018 on Arbitration.

arbitration clause included in the written correspondences between the parties is valid or not.

Capacity presents a distinct issue that has the potential to question the validity of a jurisdiction or an arbitration clause.²⁴ Comparing to the Old Arbitration Chapter, although having legal capacity to sign an arbitration agreement is nothing new and this is the case in most of the civil law jurisdictions, the UAE Arbitration Law emphasized this requirement and made it much clearer. It specifies circumstances for both nature person and legal person whereas the Old Arbitration Chapter simply states in Article 203(4) and only emphasize the subject of “person” and without legal person. Attention is worthy of being drawn to the parties who would like to enter into an arbitration agreement in respect of the legal capacity required in signing an arbitration agreement, especially, in the case of a legal entity signing the same, the representative of such legal entity must be duly authorized to execute arbitration agreement. Furthermore, it is worth mentioning notwithstanding the position that the manager of a limited liability company incorporated in UAE is usually deemed to have the authority to execute an arbitration agreement,²⁵ parties are nevertheless advised to review the constitutional documents of the said company to see if the manger’s right to enter into an arbitration agreement has been explicitly withdrawn to make sure the executed arbitration agreement is valid.²⁶

The UAE Arbitration Law expressly specify that the arbitration agreement shall not be terminated as a result of the death or bankruptcy of one of the parties and it remain enforceable against the legal successor of such party whereas nothing in this nature can be found in the Old Arbitration Chapter. This gives the parties a clear indication as to the continue validity of an arbitration agreement when the party to the same dies or is

²⁴Tang ZS, *Jurisdiction and Arbitration Agreements in International Commercial Law* (Routledge 2014) , 32.

²⁵ Dubai Court of Cassation Case No. 276-2020 issued on 20-05-2020.

²⁶ Dubai Court of Cassation Case No. 870-2020; See also Dubai Court of Cassation Challenge No. 293 of 2019 issued on 30-06-2019.

dissolved as the case may be. However, it is interesting to note that such position can be changed by the parties if they agreed otherwise as stated in article 4 (4) of the UAE Arbitration Law, “Unless otherwise agreed by the parties...”

Arbitration agreement can be incorporated by reference is undoubtedly another impressive character of the UAE Arbitration Law,²⁷ this indicates a very arbitration-friendly attitude of the legislator. It seems that the legislator intended to cover more rather than less those arbitration agreements referred to by another document referred to in the underlying contract. This is because it is not uncommon to see an arbitration clause stated in a model contract or standard forms of contract used worldwide and parties who apply these forms of contract often only sign the main contract (or form of agreement) which refers to the terms and conditions of the said forms of contract and the main contract usually states that the referred forms of contract constitute an integral part of the main contract. It is well known that such scenario is quite common to be found in UAE construction contracts which are usually FIDIC²⁸ contract forms in which an arbitration clause is incorporated by reference. This is why the UAE Arbitration Law specifies that arbitration agreement can be incorporated by reference so that those arbitration clauses, which is not stated in the signed main contract but however appears in the forms of contract referred to in the main contract, can be well “captured”.

Notwithstanding the preceding paragraph, it is significant to note that the condition precedent of incorporating arbitration agreement by reference in accordance with articles 5 (3) and 7 (2) b of the UAE Arbitration Law is that “provided that the said reference is clear in treating such clause as an integral part of the contract”. The question is what the criteria of satisfying such a condition precedent is. In other words, how would a party judge

²⁷ Article 5 (3) and Article 7 (2) b of the Federal Law No. (6) of 2018 on Arbitration.

²⁸ FIDIC named Fédération Internationale Des Ingénieurs-Conseils, is an international standards organization for construction technology and consulting engineering. The organization is best known for the FIDIC suite of contract templates.

whether the above-mentioned reference is explicit enough in deeming such clause as an integral part of the contract? This will be further discussed in the following chapter by looking at certain court judgments.

Article 6 of the UAE Arbitration Law confirms the severability or autonomy doctrine of the arbitration agreement from the legislation level which is in line with the UNCITRAL Model Law as well. The same doctrine has been established by many countries in their national legislations, which is a significant doctrine of the international arbitration.²⁹ However, the said article 6 also explicitly specifies in effect that the arbitration agreement can be found invalid if the underlying contract itself which contains such arbitration agreement or clause was held invalid due to the fact that the person who signed the contract does not have the legal capacity so to do. This echoes the requirement of article 4 of the UAE Arbitration Law as well. However, it is worth noting that, under the UAE Civil Procedures Law, the arbitration agreement shall lapse once the arbitration award is rendered. This also means that no dispute shall be resolved by arbitration again if the arbitral award is invalidated. Whereas, according to article 54 (4) of the UAE Arbitration Law which stipulates Unless the parties agree otherwise, the Arbitration Agreement stays valid under this Law even if the arbitral award is cancelled, except when the cancellation is due to issues with the Agreement itself like its absence, invalidity, or unenforceability. The arbitration agreement shall remain in full effect even if the arbitration award is invalidated. Thus, the parties may resort to arbitration again unless the parties otherwise agreed and the invalidation is not relating to an issue connected with the same arbitration agreement per se.³⁰ This is the difference between the arbitration provisions under the UAE Civil Procedures Law and the UAE Arbitration Law, namely, under the former, after the

²⁹ Born G, International Commercial Arbitration (Wolters Kluwer Law& Business 2014),67; LLC AL, ‘Does an Arbitration Clause Survive the Termination of a Contract? • Aceris Law’ (ACERIS LAW, 15 August 2020) <<https://www.acerislaw.com/does-an-arbitration-clause-survive-the-termination-of-a-contract/>> accessed 3 June 2022 .

³⁰ Dubai Court of Cassation Case No.883/2018/445 issued on 12-05-2019.

arbitration award is issued and the same is nullified, the arbitration clause shall not be applicable anymore, whereas, under the UAE Arbitration Law, according to article 54, the arbitration clause shall remain in full effect even if the arbitration award is invalidated unless such invalidation is based on the validation of the agreement per se.

Another noteworthy difference between the Old Arbitration Chapter and the UAE Arbitration Law is that when a party should raise its jurisdiction challenge before the judiciary courts if the other party files a lawsuit before the same ignoring the existence of an arbitration agreement. Under the Old Arbitration Chapter, the party who intends to raise jurisdictional challenge against the court should do it before the first hearing,³¹ whereas the UAE Arbitration Law states that the same should be raised before submitting any substantial statement of defence on the subject matter.³² This has been confirmed in the judicial practice, for instance, in the judgement on Dubai Court of Cassation Case no. 445 / 2019 / 986 issued on 15-12-2019 which states “it is established before the court that the Defendant expressed its defence represented in the existence of the arbitration clause before making any substantive defence. In consequence, its defence is in compliance with the law and this requires the adjudication of the inadmissibility of the case given the existence of the arbitration clause”.³³ If the party fails to raise the jurisdiction challenge accordingly, the judiciary courts will hear the case unless the courts find the arbitration agreement invalid or unenforceable as explicitly stated in article 8 (1) of the UAE Arbitration Law.

In addition, article 5 (2) of the UAE Arbitration Law confirms that an arbitration agreement can even be reached after an action has already been brought before the

³¹ Grose M, Construction Law in the United Arab Emirates and the Gulf (John Wiley & Sons, Ltd 2016). 254.

³² Article 8 (1) of the Federal Law No. (6) of 2018 on Arbitration.

³³ Dubai Court of Cassation Case No. 445 / 2019 / 986 issued on 15-12-2019.

judiciary court so long as such arbitration agreement states those particular issues which are subject to arbitration.

2.1.3 Arbitral Tribunal

Arbitrator Requirement

It only simply states in the Old Arbitration Chapter by repealed article 206 (1) that Minors, people with legal disabilities, those without civil rights due to criminal penalties, or unrehabilitated bankrupt individuals cannot serve as arbitrators.

Whereas the UAE Arbitration Law Article 10(1) expressly stipulates the requirements of arbitrators in addition to the conditions that might be agreed by the parties.³⁴ The UAE Arbitration Law also states that any arbitrator to be nominated or appointed by any party or parties shall make public in writing any circumstances which may cause question on the arbitrator's independence or impartiality and the arbitrator shall inform the parties and other arbitrators as soon as possible whenever the above-mentioned circumstance happens during the whole arbitration proceedings.

In addition to specifying the number of the arbitrator must be odd, the UAE Arbitration Law states, should the parties fail to agree the number of the arbitrators in their arbitration agreement, unless otherwise decided by the institution designated for arbitration or the Court of Appeal, the number of arbitrators shall be three.

Nomination of Arbitral Tribunal

The arbitrator is an indispensable element of the arbitral process, as the process itself cannot exceed the competence and calibre of the chosen arbitrator. Considering the significance of the arbitrator, one of the outstanding points of the UAE Arbitration Law is that it clearly states how the arbitral tribunal is nominated in detail. The procedures to be

³⁴ Article 10 (1) of the Federal Law No. (6) of 2018 on Arbitration: *“the arbitrator shall be a natural person who is not a minor, interdict, or deprived of his or her civic rights for having been convicted in a felony or misdemeanour involving breach of honour or trust, or declared bankrupt, unless he or she has been rehabilitated.*

complied with for the appointment of arbitrator(s) can be agreed by the parties. If the parties fail to agree the nomination of arbitrator(s) or if the arbitrators respectively appointed by the parties cannot reach an agreement with respect to nominating a third arbitrator, the Court of Appeal shall appoint such arbitrator(s) and the Court of Appeal's decision in this regard shall not be, in any way, appealed.³⁵ If one would like to apply to the Court of Appeal for an arbitrator's appointment, such party shall also forward the other parties with a copy of the application submitted to the Court of Appeal by such party and the same shall be provided to the arbitrator who was appointed in the same dispute previously. In the application that submitted to the Court of Appeal, what the dispute is about shall be briefly mentioned and those requirements needed to be satisfied for the arbitrator to be appointed as required under the arbitration agreement should be referred to. In addition, those steps that have been taken in order to appoint another member in the arbitral tribunal. The third arbitrator appointed according to the stipulation of article 11 of the UAE Arbitration Law shall act as the arbitral tribunal's chairman. In case the arbitral tribunal consists of more than three arbitrators, the same stipulation shall remain applicable. In addition, there is also an option, according to the UAE Arbitration Law, for the parties to request the Court of Appeal to provide them with a list of not more than six candidates specialized in the field of arbitration from any arbitral entity in the UAE for the purpose of appointing arbitrator. The party who requests to do so has to pay the fees required by the relevant arbitral entity and such fees shall be considered part of the arbitration costs.³⁶

Competence-Competence

One of the noteworthy characters of the UAE Arbitration Law is that it confirms the worldwide applicable principle "Competence-Competence", namely, the arbitral tribunal

³⁵ However, this shall be without prejudice to the parties' right to challenge the appointment or nomination of arbitrator(s) in accordance with article 14 of the UAE Arbitration Law.

³⁶ Article 11 (8) of the Federal Law No. (6) of 2018 on Arbitration.

can decide whether it has jurisdiction over the dispute submitted by the party or parties to it.³⁷ Broadly speaking, international arbitral tribunals possess the authority to examine and render decisions on disputes related to their own jurisdiction.³⁸ The Competence-Competence principle is derived from the Federal Constitutional Court of Germany³⁹ and it then became a very important principle in international arbitration.⁴⁰ The same principle is explicitly confirmed by article 16 (1) of the UNCITRAL Model Law and article 23 (1) of the UNCITRAL Arbitration Rules and which is recognized in various arbitration rules of arbitration institution as well, for instance, Article 6.2 of the DIAC Arbitration Rules.⁴¹

Article 19 of the UAE Arbitration Law further states any of the parties may request the court to rule on the jurisdiction issue after the arbitral tribunal makes its decision on the jurisdiction challenge saying that they are competent and the court's decision in this regard shall not be subject to appeal by any means. This is important as it can avoid a party trying to use the appeal proceedings to intentionally delay the arbitration. To ensure the fluency and timeliness of the arbitration process, article 19 (2) further states that the arbitral tribunal may even decide to continue with the proceedings at the request of one of the parties while the court is making its decision on the arbitral tribunal's jurisdiction.

Interim Measures

In the absence of any contrary agreement between the parties, the arbitral tribunal has the right to issue interim order as the arbitral tribunal deems fit with respect to the

³⁷ Article 19 (1) of the Federal Law No. (6) of 2018 on Arbitration..

³⁸ Born G, *International Commercial Arbitration* (Wolters Kluwer Law& Business 2014), 1916.

³⁹ Lo, P. Y, 'Master of One's Own Court'(2004) (34)Hong Kong Law Journal;Hartley TC, *Constitutional Problems of the European Union* (Hart 2000), 152–153.

⁴⁰ Oehmke T, *International Arbitration* (Clark, Boardman, Callaghan 1990),5; Park WW, 'The Arbitrability Dicta in *First Options v. Kaplan*: What Sort of Kompetenz-Kompetenz Has Crossed the Atlantic?' (1996) 12 *Arbitration International* 137.

⁴¹ DIAC Arbitration Rules 2022, "Where the Arbitration Court has decided pursuant to Article 6.2 above that the arbitration shall proceed, the final decision as to the jurisdiction of the Tribunal shall be taken by the Tribunal itself."

subject matter of the dispute, either upon requesting by any of the parties or upon the arbitral tribunal's own initiative.⁴²

The arbitration panel can decide on these temporary interim measures:

- a. Collect evidence important for solving the issue.
- b. Safeguard goods related to the dispute, like storing them with a third party or selling those at risk of damage.
- c. Protect assets that the future award might be enforced upon.
- d. Maintain the current situation until a decision is reached.
- e. Order actions to prevent harm to the arbitration or actions that might hurt the process.

Based on the above-mentioned, interim measures, also known as conservatory measures, are essentially designed to safeguard the interests of one party in securing the final award.⁴³ This is completely a new mechanism established in the UAE Arbitration Law which is undoubtedly a significant improvement in the UAE arbitration legislation. Moreover, according to Article 18 of the UAE Arbitration Law, the court's president has the authority to grant interim measures as deemed suitable for the ongoing or perspective arbitral proceedings. This power may be exercised upon request from either party involved or at the behest of the arbitral tribunal itself. These measures can be ordered prior to the commencement of arbitration or at any stage during the arbitral proceedings. This makes it possible for a party to apply for interim measures even before the arbitration is commenced so that the relevant evidence, assets or status could be well secured while the arbitration is going to take place or during the arbitration process which is usually not a short process. It is worthy pointing out that, once an order is issued by the court's president according to

⁴² Article 21 of the Federal Law No. (6) of 2018 on Arbitration.

⁴³ Moses M.L, *The Principles and Practise of International Commercial Arbitration* (Cambridge University Press, 2008),101.

article 18 of the UAE Arbitration Law, the order shall be always fully effective unless it is cancelled, whether partly or completely, by way of a decision made by the same person who issued the same, namely, the court's president.⁴⁴

In addition, as to the arbitral tribunal, the UAE Arbitration Law also states that the majority of the members of the arbitral tribunal shall make the decision should the number of the arbitrators be more than one unless otherwise agreed by the parties; what happens if one of the parties breaches the arbitral tribunal nomination procedures; challenge of the arbitrators and procedures for challenging the same; termination of the arbitrator mandate and appointment of the substitute arbitrator; and time limit to file a jurisdictional challenge against the arbitral tribunal.

2.1.4 Arbitral Proceedings

Commencement

The commencement of arbitral proceedings shall be the date following the arbitral tribunal is formed unless otherwise agreed by the parties according to the UAE Arbitration Law.⁴⁵ More importantly, article 27 (2) of the UAE Arbitration Law further states the issuance of the request for arbitration is considered initiating a claim for securing precautionary attachment order. This gives a clear indication to, a party, who has obtained an precautionary attachment order from the court but who has agreed to resolve any disputes by way of arbitration in the underlying contract in the meantime, as to how to satisfy the procedural requirement under the UAE Civil Procedures Law for keeping such precautionary attachment order remain valid, namely, the applicant must file a claim before the court for confirmation of his right and the validity of the attachment within eight days from the date of the issuance of the precautionary attachment order.⁴⁶

Language of the Arbitration

⁴⁴ Dubai Court of Cassation Case No. 284-2020.

⁴⁵ Article 27 of the UAE Federal Law No. (6) of 2018 on Arbitration.

⁴⁶ Article 255 (2) of the UAE Federal Law No. (11) of 1992 on Civil Procedure.

If the parties did not agree on what language shall be used in the arbitration proceedings, under the UAE Arbitration Law, the default position is that Arabic should be applied in the arbitration proceedings. Attention should be drawn to the non- Arabic speaking parties who do not wish to proceed arbitral proceedings in Arabic. They should either explicitly state the language of arbitration in the arbitration agreement or implicitly avoiding Arabic by applying institutional arbitration rules as agreed between the parties. Additionally, one distinctive characteristic of arbitration in the UAE is the availability of selecting the seat of arbitration in the DIFC, an independent jurisdiction rooted in common law principles, where English serves as the governing language.⁴⁷ However the possibility of such option has come to an end when the UAE Decree No.34 (2021) was issued.

Modern Means of Communication

The UAE Arbitration Law confirms that the method of holding hearings for arbitration proceedings can be modern communication channels and electronic technology⁴⁸ which undoubtably makes the arbitral proceedings more efficient. Article 33(3) of the UAE Arbitration Law states that the hearings may be held through modern means of telecommunication that do not require their physical presence at the hearings. In addition, witnesses may be questioned by the arbitral tribunal by way of modern means of communication without their physical attendance at the hearing in accordance with Article 35 of the UAE Arbitration Law. In addition, it seems that there are no mandatory provisions on these procedures. An important note, comparing to the Old Arbitration Chapter, is that the UAE Arbitration Law does not explicitly state that the witness should take oath whereas the same can be found in article 211 of the Old Arbitration Chapter which states “*arbitrators shall cause the witnesses to take oath.*” This point will be further discussed in the later Chapter of this paper.

⁴⁷ Arbitration World 2018 (Sweet & Maxwell International series).

⁴⁸ Article 28 (2) of UAE Federal Law No. (6) of 2018 on Arbitration.

Continuity of Arbitral Proceedings

It is worth noting that the UAE Arbitration Law clearly states that the arbitral tribunal has the right to determine the arbitral proceedings to be continuing when i) When the arbitral tribunal doesn't have authority over the matter. ii) When there's a claim of document forgery presented to the tribunal. iii) When document forgery led to criminal proceedings or other crimes.⁴⁹ This is a quite important development as, according to the UAE Civil Procedures Law, the arbitral proceedings should be suspended under these circumstances. Furthermore, any delay tactic by challenging the arbitrator repetitively appointed by a party will not work at all under the UAE Arbitration Law since article 15(3) of the UAE Arbitration Law explicitly states that such challenging of arbitrator shall not suspend the arbitral proceedings. Article 30 (1-2) of the UAE Arbitration Law also provides a fourteen-day timeline for the claimant and the respondent filing its statement of claim or statement of defence respectively should there be no agreement reached between the parties otherwise in this regard. This prompts the efficiency of the arbitral proceedings. However, such a fourteen-day timeline is usually not practical for both the claimant and the respondent. It is advised to either agree a longer timeline in the arbitration agreement or by agreeing to apply arbitration rules of an arbitration institution.

2.1.5 Arbitral Award

Form of Arbitral Award

Article 41 of the UAE Arbitration Law stipulates, inter alia, the specific constitution of an arbitral award. In addition, the UAE Arbitration Law confirms that, before the final award which settles the complete dispute is issued by the arbitral tribunal, partial or interim arbitral awards may be issued by the arbitral tribunal. The interim orders issued by the arbitral tribunal shall be executable before the courts and which shall be executed by way

⁴⁹ Article 43 of the UAE Federal Law No. (6) of 2018 on Arbitration.

of an enforcement order rendered by the court's president, or the person authorized by the same.⁵⁰

It is worth noting that the UAE Arbitration Law also confirms that the arbitral tribunal may issue an arbitral award including the terms of a settlement agreement reached between the parties before the final award is rendered. Such award which includes settlement terms reached between the parties as mentioned above shall have the same effect as those which do not include settlement terms in terms of the enforcement of the arbitral awards.⁵¹ This encourages disputed parties to always try to amicably settle disputes between them.

Furthermore, additional arbitral award is available under the UAE Arbitration Law. It, for the avoidance of doubt, in no way shall mean an award dealing with any disputes or issues in addition to those submitted to the arbitral tribunal for resolution by the disputed parties. Such an additional award is only applicable to those claims submitted to the arbitral tribunal during the arbitral proceedings but neglected or not mentioned in the final arbitral award.⁵²

Interpretation and Correction of the Award

In addition to the above, the Arbitral Tribunal may issue decision on interpretation of the award and correction of the award after the final arbitral award is rendered according to the UAE Arbitration Law.⁵³ Whilst the decision on interpretation of the award may only be issued upon request by any of the disputed parties and which is subject to the arbitral tribunal's discretion, the decision regarding correction of the award may be issued either upon request by any of the disputed parties or on the arbitral tribunal's own initiative.

⁵⁰ Article 39 of the UAE Federal Law No. (6) of 2018 on Arbitration.

⁵¹ Article 40 of the UAE Federal Law No. (6) of 2018 on Arbitration.

⁵² Article 51 of the UAE Federal Law No. (6) of 2018 on Arbitration.

⁵³ Article 49, 50 of the UAE Federal Law No. (6) of 2018 on Arbitration.

However, both the decision on interpretation of the award and the one on correction of the same shall be deemed supplementary to the arbitral award.

Time Limit for issuance of Arbitral Award

According to article 42(1) of the UAE Arbitration Law, the arbitral award shall be issued within six months from the date of the first hearing of the arbitration unless the parties agreed otherwise. Differing from the mechanism previously available under the repealed Old Arbitration Chapter, unless a longer period is agreed between the parties, the above time limit for issuing arbitral award is now allowed to be extended for an additional six months under the UAE Arbitration Law. In addition, further extension is only allowed to be granted by the courts upon request by the parties or the arbitral tribunal itself.⁵⁴ It is worth noting that, under the repealed Old Arbitration Chapter, it is explicitly stated that the parties may, whether expressly or impliedly, agree to extend the time limit for issuing arbitral award stipulated in the agreement or by law⁵⁵ whereas similar provision is not found in the UAE Arbitration Law.

It is significant to note that failing to issue an arbitral award in line with the time limit mentioned above is one of the reasons for challenging an arbitral award in accordance with the UAE Arbitration Law.⁵⁶

Signing of Arbitral Award

Article 41 (6) of the UAE Arbitration Law states that arbitral awards can be signed outside the seat of arbitration and the same can be signed via electronic way as well, which, in the view of the author of this paper, is quite a positive development. Before the UAE Arbitration Law comes into effect, the arbitrators had to come to Dubai, for instance, to sign the arbitral awards for Dubai seated arbitration cases to ensure that the arbitral

⁵⁴ Article 42(2) of the UAE Federal Law No. (6) of 2018 on Arbitration.

⁵⁵ Article 210(2) of the UAE Federal Law No. (11) of 1992 on Civil Procedure.

⁵⁶ Article 53(1)(g) of the UAE Federal Law No. (6) of 2018 on Arbitration.

awards will not be nullified on the basis that the same were not signed in Dubai, the seat of arbitration.⁵⁷

Enforcement of the Arbitral Award

Being legally final and binding to the parties is the essential character of an arbitral award and which shall have the res judicata effect.⁵⁸ Notwithstanding its self-enforceable effect as if it were a final court judgment, to enforce an arbitral award, a court decision ratifying the same should be obtained to proceed such enforcement.

The party who wishes to execute an arbitral award need to submit a request to the court for confirming the arbitral award and request the court to issue an order to enforce. The following documents shall be appended to the above-mentioned request submitted to the court:

- a. The original arbitral award or a certified true copy;
- b. A copy of the arbitration agreement;
- c. If the award isn't Arabic, a certified Arabic translation from an authorized institution in th UAE; and
- d. A copy of the court judgment filling transcript.

The president of the court or the person duly authorized by himself shall confirm the request for confirming the arbitral award and order to execute the same within sixty (60) days from the date on which the said confirmation decision is made unless the arbitral award should be nullified based on any reasons under the UAE Arbitration Law. There is a

⁵⁷ (The Evolution of Arbitration in the United Arab Emirates - Researchgate) <https://www.researchgate.net/publication/322357587_The_Evolution_of_Arbitration_in_the_United_Arab_Emirates> accessed 18 August 2022.

⁵⁸ Article 52 of the UAE Federal Law No. (6) of 2018 on Arbitration.

scarcity of information regarding the enforcement of arbitral awards, although initial cases suggest that the courts have complied with the brief and demanding timeline.⁵⁹

The proceedings for arbitration award ratification and enforcement shall commence before the Court of Appeal⁶⁰ according to the UAE Arbitration Law instead of the Court of First Instance before the UAE Arbitration Law comes into effect. This is a key development comparing to the old practical case and the proceedings have been simplified and expedited as well. It is not anymore, the case where a case before the court should be filed for seeking the ratification and enforcement of an arbitral award, instead, an application for the same can be filed with the Chief Justice of the Court of Appeal.⁶¹

Notwithstanding the Court of Appeal's decision, either ratifying or rejecting the enforcement of the arbitral award, it is allowable for a party, within thirty (30) days from the date on which the above decision is notified to such a party, to file a grievance against the above-mentioned decision determining the execution or rejecting the request for the enforcement of the arbitral award.⁶² A grievance should be usually filed before the higher appellate court, i.e. the Court of Cassation, in this case, however, the UAE Arbitration Law does not provide so.

Annulment of the Arbitral Award

An arbitral award, once issued, should be final and binding and which shall have the self-enforceable effect as if it were a final court judgment, as a final arbitral award should be challengeable on quite limited number of reasons.⁶³ But it still can be nullified by filing an annulment request upon receipt of the arbitral award or during the consideration of the

⁵⁹ The middle eastern and African Arbitration Review - Global Arbitration Review, <<https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2020>>; accessed 14 August 2022.

⁶⁰ Federal or local Court of Appeal .

⁶¹ 'Commentary on the UAE's New Arbitration Law' (Al Tamimi & Company, 24 November 2020) <<https://www.tamimi.com/law-update-articles/commentary-on-the-uaes-new-arbitration-law/>>; accessed 20 June 2022.

⁶² Article 57 of the UAE Federal Law No. (6) of 2018 on Arbitration.

⁶³ Davidson F, Arbitration (Thomson Reuters, 2020), 53.

request for confirming and enforcing the arbitral award by the court. The annulment of the arbitral award shall be based on the reasons stated in the UAE Arbitration Law for annulment of the arbitral award. These reasons have been classified into the following two categories:

On party-request category

- a. No valid arbitration agreement or it's expired.
- b. One party lacked legal capacity during agreement.
- c. A party lacked capacity regarding the disputed right.
- d. A party couldn't present their case properly due to reasons like improper notice or tribunal actions.
- e. Chosen subject law not followed in the award.
- f. Tribunal or arbitrator selection violated laws or agreements.
- g. Faulty proceedings or late award issuance.
- h. Award addresses matters beyond the agreement's scope. Nullity affects those parts but not the arbitration-relevant parts if separable.

However, in any of the cases above, the party has to commence the annulment action within thirty (30) days from the date on which the arbitral award being notified to such party, whereas under the Old Arbitration Chapter regime, there was no specific time limit provided for the purpose of filing an award nullification action.

On Court's own initiative category

- the dispute's subject isn't suitable for arbitration; or
- the arbitration award goes against UAE's public order and morality.

The above-mentioned reasons to set aside an arbitral award are in line with the spirit of the UNCITRAL Model Law.⁶⁴ However, in addition to those grounds stated in the

⁶⁴ Article 34 of the UNCITRAL Model Law.

UNCITRAL Model Law, the UAE Arbitration Law also provides that if the arbitral tribunal does not apply the substantive law agreed by the parties or if the arbitral tribunal fails to issue the award within the specified time-period shall constitute reasons for annulment of arbitral award as well. Furthermore, the UAE Arbitration Law provides the grounds to set aside the arbitral award on the court's own initiative whereas the UNCITRAL Model Law does not.

Notwithstanding the possibility of challenging an arbitral award, it is worth noting that, under the UAE Arbitration Law, the arbitral award annulment proceeding may be suspended by the court for a period of up to 60 days for the purpose of giving the arbitral tribunal an opportunity to make amendments to the form of the arbitral award.⁶⁵

As discussed above, the UAE Arbitration Law provides for a time limit, i.e. 30 days from the date on which the party receives the arbitral award, to commence setting aside proceeding, whereas there was no specific deadline in order to filing an award annulment action according to the Civil Procedures Law. This is an important change to the previous mechanism, and which will enhance the legal security of final arbitral awards. However, the decision in relation to award annulment can be appealed and it can only be appealed to the Court of Cassation. No time limit for such appeal is stated in the UAE Arbitration Law though. Furthermore, a significant precedent set on May 26, 2019, by the Dubai Courts of Cassation, has established a definitive prerequisite for a valid notification. The law prohibits the notification of the award by the arbitral tribunal to any individual other than the party itself, even if that person is the attorney.⁶⁶

An action to file an award annulment does not necessarily suspend the enforcement of the same. Nevertheless, the court may order the enforcement to be suspended if a party

⁶⁵ Article 54(6) of the UAE Federal Law No. (6) of 2018 on Arbitration.

⁶⁶ Said SA, Landmark Arbitration Cases: Dubai Courts (2019-2021) (Lexisnexis,2021).

requests so. Such suspension of enforcement should be determined within 15 days after the date on which the first hearing is scheduled for considering such request.

Final Provisions

There are four articles stated at the last section of the UAE Arbitration Law, namely articles 58 to 61 which are also important. In this section, it settles a question whether, at the time of the UAE Arbitration Law becoming effective, it shall also apply to those arbitration which is still ongoing and which is based on an arbitration agreement reached between the parties well before the UAE Arbitration Law entering into force. This section explicitly confirms that the answer to the question above is yes, so long as the earlier arbitral proceedings took place are remain valid according to the stipulations of the previous legislation which governs the same at that time.

Furthermore, in this section, it abolishes Articles 203-218 of the Civil Procedures Law which shall not be applicable when the UAE Arbitration Law comes into effect. However, as to the arbitral proceedings which took place earlier according to the above-mentioned articles shall remain valid. In addition, it made clear in this section that any stipulation which is conflicted with the provisions of the UAE Arbitration Law is hereby abolished.

Chapter 3: Judicial Application of the UAE Arbitration Law

Although it has been four years since the UAE Arbitration Law came into effective in 2018 and there have been many cases to which the UAE Arbitration Law applies, not every element of the UAE Arbitration Law or most of them have been tested yet in the judicial practice, as such, the discussion under this chapter will be mainly focus on certain important points related to the application of the UAE Arbitration Law basing on certain judgments that are limited available.

3.1 Applicability to Foreign Award

According to article 2 (2) of the UAE Arbitration Law, the UAE Arbitration Law can be applied to international commercial arbitration carried out outside the UAE, provided that the parties have so agreed. This has been confirmed in the judgement on *Dubai Court of Cassation Case No. 3 / 2020 / 445 issued on 16-02-2020* which states that, in regards to an arbitration conducted abroad, if there is no clause under the contract signed between the parties showing that the parties have agreed to apply the UAE Arbitration Law, the same shall not be applied; should an execution judge decide to recognize and ratify an foreign arbitration award nevertheless given the above circumstance, such judgement shall be revoked due to non- jurisdiction of the execution judge.⁶⁷

3.2 Capacity to Agree Arbitration

As can be seen from the judgment on *Dubai Court of Cassation Challenge No. 293 of 2019 issued on 30-06-2019*, the agreement to resort to arbitration is approved only by those who have the capacity to handle and manage the disputed right, not the eligibility to seek justice, because the agreement on arbitration means waiver to claim to the State jurisdiction. According to the provision of article 4 of the UAE Arbitration Law, the arbitration agreement will only be valid if it is approved and accepted by a natural person

⁶⁷ Dubai Court of Cassation Case No. 3 / 2020 / 445 issued on 16-02-2020.

with the legal capacity to assert their rights or by an authorized representative of a legal entity eligible to enter into such an arbitration agreement.⁶⁸

Furthermore, the above case has established that the director of a limited liability company who is its legal representative is the one who has the capacity to agree on arbitration in his or her name unless its memorandum of association limits its authority by depriving it from agreement on arbitration. This gives a clear indication to the legal practitioners in the UAE that, in general, should there be nothing stated in the memorandum of association of a limited liability company with respect to the limitation of the general manager's authority of agreeing or signing arbitration agreement, the arbitration agreement entered into by such a general manager should be deemed valid; the doctrine established in the above case is quite helpful as such circumstance is very common to see in practice in the UAE.

It is established as well in the above case that if, in the contract's introduction and preamble, the name of the legal entity is stated along with the description and identification of "legal representative of the company" and the contract concludes with a legible signature from another individual, and the contract also contains the arbitration clause, in this case the legal person may adhere to invalidate the arbitration clause as the same being signed by someone who is not the legal representative and who has the capacity to agree on arbitration. In contrary, if, at the beginning and in the preamble of a contract, the name of the legal person is mentioned not accompanied with the description and identification of "legal representative of the company" and the contract is ended with an illegible signature, and the contract included the arbitration clause, in this case a decisive legal evidence is established that the signature is for the legal representative of the legal person, who has capacity to agree on arbitration who may not deny the signature of the legal representative

⁶⁸ Dubai Court of Cassation Case No. 276-2020 issued on 20-05-2020.

who can conclude and act on dealings signed the contract.⁶⁹ This is because contracts must be entered into in good faith in accordance with article 70 of the UAE Civil Transactions Law which stipulates that anybody who challenges what is done by itself shall be rejected.⁷⁰

3.3 Arbitration Agreement after Action Taken before the Court

As discussed in Chapter 2 of this paper, the parties may enter into an arbitration agreement after the dispute has arisen and they can do so even after a lawsuit has already been lodged before a judicial court according to article 5 (2) of the UAE Arbitration Law. This has been confirmed in the judgement on Dubai Court of Cassation Case No. 445 / 2019 / 756 issued on 29-12-2019 which states “an arbitration agreement may be concluded after the dispute has arisen among the litigants and a lawsuit has been filed before an ordinary court and that this subsequent agreement will not be considered a dispossession of its jurisdiction. Accordingly, the jurisdiction of the ordinary court regarding any dispute does not preclude the agreement to refer it to arbitration so long as it is included within the reconcilable issues.” It is not uncommon to find misunderstandings among certain litigants that parties may not settle their disputes through arbitration once an action is taken before the judicial court.

3.4 Arbitration Incorporated by Reference

In Dubai Court of Cassation Case No. 445/2018/1029 issued on 28-04-2019, part of the reasons based on which the Defendant challenged the arbitral award is as follows:

The signed agreement did not include any agreement to arbitration and there was no agreement to arbitration in the contract agreement entered into between the Claimant and the Defendant; In addition, the annexes of such contracts did not carry the signature of the Claimant's director and the agreement signed with arbitrator did not include any arbitration

⁶⁹ Dubai Court of Cassation Challenge No. 293 of 2019 issued on 30-06-2019.

⁷⁰ The UAE Federal Law(5) of 1985 on the Civil Transactions; Dubai Court of Cassation Case No. 276-2020 issued on 20-05-2020.

condition or agreement thereto; Rather, the arbitration clause only stated mere vague sentences that did not entail any agreement to arbitration and shall not constitute an arbitration agreement.⁷¹

However, the Court, according to article 5 of the UAE Arbitration Law found that the challenged award should be valid and the challenge against the same shall be deemed groundless on the basis of the following:

in clause 2/1 of the agreement dated 20-3-2017 under the arbitration clause states "This agreement is deemed dominant and superseding to all otherwise agreements concerning the clause of arbitration only and shall be independent. Previous conditions of arbitration or other arbitration conditions in the previous agreements between both parties shall not apply thereto", that is to say, both litigants agreed arbitration in a separate agreement; the copy of the power of attorney attached to the documents is ratified by the Notary and since that document included the agreement of both parties to arbitration by an individual arbitrator amicably appointed, therefore the agreement to arbitration shall be in force between both parties.

As discussed in Chapter 2 of this paper, the UAE Arbitration Law intends to cover more rather than less those arbitration agreements referred to by another document referred to in the underlying contract. The judicial application of the UAE Arbitration Law in the above case well confirmed the above proposition. Such a trend is also consist with the judgement of the French Court of Cassation, in *Crouzier*, it has been determined that the mere absence of a reference to the arbitration clause in the contract, along with a mere mention of standard conditions that were neither accepted nor signed, is insufficient to negate the presence of a valid arbitration clause.⁷²

⁷¹ Dubai Court of Cassation Case No. 445/2018/1029 issued on 28-04-2019.

⁷² Rubino-Sammartano M, *International Arbitration Law and Practice* (Juris Pub 2014), 210.

Notwithstanding the above, according to article 5 (3) and article 7 (2) b of the UAE Arbitration Law, it's important to note that an arbitration agreement can still be considered established and legally binding if the contract refers to another document containing an arbitration clause. This is valid as long as the mentioned reference distinctly treats the arbitration clause as an essential component of the contract. However, it has established in *Dubai Court of Cassation Case No. 276-2020 issued on 20-05-2020* that usually the parties are not required to sign the appendices and schedules attached to the contract. It suffices to mention in the contract that these appendices and schedules are an integral part of the contract, considering them as detailed statement of the substantive issues agreed upon by the parties. But, in the event the abovementioned appendices and schedules attached to the contract contain an arbitration clause which is an exceptional condition, then the principle mentioned above shall not apply. The arbitration condition included in the appendices or schedules shall not be valid unless it is signed by the parties.⁷³

Furthermore, in *Dubai Court of Cassation Case No. 329-2020 issued on 20-09-2020*, it has established that in the event the reference to the contract is only a general reference to the stipulations of a contract without mentioning the arbitration condition explicitly showing the parties' awareness of the existence of the arbitration clause in the contract, such reference as mentioned above shall not extend to it and no arbitration agreement reached between the parties to the contract.⁷⁴ The arbitration clause must be interpreted narrowly and precisely "in two-contract situations, whereas in a one-contract situation general words suffice."⁷⁵ As it shows that the arbitration clause contained in appendix D, Part Second, Article (67) was not signed by the legal representative of the two parties to

⁷³ Dubai Court of Cassation Case No. 276-2020 issued on 20-05-2020.

⁷⁴ Dubai Court of Cassation Case No. 567 of 2020 issued on 07-26-2020; See also Dubai Court of Cassation Case No. 139-2021 issued on 09-05-2021.

⁷⁵ Beale HG, Chitty J and Chitty J, Chitty on Contracts (Sweet & Maxwell, Thomson Reuters 2021), 125.

the dispute, the requirements of article 7 (2) b of the UAE Arbitration Law were not satisfied.⁷⁶

As can be understood from the case above, even if, an international model contract such as FIDIC conditions are referred to, should the referral be not that crystal clear in stating the arbitration clause referred is deemed an integral part of the contract signed by and between the parties.

3.5 Arbitration Agreement-No Objection to Arbitrate

As article 7 (2) d of the UAE Arbitration Law states the arbitration agreement shall be deemed to be exist between the parties and have met the writing requirements which is therefore legally valid even if, physically, there is no arbitration agreement or arbitration clause found in place. This has been confirmed in the judicial practice, namely, in *Dubai Court of Cassation Case No. 445/2020/114 issued on 18-03-2020* where a party argued that there was no arbitration clause in the two settlement agreements under which the disputes had arisen between the parties and therefore the arbitral tribunal has no jurisdiction over such disputes, the arbitral award should be invalidated accordingly. However, it has established in the judgment on the above case that although there was no arbitration clause stated under the settlement agreements or there was no arbitration agreement in writing between the parties in place, the fact that the respondent did not object to the arbitral tribunal to which the claimant submitted the dispute arisen between the claimant and the respondent shall be deemed the parties agreed to resolve the dispute by way of arbitration and the arbitral tribunal shall have the jurisdiction over the dispute arising from and/or in relation to the underlying agreement.⁷⁷

⁷⁶ Dubai Court of Cassation Case No. 329-2020 issued on 20-09-2020.

⁷⁷ Dubai Court of Cassation Case No. 445/2020/114 issued on 18-03-2020.

3.6 Jurisdictional Challenge after First Hearing

As discussed in Chapter 2 of this paper, the jurisdiction challenge can be raised at any time before any substantial response on the merit of the case is raised instead of at the first hearing as it was under the repealed articles in relation to arbitration under the UAE Civil Procedure Law. This has been established in the judgement on *Dubai Court of Cassation Case No. 300/2019/458 issued on 13-02-2020* which states “...to the effect that adherence to the arbitration clause may be expressed at any time before raising any claims or pleas in the subject matter of the Case.” This indicates to the UAE legal practitioners that any attempt to argue that the court should hear the case due to the relevant party fails to raise the jurisdictional challenge at the first hearing will not be successful moving forward.⁷⁸ This also means that the failure of the respondent to attend the first hearing scheduled before the case management office, it does not automatically lose the right to raise a jurisdictional challenge based on the existence of an arbitration clause, as long as it has not yet presented its substantive plea.⁷⁹

3.7 No Appeal to Decision on Appointment of Arbitrator

Pursuant to article 11 of the UAE Arbitration Law, if the parties are unable to agree on selecting an arbitration within fifteen(15) days after one party sends a written request to inform the other party about the arbitrator’s nomination,, or in the event both the nominated arbitrators fails to agree a third arbitrator to be appointed within fifteen (15) days after the latter of the two nominated arbitrators was nominated, upon the request of any of the parties, the body concerned shall appoint such a third arbitrator and the decision regarding the said third arbitrator shall not be subject to appeal in any way whatsoever. This has been established in *Dubai Court of Cassation Case No. 864-2020 issued on 04-11-2020* which states “... the judgment issued to appoint the arbitrators was a non-

⁷⁸ Dubai Court of Cassation Case No. 300/2019/458 issued on 13-02-2020.

⁷⁹ Dubai Court Case No.445/2019/986 Commercial Challenge.

appealable judgment pursuant to article 11 of the UAE Arbitration Law.”⁸⁰ However, this does not mean the party cannot challenge the arbitrator in accordance with article 14 of the UAE Arbitration Law, provided that the challenge raised by a party who challenged previously the same arbitrator relying on the same reason in the same arbitration proceedings may not be accepted.

3.8 Competence- Competence

In *Dubai Court of Cassation Case No. 445/2018/1059 issued on 17-03-2019*, it confirms, that based on UAE Arbitration Law Article 19, the arbitral tribunal possesses the authority to assess challenges to its own jurisdiction, ascertain the validity or existence of the arbitration agreement, and determine if the dispute’s subject falls within its purview.⁸¹ It states in the judgement, “the rules of general jurisdiction, to which both Claimants adhere are not binding to both litigants in case of their agreement of arbitration.” It established in this case that arguing to decide whether the arbitral tribunal is authorized to determine on its own jurisdiction is an issue in the nature of public order and therefore the arbitral award deciding the arbitral tribunal’s own jurisdiction shall be nullified, is groundless.

The above case indicates to the UAE legal practitioners that challenging an arbitral award by advocating deciding whether or not an arbitral tribunal has jurisdiction over the dispute is an issue in public nature will not be upheld by the Courts of the UAE. In other words, the UAE Arbitration Law clearly confirms the legal principle “Competence-Competence” comparing to the old arbitration law contemplated in the UAE Civil Procedures Law.

⁸⁰ Dubai Court of Cassation Case No. 864-2020 issued on 04-11-2020.

⁸¹ Dubai Court of Cassation Case No. 445/2018/1059 issued on 17-03-2019.

3.9 Court of Appeal Decision on Competence-Not Subject to Appeal

According to article 19 (2) of the UAE Arbitration Law, the decision made by the Court of Appeal on the arbitrator's decision in relation to its competence to adjudicate the dispute is not subject to appeal. This has been established in the judgment on *Dubai Court of Cassation Case No. 445/2020/339 issued on 19-07-2020* where the Court of Appeal decided that the arbitration is premature because the pre-procedures stated under clause 67 of the contract were not satisfied and hence the arbitral tribunal has no jurisdiction over the dispute which is a decision as the same one issued by the arbitral tribunal, therefore, the above mentioned Court of Appeal's decision gives a clear indication to the legal practitioners that any attempt to overturn the decision made by the court on the issue as mentioned above by filing an appeal before the Court of Cassation will be simply dismissed.⁸²

3.10 Waiver of the Right to Object

Pursuant to article 25 of the UAE Arbitration Law, if one of the dispute parties continues the arbitration procedures while being aware of a violation of a condition in the arbitration agreement or a non-mandatory provision of the UAE Arbitration Law and failing to object to the same, this will be deemed an implicit consent to such violation. As stated in the judgment on *Case No. 445/2020/36 issued on 12-07-2020* that whoever claims the arbitrator's lack of impartiality or lack of independence or incompetence must prove the same as long as it becomes aware of the defect before the issuance of the arbitral award and it shall not claim its invalidity after the award being issued as this is in line with the approach taken by the legislator in the UAE Arbitration Law, namely, article 25 of the UAE Arbitration Law.⁸³

⁸² Dubai Court of Cassation Case No. 445/2020/339 issued on 19-07-2020; Dubai Court of Cassation Case No. 339-2020; e Dubai Court of Cassation Case No. 1216-2020 issued on 02-03-2021.

⁸³ Dubai Court of Cassation Case No. 445/2020/36 issued on 12-07-2020.

3.11 Interim Measures

As discussed in Chapter 2 of this paper, interim or precautionary measures may be requested from either the Chief Justice of the Court of Appeal or the arbitral tribunal in accordance with article 18 or article 21 of the UAE Arbitration Law. It is, however, worth noting from the judgment on *Dubai Court of Cassation Case No. 445/2020/284 issued on 03-06-2020* that if the precautionary order was issued by the Chief Justice of the Court of Appeal, the effect of this order does not remove in whole or in part without a decision issued by the said Chief Justice. The interim or conservative measures may not be canceled except by a decision issued by the authority that issued them, whether it is the tribunal or the Chief Justice of the Court of Appeal, and that the UAE Arbitration Law did not give the right to cancel any of these decisions to any party except the one that issued them. In this regard, it may not be said that the UAE Arbitration Law has not included any provision regulating filling a grievance against those decisions on the interim or conservative measures, which requires the application of the provisions of the UAE Civil Procedures Law regarding grievances against the attachment order.⁸⁴ To the contrary, it is evident in the UAE Arbitration Law that it has regulated grievance procedures against attachment order that the authority that issued it is assigned to consider the request for its cancellation. That is to say it would be legally wrongful to apply the UAE Civil Procedures Law under the circumstances discussed above.

3.12 Procedures to be Followed

In *Dubai Court of Cassation Case No. 204/2019/445 issued on 23-06-2019*, it has established that article 23 of the UAE Arbitration Law means that the arbitrator does not adhere to the procedures of the pleadings followed in the cases before the courts, but he must comply with the procedures set forth in the UAE Arbitration Law and in the certain

⁸⁴ Dubai Court of Cassation Case No. 445/2020/284 issued on 03-06-2020; Dubai Court of Cassation Case No. 122-2021 issued on 28-04-2021.

procedures agreed upon by the litigants. This is important to point out as there are quite some legal practitioners trying to nullify arbitral awards on the basis that the arbitral tribunal does not follow certain procedures stated in other laws or certain ways of providing witnesses' testimony as it was the case in the above-mentioned court case.⁸⁵

3.13 Arbitral Award on Agreed Terms

According to article 40 of the UAE Arbitration Law, in the event the parties reached a settlement agreement in relation to the dispute between them which means the parties settled their dispute amicably before the final arbitral award is issued, the parties may submit the settlement agreement reached between them together with its terms and conditions to the arbitral tribunal. If such a scenario arises, the arbitral tribunal shall then issue an arbitral award incorporating the settlement terms from the settlement agreement mentioned above, thereby concluding the arbitral proceedings. This specific award, includes the settlement terms, will hold the same effect concerning the enforcement of the arbitral awards. This has been established in *UAE Court of Cassation Case No. 526-2020*, affirming that the settlement agreement between the disputing parties carries the same weight as an arbitral award.⁸⁶

3.14 Arbitral Tribunal Decides to Extend Time Limit for Issuing Final Award

The Claimant argued in *Dubai Court of Cassation Case No. 445/2018/1029 issued on 28-04-2019* that the arbitral award should be nullified because the arbitral tribunal issued the same after six months from the date of the first hearing and therefore the arbitral award should be set aside. However, the Court found that such argument is groundless relying on article 42 (1) of the UAE Arbitration Law. It states that the Arbitral tribunal must provide the ultimate decision resolving the entire conflict within the time both sides have decided. If they don't agree on a duration, the decision must be made within six (6)

⁸⁵ Dubai Court of Cassation Case No. 204/2019/445 issued on 23-06-2019.

⁸⁶ UAE Court of Cassation Case No. 526-2020.

months from the first arbitration session. The Tribunal can extend the proceedings by up to six (6) more months unless both parties accept a longer period.” The judgement on this case well clarifies that Article 42 (1) does mean that the arbitral tribunal is empowered by the UAE arbitration law to at its sole discretion to extend the arbitration time-limit to further six months unless the parties agree to a longer extension. The earlier legal position based on article 210 of the UAE Civil Procedure Law is not applicable as article 42 (1) of the UAE Arbitration Law prevails which is confirmed in the judgement on the above case. It states in the judgement that, according to article 59 of the UAE Arbitration Law, this Law's rules will apply to ongoing arbitrations when it takes effect, even if they're based on older arbitration agreements. Any actions done according to previous laws will still be valid.” and article 60 (1) of the same law which stipulates “*Articles (203-218) of Federal Law No. (11) of 1992⁸⁷ referred to above are hereby repealed, provided that the proceedings carried out in accordance therewith shall remain valid.*”, the provisions of the UAE Arbitration Law shall apply and therefore the challenge against the award shall be deemed groundless. The above case reflects that the legislator allowed the arbitrator on its own accord to extend the arbitration time-limit to further six months.

3.15 Exclusivity of the Reasons for Annulment of Award

It states in substance in the judgement on *Dubai Court of Cassation Case No. 445/2018/1029 issued on 28-04-2019* that article 53 of the UAE Arbitration Law sets out particularly, from its sub-paragraphs a to h, the reasons based on which a party may request the arbitral award to be annulled. As such, any reason beyond those ones stated in article 53 shall not be upheld by the Courts. The above-mentioned judgement states “*The Claimant stated grounds other than those cases mentioned in the article⁸⁸, therefore, its challenge would be inadmissible.*” That is to say, the UAE Arbitration Law envisages the

⁸⁷ Namely, the UAE Federal Law No. (11) of 1992 on Civil Procedure.

⁸⁸ Namely article 53 of the UAE Federal Law No. (6) of 2018 on Arbitration.

circumstances under which the arbitral award may be nullified are meant to be exclusive although the article itself does not explicitly state the same. The judgment on *Dubai Court of Cassation Case No. 204/2019/445 issued on 23-06-2019* has established the same where it states that article 53 of the UAE Arbitration Law means that challenges to the validity of an arbitral award should be directed towards the arbitrator's decision as a legal act, focusing on procedural mistakes rather than errors in judgment. . The defects that the nullity applicant may adhere to, as well as the defects related to the arbitration agreement and that may be a cause for nullity of the award, shall be exclusively according to the scenarios mentioned in article 53 aforementioned.⁸⁹

Notwithstanding the case above, should the substantial section of an arbitral award be not signed by the arbitral tribunal, such award shall be nullified because it is against the public order. This has been established in the judgment on *Dubai Court of Cassation Case No.1083/2019/445 issued on 14-06-2020*. According to this judgment, it is established in the doctrine of the court that the arbitrators' signature on the arbitration award is one of the material statements that must be included, given that the arbitrators' signature is the only evidence on the legal existence of the arbitral award, and, without it, the award cannot be attributed to the arbitral tribunal. The reasons and operative part are substantial to an arbitral award. Therefore, reasons and operative part must be signed by the arbitrators, otherwise the award is null and void except when the reasons or part of them are continued in the paper on which the arbitrators signed, as this signature by all or most of the arbitrators fulfills the legislator's requirements. However, if the reasons are on a separate paper from the operative part, all papers including the last paper containing the operative part must be signed by the arbitrators who issued the award, otherwise the award is null

⁸⁹ Dubai Court of Cassation Case No. 204/2019/445 issued on 23-06-2019; Dubai Court of Cassation No. 446 of 2019 issued on 21/07/2019; Dubai Court of Cassation No. 372 of 2019 issued on 07/07/2019; Dubai Court of Cassation Case No. 445/2020/114 issued on 18-03-2020; Case No. 445/2020/36 issued on 12-07-2020.

and void. This nullity related to the public order is decided by the court even if the litigants do not claim it.⁹⁰

Nevertheless, the legislator tended in the UAE Arbitration Law to reduce reasons for nullity and prioritized the requirements of validity of the award given that the purpose of the award is to reserve rights. Therefore, the legislator included a provision article 54 (6) in the UAE Arbitration Law authorizing the arbitral tribunal to correct the defects in the award based on the litigants' request, which is consistent with the general principles that stipulate that the nullity shall not apply when the invalid procedure is corrected, or the purpose of the procedure is achieved. In practice, this has been established in judgement on *Dubai Court of Cassation Case No. 1094 of 2020 issued on 07-03-2021*, according to which, if the arbitral tribunal did not sign the arbitral award properly, it can be rectified according to article 54 (6) and, accordingly, if the court, requested by one of the parties, decides to suspend the nullification proceedings due to the reason that the award was not properly signed, this shall not be seeing as in violation of the public order.⁹¹

3.16 Suspension due to Challenge for Forgery

According to article 43 of the UAE Arbitration Law, the arbitration proceedings will not be necessarily suspended should a party challenge a document submitted to the arbitral tribunal for forgery. This has been implemented in the judicial practice, i.e. in the judgement on *Dubai Court of Cassation Case No. 445/2018/1029 issued on 28-04-2019* which states that the arbitrator used the authorization entitled thereto by law and decided accordingly that it is not necessary to suspend the arbitration proceedings due to the challenge for forgery. The earlier legal position under the UAE Civil Procedure Law is no longer applicable. In other words, the arbitral tribunal is empowered by the UAE

⁹⁰ Dubai Court of Cassation Case No.1083/2019/445 issued on 14-06-2020.

⁹¹ Dubai Court of Cassation Case No. 1094 of 2020 issued on 07-03-2021.

arbitration law to decide whether it is necessary to suspend the arbitration proceedings should a challenge for forgery is filed by one of the parties before the courts.

3.17 Arbitration Costs

According to article 46 (1) of the UAE Arbitration Law, the Arbitral Tribunal is authorized to evaluate the arbitration expenses. However, article 46 does not explicitly state that the legal costs and expenses incurred shall be excluded notwithstanding that the legal costs and expenses are indeed not included in the given examples set out under article 46 of the UAE Arbitration Law. Nevertheless, in *Dubai Court of Cassation Case No. 445/2018/1029 issued on 28-04-2019*, it established that in the absence of the legal text or the clear express text in the arbitration agreement about such legal costs and expenses, they shall not be considered a subordinate, relevant and a matter directly connected to the arbitration award.⁹² As such, the legal costs and expenses cannot be argued to be associated to the arbitration cost which can be awarded by the arbitral tribunal unless it has been expressively agreed by the parties.

The same has been established in *Dubai Court of Cassation Case No. 204/2019/445 issued on 23-06-2019* which states that legal expenses incurred due to engaging lawyers or legal advisers for representing the parties in the arbitration proceedings and providing legal advice services for the parties before the commencement of the arbitration proceedings are not included in these expenses, unless it is stipulated in the arbitration agreement with an explicit and clear text.⁹³ Furthermore, it also confirms in this case that deciding the legal expenses by the arbitral tribunal based on the parties' agreement is not against fore or morals.

⁹² Dubai Court of Cassation Case No. 445/2018/1029 issued on 28-04-2019.

⁹³ Dubai Court of Cassation Case No. 204/2019/445 issued on 23-06-2019.

3.18 Notification of the Award

Article 44 of the UAE Arbitration Law requires the arbitral tribunal to inform all parties about the award by providing a true or signed copy within fifteen (15) days after issuing of the award. It, however, does not literally mean that the notification of the award has to be given only to each party itself as it established in the judgement on *Dubai Court of Cassation Challenge No. 242 of 2019 issued on 26-05-2019* that arbitral tribunal handing over a copy of the arbitration award by hand to a party's attorney is considered a valid notification to the latter which is permitted by law.⁹⁴

3.19 Non-Retroactivity of the UAE Arbitration Law

According to article 59 of the UAE Arbitration Law, it applies to ongoing arbitrations upon its implementation, even if they were established based on previous agreements. The actions taken under earlier laws will still be recognized as well. In the judgment on *Dubai Court of Cassation Case No. 215/2019/445 issued on 07-07-2019*, it confirmed that the provisions of the UAE Arbitration Law shall only apply to acts or contracts after making such provisions effective and such provisions shall not apply to any acts done before being effective as per the principle of non-retroactivity of the law.⁹⁵ Based on the above case, for the arbitral awards issued or the arbitration case is closed due to, for instance, failure of a party paying its shared arbitration costs, before the UAE Arbitration Law comes into effective, but which is still subject to a nullification challenge before the court or a jurisdictional challenge due to the existence of an arbitration clause, if one party attempts to argue applying article 59 above-mentioned, the court would not uphold it. This demonstrates that the words “*shall apply to any ongoing Arbitration*” may not be interpreted in an expand way which even covers the proceedings after the original

⁹⁴ Dubai Court of Cassation Challenge No. 242 of 2019 issued on 26-05-2019.

⁹⁵ Court Case No. 215/2019/445 issued on 07-07-2019.

arbitration proceedings are ended at the time when the UAE Arbitration Law has not become into effective.

3.20 Nullification in Part

According to article 54 (3) of the UAE Arbitration Law which states When an arbitral award is nullified by a judgment, the award is cancelled either completely or partially, based on the extent of the nullification. If there was an interpretation issued for the nullified part, that interpretation is also cancelled. The judgment on *Dubai Court of Cassation Case No. 153/2019/445 issued on 28-04-2019* decided that the arbitral award should be nullified because it included persons who are not a party to the arbitration agreement between party A and party B although those persons are related to Party B and whose benefits are closely connected to the dispute under the arbitration. However, the arbitral award may be nullified partially based on article 54 (3) mentioned above.⁹⁶ Again, this is another sign of the arbitration-friendly intention in practicing the UAE Arbitration Law.

As discussed above, this Chapter discussed, analyzed and summarized how the UAE Arbitration Law has been judicially applied by looking at some actual court precedents, aiming at attempting to provide cautions, certainty and guidance to those who are interested in understanding the meaning of the provisions of the UAE Arbitration Law as well as how the same is being applied in the judicial practice so that, inter alia, the provisions of the UAE Arbitration Law can be correctly understood and applied in practice, as a result of which, time and cost could be saved for the parties to the disputes. The next Chapter will emphasize and conclude cautions and guidance as mentioned above basing on the discussions in the previous Chapters of this paper and the court's precedents discussed in this Chapter.

⁹⁶ Dubai Court of Cassation Case No. 153/2019/445 issued on 28-04-2019.

Chapter 4: Conclusion and Recommendations

As can be seen from the aforementioned Chapters of this paper, it is undoubtable that the UAE Arbitration Law, which is its first stand-alone arbitration law in its history, inaugurates a new era for the development and enhancement of the arbitration law in UAE. Such an UNCITRAL Model Law based UAE national arbitration law has not only well captured the principles recognized internationally, such as, the party autonomy, separability of the arbitration agreement, competence-competence, arbitration incorporated by reference, res judicata effect of arbitral awards and partial invalidation of arbitral awards etc.,⁹⁷ but also have its own features as discussed mainly in Chapter 2 of this paper.

4.1 Guidance and Recommendations

Basing on the discussions in the previous Chapters of this paper, especially, the court precedents discussed in Chapter 3, certain cautions that worth noting or exercising in understanding and applying the UAE Arbitration Law can be summarized as below.

4.1.1 Capacity to Agree Arbitration

As discussed in Chapter 3 of this paper, should the arbitration agreement be signed by someone who does not have capacity or who is not duly authorized to do so, the arbitration clause will not be upheld by the court if a jurisdictional challenge is raised. An arbitral award can be nullified should the person who signs the arbitration agreement does not have such capacity or special authorization. This is actually nothing new as the same concept was contemplated under the Old Arbitration Chapter as well which had always been argued by the litigants in frustrating the previously agreed arbitration dispute settlement mechanism which must be expected to be valid and used by the parties when any dispute arises between the parties but which were always found invalid at the end, as a result of which, a lot of efforts, time, costs and resources had been wasted. In addition,

⁹⁷ Blanke D, 'The new UAE Federal Arbitration Law: first impressions'(2018), International Arbitration Review.

caution must be noted where a director of a limited liability company who is its legal representative is usually the one who has the capacity to agree on arbitration in his or her name, however, one must be careful enough to review its memorandum of association to see if the same limits the director's authority by depriving it from agreement on arbitration, as which is discussed in Chapter 3 above and supported by court precedent. Whilst it is not difficult in understanding the importance of such requirement and it will be way too far to completely remove the same from the law provisions, it might worth considering allowing the well-established legal principle of apparent or ostensible authority to be applicable for the purpose of protecting the validity of arbitration agreement and the arbitral award. As such, the provisions of the UAE Arbitration Law are recommended to be amended to reach the above-mentioned effect.

4.1.2 Arbitration Incorporated by Reference

Although article 7 (2) b of the UAE Arbitration Law clearly states if a written contract mentions a model contract, international agreement, or any document containing arbitration clauses, and this reference clearly considers the arbitration clause as an essential part of the contract,”, but it does not mean, so long as the reference is made in a written contract to an international model contract or any other form of model contract such as the well-known FIDIC forms of contract, the arbitration clause referred to should be deemed to be valid. In addition to the court precedent discussed in Chapter 3 of this paper, this has been established in *Dubai Court of Cassation Case No. 1308-2020 issued on 03-03-2021* where the general conditions of the FIDIC 1987 was referred to but the Court of Cassation in the above case took a very strict approach in applying the above-mentioned article 7 (2) b although FIDIC conditions which contain arbitration clause are well known to the construction industry in the UAE.

It states in the judgement of the above case that a reference made in a contract reached between the parties to another contract in which an arbitration clause is included has to be explicit and clear in specifically stating such arbitration clause in the contract reached between the parties. Namely, the effect of the said reference would not be achieved should it does not include a specific referral of the arbitration clause included in the contract to which the contract is referred. In the event there is only a general reference to the clauses of the above-mentioned contract without assigning to the arbitration clause mentioned above in a specific way that known by the parties, such reference does not extend to the said arbitration clause, therefore, no arbitration agreement shall be deemed agreed between the parties to the contract.⁹⁸

As such, extreme caution should be exercised by legal practitioners as to the way that the court understands the words “*and the said reference is clear in treating such clause as an integral part of the contract*” in article 7 (2) b of the UAE Arbitration Law. One cannot simply argue that since a well-known model contract (such as FIDIC conditions) is referred to, the arbitration clause should be legally valid, given the case discussed above.

To avoid the arbitration clause to be deemed invalid under the above discussed circumstance, the recommendation is to include, in the main contract agreement in which the FIDIC conditions or other form or terms and conditions which contain arbitration clause are referred to, a specific clause crystal clearly stating that the dispute shall be finally resolved by arbitration in accordance with clause X as stated in the FIDIC conditions or the attached terms and conditions as the case may be. Perhaps, it is worth considering amending the UAE Arbitration Law to the effect that, at least, ensuring that, for an international model contract like FIDIC conditions which are well-known to the parties and which are commonly used in the industry region in which the parties play, the

⁹⁸ Dubai Court of Cassation Case No. 1308-2020 issued on 03-03-2021; Dubai Court of Cassation Case No. 169-2021 issued on 30-05-2021.

arbitration clause incorporated in those model contracts should be deemed valid so long as the model contracts are referred to in the main written contract signed by the parties.

4.1.3 Jurisdictional Challenge after First Hearing

There were considerable court cases in which litigants argued that the party against whom they filed a court case did not raise the jurisdictional challenge due to the existence of an arbitration clause at the first hearing and therefore that party shall be deemed to have waived its right to arbitrate, as a result of which, the court should hear the case. However, the legal practitioners must be reminded that this will not be upheld by the court anymore, as can be seen from the court precedent discussed in the previous Chapter, so long as the party raises the jurisdictional challenge before it submits its substantial statement of defence, will the court rule that the court case shall be dismissed due to the existence of the arbitration agreement, provided always that the arbitration agreement is valid.

4.1.4 Competence- Competence

As can be seen from the court precedents that there are quite some litigants taking the view that decision on whether an arbitral tribunal has jurisdiction over the dispute is, by its nature, a public order connected matter which should be heard and decided by the courts. Therefore, the arbitral award deciding the arbitral tribunal's own jurisdiction by itself goes against the public order and should be set aside. The caution here is that the above argument may work excellent before the UAE Arbitration Law comes into effective, but it is not the case anymore after the same became effective and it will not work even for those arbitrations that were still ongoing when the UAE Arbitration Law had become effective. Any attempt to nullify the arbitral award on the basis above-mentioned will not uphold by the judicial court at all. In addition, the litigants are reminded that the court's decision as to the challenge to a decision on the arbitral tribunal's own jurisdiction over the dispute issued by the tribunal themselves is not subject to appeal.

4.1.5 Interim Measures

As shown in the court precedent discussed in the previous Chapter of this paper, precautionary attachment order may be issued by the arbitral tribunal itself or the Chief Justice of the Court of Appeal. Caution must be noted by the legal practitioners in this aspect that such precautionary attachment order shall remain valid until and unless the same is lifted by the one who issued it, i.e. either by the tribunal or by the Chief Justice of the Court of Appeal. That is to say the provisions of the UAE Civil Procedures Law regarding grievances against the precautionary attachment order are not applicable anymore. As such, the legal practitioners are reminded to file a grievance case against those precautionary attachment order in accordance with the provisions of the UAE Arbitration Law instead of the provisions of the UAE Civil Procedures Law which has been wrongfully applied in the judicial practice.

However, emphasis is added that, when a party applied a precautionary attachment order in accordance with the provisions of the UAE Arbitration Law before the arbitration proceeding has been commenced, the above does not mean article 255 of the UAE Civil Procedures Law which requires the party who successfully obtained a precautionary attachment order to file a substantive claim before the court with eight (8) days from the date on which such attachment order was issued shall not be applicable to make sure such attachment order shall not be deemed null and void. That is why article 27 (2) of the UAE Arbitration Law states serving the arbitration request is considered starting a claim for the purpose of precautionary attachment. Nevertheless, this may still cause an issue which will be addressed in the further below section of this Chapter.

4.1.6 Arbitral Tribunal Decides to Extend Time Limit for Issuing Final Award

The court precedent stated in the previous Chapter has well established that the arbitral tribunal is empowered by the UAE Arbitration Law to at its sole discretion to

extend the arbitration time-limit to further six months unless the parties agree to a longer extension. Legal practitioners must note this change so that time will not be wasted in trying to argue that the arbitral award was issued beyond the time limit and therefore it should be set aside. This will not be supported by the competent court as the arbitrator may on its own accord extend the arbitration time-limit to further six months.

4.1.7 Suspension due to Challenge for Forgery

If a party filed a criminal case before the judicial court alleging that certain documents are forged by the other party during the arbitration proceedings, it would be serious enough to have the arbitration proceeding suspended under the Old Arbitration Chapter. However, as can be seen from the court precedent discussed in the previous Chapter, this is no longer the case according to the UAE Arbitration Law. The arbitral tribunal is empowered by the UAE Arbitration Law to decide whether it is necessary to suspend the arbitration proceedings under the above-mentioned circumstance. As such, cautions are advised to be noted by the legal practitioners in regard to the above.

4.1.8 Exclusivity of the Reasons for Annulment of Award

As can be understood from the court precedents discussed in the previous Chapter, the circumstances stated in article 53 (1) of the UAE Arbitration Law under which an arbitral award can be set aside are meant to be exclusive although there is no provisions explicitly stipulating so. Cautions as to the above are highly advised to be noted by the legal practitioners in any effort trying to set aside an arbitral award basing on any reasons other than those exclusive ones stated in article 53 (1) above-mentioned as it will not be supported by the competent court unless the nullification requests are based on the reasons that will be found against the public order or moral.

4.1.9 Arbitration Costs

As established in the court precedents provided in the previous Chapter, in the absence of the explicit provision in the arbitration agreement as to the parties' consent to authorize the arbitral tribunal to decide how the legal costs and expenses should be born between them, the arbitral tribunal shall have no right to decide about the legal costs and expenses, otherwise, such arbitral award will be nullifiable. It might be worth considering amending the provision of the UAE Arbitration Law to expressively stipulate that the arbitral tribunal should have the right to make a decision as to the legal costs and expenses, given that there is no definition of "*arbitration expenses*" stated in article 46 (1) or other articles of the UAE Arbitration Law, although it does list out the specific examples showing what arbitration expenses may include, it indeed does not explicitly exclude the legal costs and expenses either.

To avoid the award being set aside, the legal practitioners are advised to explicitly state in the arbitration agreement that the parties agreed to have the legal costs and expenses in relation to the arbitration to be decided by the arbitral tribunal in its arbitral award.

However, in practice, it is common to see the same is usually agreed by the parties after the arbitration being commenced and which are stated in writing in the terms of reference that formed after the arbitral tribunal is constituted. This approach can also ensure that the arbitral tribunal has the right to decide the legal costs and expenses.

In addition, another caution should be noted by the legal practitioners in this aspect is that the fact that deciding by an authorized arbitral tribunal about the legal costs and expenses itself is not a matter against public order in its nature, which has been established in the court precedent discussed in the previous Chapter, any attempt to set aside an arbitral award alleging that it is against the public order will be out of no avail.

4.1.10 Nullification in Part

As can be seen from the court precedent provided in the previous Chapter, arbitral awards may be set aside partially, which can save, at least, the arbitral award's remaining part, under which no reasons can be found for setting aside that part of the award. Legal practitioners are therefore reminded, when the other party attempts to nullify the whole arbitral award, it might be possible in successfully arguing that part of the arbitral award can be still valid if it is not possible to protect the validity of the whole arbitral award.

4.2 Improvement and Recommendations

As discussed at the beginning of this Chapter, whilst the UAE Arbitration Law undoubtedly enhanced the arbitration in UAE and developed the UAE arbitration legislation in a positive way, there are remain certain spaces to further improve the same.

Waiver of right to Challenge the Tribunal's Decision on its Competence.

Article 19 (2) of the UAE Arbitration Law, if the Arbitral Tribunal determines its jurisdiction in an initial decision, either party can, within fifteen (15) days of learning about this decision, ask the court to make a ruling on the issue, but it is silent on what happens if a party files a case before the court after the said fifteen (15) days although it seems from the judgement on *Dubai Court of Cassation Case No. 314-2020 issued on 06-03-2020* that such a party's right to file a case before the court shall be deemed forfeited.⁹⁹

As such, it would be much better should this article clearly stipulate the result of failure of a party filing a case before the court or the scenarios under which the said fifteen days can be extended if the delay in filing the court case is justifiable. Perhaps, a consideration of amending the provision under the UAE Arbitration is worth giving by the legislator.

⁹⁹ Dubai Court of Cassation Case No. 314-2020 issued on 06-03-2020.

4.2.1 Interim Measures

As mentioned under *4.1 Interim Measures* above, article 255 of the UAE Civil Procedures Law is still applicable as before for the purpose of maintaining the obtained precautionary attachment order remain valid, which may cause issues, for instance, there might be a multi-tiered arbitration clause in some agreements, namely, before the arbitration can be commenced validly, there are pre-conditions to be satisfied, failing which the commenced arbitration will be deemed premature, a good example of which are the FIDIC forms of contract. The pre-steps under the FIDIC conditions will have no doubt to take much longer than just eight (8) days provided for by the UAE Civil Procedures Law to maintain the validity of the precautionary attachment order and this is where the issue arises. The UAE Arbitration Law does not stipulate, under such circumstance, how the validity of the precautionary attachment order can be maintained.

As such, it might be worth considering amending the provisions of the UAE Arbitration Law to differ the simple arbitration clause and multi-tiered arbitration mechanism in regard to maintaining the precautionary attachment order's effectiveness. In the meantime, before the amendment to the UAE Arbitration Law can be made, in order to maintain the validity of the precautionary attachment order, the legal practitioners are recommended to comply with the eight-day requirement and request the court to suspend the substantive claim proceedings after such substantive claim is filed within the said eight (8) days.¹⁰⁰

4.2.2 Joining Third Party to Arbitration

Notwithstanding article 22 of the UAE Arbitration Law clearly states that the arbitral tribunal has the authority to permit the involvement of a third party in the arbitration process. This can be initiated either by one of the existing parties or by the third party

¹⁰⁰ Alhyari OH, 'Does the "New" UAE Arbitration Law Need to be Modified?' (2020) International Arbitration Law Review.

seeking intervention. However, it is required that such a third party must be a party to the arbitration agreement based on which the original arbitration was initiated. This somehow is an improvement in the UAE arbitration legislation, but it does not help in the circumstances under which a third party is not a party to the arbitration agreement but who is well connected to the dispute that is being settled through arbitration by the parties to the arbitration.

By way of example, it is widely recognized that the construction industry is prone to disputes and focused on claims.¹⁰¹ Between the developer and the main contractor under the main construction contract are closely relevant to the subcontractor with whom the main contractor has signed a subcontract, the work scope under which is closely connected to the construction works under the main contract. Should there be a dispute arising between the developer and the main contractor regarding the quality of the works completed by the main contractor and part of the works be built by the subcontractor, when the said dispute is being resolved by arbitration according to the main contract, there is no mechanism envisaged in the UAE Arbitration Law to have the subcontractor joined in the arbitration proceedings which the developer and the main contractor are in, whilst it is of extreme relevant and important to have the subcontractor joined in the same arbitration to resolve the dispute technically accurate and legally efficient. It is important to highlight the drawbacks of third-party consolidation that a small subcontractor may endure, as they await the resolution of a significant legal case years after the initial event.¹⁰²

As such, the recommendation as to addressing the above issue is perhaps to include a provision in the UAE Arbitration Law stipulating certain limited circumstances or criteria under which the arbitral tribunal may decide to join a third party to the arbitration to which such third party is not a party.

¹⁰¹ Brekoulakis SL and Thomas DB, *The Guide to Construction Arbitration* (Law Business Research Ltd 2021), 375.

¹⁰² Stephenson DA, *Arbitration Practice in Construction Contracts* (Blackwell Science 2001), 11.

4.2.3 Waiver of the Right to Object

As discussed in the previous Chapters of this paper, if a party fails to object to any violation of the arbitration agreement or a non-mandatory provision of the UAE Arbitration Law by the other party and continues to proceed the arbitration proceedings, this will be deemed a waiver of the right to object to such violation. However, no provision in the UAE Arbitration Law stating which provisions under the same are mandatory. It will be quite helpful should there be a provision stating so as this could be an area in which parties would argue frequently. To get this issued addressed, it is highly advised to list out the provisions that are meant to be mandatory under the UAE Arbitration Law. This approach has been taken by the UK legislator to address the issue above-mentioned.¹⁰³

4.2.4 Witness to Take Oath

As mentioned in Chapter 2 of this paper, the UAE Arbitration Law does not explicitly state that the witness should take oath whereas the same was required under the Old Arbitration Chapter. The issue lies with this point is that the statement of the oath must be taken in an official form according to article 41(2) of the UAE Evidence Law whereas article 33 (7) of the UAE Arbitration Law specified that unless the parties agree otherwise, witnesses, including experts, will provide testimony according to the existing laws of the State.” It seems that the UAE Arbitration made the above requirement on taking oath non-mandatory and more flexible by reading the opening wording of article 33 (7) “*Unless otherwise agreed by the parties,*” on one hand, whilst, on the other hand, it states, meanwhile, “*shall be heard in accordance with the laws in force in the State.*” The question is whether the above-mentioned article 41(2) of the UAE Evidence Law is remain applicable given the UAE Evidence Law is a law in force in the state. Can this article 41 (2) be argued to have been repealed according to article 60 of the UAE Arbitration Law?

¹⁰³ See Sch.1 to the UK Arbitration Act.

Without an express stipulation available under the UAE Arbitration Law stating, for instance, provided that article 41 (2) of the UAE Evidence Law shall not be applicable in terms of the way that how the witness takes oath in the arbitration governed by this law.

4.2.5 Signing of the Arbitral Award

As discussed in Chapter 3 of this paper, it has been established in *Dubai Court of Cassation Case No.1083/2019/445 issued on 14-06-2020* that if the substantial section of an arbitral award is not signed by the arbitral tribunal, such award shall be nullified because it is against the public order whereas article 41 (3) of the UAE Arbitration Law just simply states that the arbitrators shall sign the award and the award would be legal validity when it's signed by most of the arbitrators.” Without stipulating in detail as to how the arbitral award should be signed. It was the same situation under the Old Arbitration Chapter previously on this point, namely, article 212 (5) of the Civil Procedures Law which states in general terms that the award is considered valid when it's signed by most of the arbitrators.

In the view of the author of this paper, although, the arbitral tribunal has an opportunity to correct the form of the arbitral award eliminating the defect found in signing of the same in accordance with article 54 (6) of the UAE Arbitration Law, there is still the possibility to be exposed to the risk of annulment.¹⁰⁴ It would be much better had the legislator, by taking the opportunity in drafting the UAE new arbitration law, improved the above-mentioned general terms in detail so that parties would have not made lots of unnecessary efforts in arguing how the arbitral awards should be signed but which the tribunal failed to do for the purpose of setting aside the arbitral awards. It is perhaps therefore worth considering including additional provisions setting out the specific criteria

¹⁰⁴ (The new United Arab Emirates Arbitration Law - Cleary Gottlieb) <https://www.clearygottlieb.com/-/media/files/the-new-united-arab-emirates-arbitration-law--a-step-toward-2018_06_04-pdf.pdf> accessed 12 May 2022.

and requirement that need to be fulfilled by the arbitral tribunal in signing the arbitral awards.

4.2.6 Confidentiality of Arbitration

Article 48 of the UAE Arbitration Law requires the parties to keep confidential for the arbitral award. Does this mean the arbitration proceedings and all the information connected to them are not confidential? This should not be what the legislator had in mind. In the view of the author of this paper, even the existence of the arbitration per se should be confidential unless otherwise agreed by the parties to the arbitration. Therefore, it is advised to amend this article to cover all the information in relation to the arbitration to be confidential.

4.2.7 Exclusivity of the Reasons for Annulment of Award

It has been established in the court precedents discussed in Chapter 3 of this paper that the circumstances stated in article 53 (1) of the UAE Arbitration Law are intended to be exclusive whilst the provision itself does not make this point explicit.

The issues arising out of this article 53 (1) mentioned above are mainly discussed as below.

In general, this might cause an unjustifiable arbitral award which does not fall under any of the grounds stated either in article 53 (1) or article 53 (2) of the UAE Arbitration Law difficult or impossible in nullifying.

In particular, article 53 (1) c of the UAE Arbitration Law specified the individual didn't have the legal ability, as outlined in Article (4) of this Law, to address the right related to the dispute's subject. According to which, if one of the parties to the arbitration agreement is a corporation which is registered in the United States, for the purpose of deciding whether the representative of such a corporation has the right or is duly authorized to sign the arbitration clause so that determining whether the arbitration

agreement is enforceable, the relevant laws that are enforceable and applicable in the United States will have to be applied pursuant to article 53 (1) c above-mentioned.

Article 53 (1) e of the UAE Arbitration Law states if the arbitration award doesn't adhere to the agreed-upon law for the dispute's subject matter. It is quite unusual to find such a provision worldwide in national arbitration legislations, but a similar provision indeed can be found in some parts of the earth, for instance, Egypt, Oman, Jordan, and Saudi Arabia. Whilst such a reason based on which an arbitral award may be set aside is definitely understandable and sensible in general. By way of example, if the parties choose English law to be applied in governing the disputes between them substantially but the arbitral tribunal for whatever reason somehow wrongfully applied the UAE Law completely to the said dispute, apparently, such an arbitral award should therefore be nullified.

However, such a provision above-mentioned indeed give the competent court an opportunity to reopen the specific legal issues that had already been decided by the arbitral tribunal if the court would like to, which is unlikely the intention of the drafter of the UAE Arbitration Law in the view of the author of this paper.

According to article 53 (1) g of the UAE Arbitration Law which states if the arbitration process is flawed, affecting the award's validity, or if the award is issued after the prescribed time limit, an arbitral award may be set aside should the same be issued beyond the due time limit. Whilst this undoubtably encourages the arbitration proceedings to be conducted efficiently, however, according to article 42 (1) of the UAE Arbitration Law, the arbitral award should be issued within twelve (12) months from the first arbitration hearing unless a longer period is agreed by the parties, which may not be long enough for a rather complicated dispute, for instance, a complicated construction dispute which involves various of issues such as design, variation, delay and disruption etc. Should

a party to such a completed dispute insists on having the arbitral award issued with the above-mentioned twelve months, it will leave the arbitral tribunal in a difficult position to balance efficiency between adjudicating the matter with considerable care and the potential risk of the arbitral award being nullified, notwithstanding that the tribunal can request from the competent court to grant further extension of time to it.

As such, perhaps, it might be worth considering amending the above-mentioned articles under article 53 (1) of the UAE Arbitration Law to the effect addressing the issues identified under the sub-title *Exclusivity of the Reasons for Annulment of Award* above.

4.2.8 Suspension of the Award Enforcement under Serious Grounds

According to article 56 (1) of the UAE Arbitration Law, it said that filing an annulment request doesn't automatically pause the arbitration award. Yet, the court handling the request might pause it if a party asks, and there are significant reasons for it., the court may order to suspend the enforcement based on serious grounds at the request of any of the parties. The question here is what grounds can be seen as serious grounds.

With this uncertainty in place, parties will always try their luck in attempting to get the enforcement of arbitral award suspended based on the grounds that they think serious and there is no judicial criteria justifying whether such grounds are indeed serious. It is therefore highly recommended to stipulate what grounds may be deemed serious grounds stated in article 56 (1) above-mentioned or to specify what the criteria are in deciding what shall be deemed serious grounds stated above into the provisions of the UAE Arbitration Law.

4.2.9 Non-Retroactivity of the UAE Arbitration Law

Article 59 of the UAE Arbitration Law, the Law applies to ongoing arbitrations when it takes effect, even if they're based on earlier agreements. Actions done according to previous laws will still be valid, but there is no definition of the words “*ongoing*

Arbitration” stated in the above article under the UAE Arbitration Law. Could the expression “*ongoing Arbitration*” be interpreted to also include an arbitration which is under the ratification and enforcement proceedings in line with the UAE Arbitration Law? As can be seen from the court precedent discussed in the previous Chapter, provisions of the UAE Arbitration Law shall not apply to any acts done before being effective as per the principle of non-retroactivity of the law. It seems from the above-mentioned court precedent that the words “*ongoing Arbitration*” means those arbitrations which are remain under the arbitration proceedings and, the award of which, has not been issued yet. Therefore, the answer to the question above is simply “No.”. As such, to avoid the discrepancy in rightfully understanding article 59 of the UAE Arbitration Law, it is recommended to amend the wording of this article to have the expression “*ongoing Arbitration*” clearly defined.

4.2.10 Arbitration Clause in Insurance Policy

Article 1028 of the UAE Civil Transaction Law specified that any of these clauses in an insurance policy will be considered void: An arbitration clause, unless it's in a separate special agreement, not within the standard printed terms of the policy. This is a specific writing requirement of arbitration agreement for a specific category of contract, namely, the insurance contract, according to law. Apparently, this is to protect the insured who is in a weaker position by default under an insurance contract, by making sure the insured is fully aware of the arbitration clause because it is very common to find the terms and conditions of the insurance policy being printed out in very small words. Whereas, under article 7 of the UAE Arbitration Law, the specific writing requirement of arbitration agreement for insurance contract stipulated in article 1028 of the UAE Civil Transaction Law is not captured. This leads to a question;¹⁰⁵ does it mean that article 1028 mentioned

¹⁰⁵ Abu Dhabi Court of Cassation Appeal No. 905 of 2019.

above has been repealed by the UAE Arbitration Law as article 60 (2) of the same states that any provision that is contrary to the provisions of the UAE Arbitration Law is repealed?¹⁰⁶

Obviously, this should not be what the legislator intended in the view of the author of this paper. It simply because that the enactment of the UAE Arbitration Law does not improve the weaker position of the insured under an insurance contract at all and there is no reason for that the insured shall not be protected anymore since the UAE Arbitration Law is enacted. As such, it is recommended to amend article 7 of the UAE Arbitration Law to have the specific writing requirement of arbitration agreement for insurance contract stated in this article 7.

4.2.11 Stay under UAE Bankruptcy Law

In addition to the above, the question as to whether the arbitration proceedings should be suspended in the event one of the parties against whom bankruptcy procedures has been commenced in the competent court as article 32 of the UAE Bankruptcy Law¹⁰⁷ stipulates that the judicial proceedings should be stayed under such circumstance. Whilst it seems the “*judicial proceedings*” meant to include arbitration proceedings, the UAE Arbitration Law is, however, silent on this point. As such, it is advised to have this point explicitly stated in the UAE Arbitration Law to reduce uncertainty in applying the same.

4.2.12 Applicability to Enforcement of Foreign Arbitral Award

Furthermore, it is worth noting that the UAE Arbitration Law does not provide provisions particularly relating to enforcement of foreign arbitral award. It was not clear, whether articles 235 to 238 of the UAE Civil Procedures Law, explicitly dealing with enforcement of foreign judgement or arbitral award, and the UAE Arbitration Law are

¹⁰⁶ Alhyari OH, ‘Does the “New” UAE Arbitration Law Need to be Modified?’(2020) International Arbitration Law Review.

¹⁰⁷ Federal Law by Decree No. (9) of 2016 on Bankruptcy.

applicable given the UAE Arbitration Law is silent on this point, until the Cabinet Decision No. 57 of 2018 Concerning the Executive Regulations of the UAE Civil Procedures Law was issued and became effective in 2019. The said Cabinet Decision No. 57 of 2018 specifically regulates the enforcement of foreign arbitral awards, judgments and orders in the UAE.¹⁰⁸ Perhaps, it is now worth considering adding an additional provision in the UAE Arbitration Law stating that the UAE Arbitration Law shall not be applicable to the enforcement of foreign arbitral award.

4.2.13 Final Conclusion

As discussed above in this paper, the UAE Arbitration Law is in no doubt indeed needed in the UAE judicial practice. It well captures the international recognized principles in international arbitration and makes a milestone in the UAE arbitration legislation history as it is the first stand-alone arbitration law in the UAE history. As discussed, the UAE Arbitration Law, on one hand, makes a lot of contributes to the modernization of the UAE seated arbitration and which is an important and positive move in the development of the UAE arbitration legislation; whilst, on the other hand, there are still rooms for it to be further improved. It is apparent that the new UAE Federal Arbitration Law falls short of the anticipated extent in terms of altering the practice and procedure of arbitrations conducted within the UAE.¹⁰⁹

From introducing the basic concept of arbitration, the background and key features of the UAE Arbitration Law, analysing the key provisions of the UAE Arbitration Law in conjunction with commenting on the judgement of the UAE Court's precedents, providing guidance as to how to better apply the UAE Arbitration Law in practice and identifying the areas in which the UAE Arbitration Law might be further improved, this paper is produced

¹⁰⁸ 'The UAE Federal Arbitration Law on Its First Anniversary' (Al Tamimi & Company, 25 November 2020) <<https://www.tamimi.com/law-update-articles/the-uae-federal-arbitration-law-on-its-first-anniversary/>> accessed 29 June 2022.

¹⁰⁹ Blanke G, 'The new UAE federal arbitration law: old wine in a new bottle' (2018), Arbitration: The International Journal of Arbitration, Mediation and Dispute Management 251-259.

in an effort attempting to provide guidance, identify issues and give recommendations on how to address the issues, and which are, hopefully, be of helpful and be considered by the legal practitioners and the UAE legislators.

References

Cases

1. Abu Dhabi Court of Cassation Appeal No. 905 of 2019.
2. Dubai Court Case No.445/2019/986 Commercial Challenge.
3. Dubai Court of Cassation Case No. 445/2018/1059, dated 17 March 2019.
4. Dubai Court of Cassation Case No. 445/2018/1029 dated 28 April 2019.
5. Dubai Court of Cassation Case No. 153/2019/445, dated 28 April 2019.
6. Dubai Court of Cassation Case No.883/2018/445, dated 12 May 2019.
7. Dubai Court of Cassation Challenge No. 242/2019, dated 26 May 2019
8. Dubai Court of Cassation Case No. 204/2019/445, dated 23 June 2019.
9. Dubai Court of Cassation Challenge No. 293/2019, dated 30 June 2019.
10. Dubai Court of Cassation Case No. 215/2019/445, dated 07 July 2019.
11. Dubai Court of Cassation No. 372/2019, dated 07 July 2019.
12. Dubai Court of Cassation No. 446/2019, dated 21 July 2019.
13. Dubai Court of Cassation Case No. 445 / 2019 / 986, dated 15 December 2019
14. Dubai Court of Cassation Case No. 284/2020.
15. Dubai Court of Cassation Case No. 339/2020.
16. Dubai Court of Cassation Case No. 526/2020.
17. Dubai Court of Cassation Case No. 300/2019/458, dated 13 February 2020.
18. Dubai Court of Cassation Case No. 3 / 2020 / 445, dated 16 February 2020.
19. Dubai Court of Cassation Case No. 314/2020, dated 06 March 2020.
20. Dubai Court of Cassation Case No. 445/2020/114, dated 18 March 2020.
21. Dubai Court of Cassation Case No. 276/2020, dated 20 May 2020.
22. Dubai Court of Cassation Case No. 445/2020/284, dated 03 June 2020.
23. Dubai Court of Cassation Case No.1083/2019/445, dated 14 June 2020.

24. Dubai Court of Cassation Case No. 445/2020/36, dated 12 July 2020.
25. Dubai Court of Cassation Case No. 445/2020/339, dated 19 July 2020.
26. Dubai Court of Cassation Case No. 567/2020, dated 26 July 2020.
27. Dubai Court of Cassation Case No. 329/2020, dated 20 September 2020.
28. Dubai Court of Cassation Case No. 864/2020, dated 04 November 2020.
29. Dubai Court of Cassation Case No. 870/2020, dated 25 November 2020.
30. Dubai Court of Cassation Case No. 139/2021, dated 09 February 2021.
31. Dubai Court of Cassation Case No. 1216/2020, dated 02 March 2021.
32. Dubai Court of Cassation Case No. 1094/2020, dated 07 March 2021.
33. Dubai Court of Cassation Case No. 1308/2020, dated 03 March 2021.
34. Dubai Court of Cassation Case No. 122/2021, dated 28 April 2021.
35. Dubai Court of Cassation Case No. 169/2021, dated 30 May 2021.

Legislation

1. ADGM Arbitration Regulations 2015
2. DIAC Arbitration Rules 2022
3. DIFC Arbitration Law 2008
4. Egyptian Arbitration Law No.27 of 1994 (as amended by Law No.9 of 1997 and Law No.8 of 2000)
5. UK Arbitration Act 1996
6. UNCITRAL Model Law on International Commercial Arbitration 2006
7. UAE Federal Law No. (6) of 2018 on Arbitration
8. UAE Federal Law No. (11) of 1992 on Civil Procedure
9. UAE Federal Law(5) of 1985 on the Civil Transactions
10. UAE Federal Law by Decree No. (9) of 2016 on Bankruptcy

International Convention

1. New York Convention

Books

1. Arbitration World 2018 (Sweet & Maxwell International series).
2. Born G, International Commercial Arbitration (Wolters Kluwer Law& Business 2014).
3. Brekoulakis SL and Thomas DB, The Guide to Construction Arbitration (Law Business Research Ltd 2021).
4. Beale HG, Chitty J and Chitty J, Chitty on Contracts (Sweet & Maxwell, Thomson Reuters 2021).
5. Davidson F, Arbitration (Thomson Reuters, 2020).
6. Ess. H Martin (barrister And International Arbitrator), Redfern and Hunter on International Arbitration (Oxford University Press 2015).
7. Hartley TC, Constitutional Problems of the European Union (Hart 2000).
8. Moses ML, The Principles and Practice of International Commercial Arbitration (Cambridge University Press 2017).
9. Onyema E, International Commercial Arbitration and the Arbitrator's Contract (Routledge 2012).
10. Oehmke T, International Arbitration (Clark, Boardman, Callaghan 1990).
11. Rubino-Sammartano M, International Arbitration Law and Practice (Juris Pub 2014).
12. Stephenson DA, Arbitration Practice in Construction Contracts (Blackwell Science 2001).
13. Said SA, Landmark Arbitration Cases: Dubai Courts (2019-2021) (Lexisnexis,2021).
14. Tang ZS, Jurisdiction and Arbitration Agreements in International Commercial Law (Routledge 2014).

Articles

1. Alhyari OH and Al Ani AR, 'Annulment of Arbitral Awards: A New Adoption of the UNCITRAL Model Law's Legal Framework', (2020) Journal of Legal Affairs and Dispute Resolution in Engineering and Construction.

2. Alhyari OH, 'Does the "New" UAE Arbitration Law Need to be Modified?'(2020) International Arbitration Law Review.
3. Blanke G, 'The new UAE federal arbitration law: old wine in a new bottle'(2018), Arbitration: The International Journal of Arbitration, Mediation and Dispute Management 251-259.
4. Blanke D, 'The new UAE Federal Arbitration Law: first impressions'(2018), International Arbitration Review.
5. J. Kwan and E. Teale , 'Arbitration in the United Arab Emirates: the traps, the tricks and tips for the unwary', (2006), International Arbitration Law Review.
6. Lo, P. Y, 'Master of One's Own Court'(2004) (34)Hong Kong Law Journal.
7. Park WW, 'The Arbitrability Dicta in First Options v. Kaplan: What Sort of Kompetenz-Kompetenz Has Crossed the Atlantic?' (1996) 12 Arbitration International 137.

Electronic Resources

1. The In-House Lawyer: Arbitration under UAE Law: Towards a Modern Legal Framework?' (The In-House Lawyer | The Legal 500) <<https://www.inhouselawyer.co.uk/legal-briefing/arbitration-under-uae-law-towards-a-modern-legal-framework/>> accessed 10 April 2022.
2. The new United Arab Emirates Arbitration Law ;https://www.clearygottlieb.com/-/media/files/the-new-united-arab-emirates-arbitration-law--a-step-toward-2018_06_04-pdf.pdf> accessed 12 May 2022.
3. LLC AL, 'Does an Arbitration Clause Survive the Termination of a Contract?' • Aceris Law' (ACERIS LAW, 15 August 2020) <<https://www.acerislaw.com/does-an-arbitration-clause-survive-the-termination-of-a-contract/>> accessed 3 June 2022 .

4. Commentary on the UAE's New Arbitration Law (Al Tamimi & Company, 24 November 2020)<<https://www.tamimi.com/law-update-articles/commentary-on-the-uaes-new-arbitration-law/>> accessed 20 June 2022.
5. The UAE Federal Arbitration Law on Its First Anniversary' (Al Tamimi & Company, 25 November 2020) <<https://www.tamimi.com/law-update-articles/the-uae-federal-arbitration-law-on-its-first-anniversary/>> accessed 29 June 2022.
6. The middle eastern and African Arbitration Review - Global Arbitration Review, <<https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2020>> accessed 14 August 2022.
7. The Evolution of Arbitration in the United Arab Emirates;https://www.researchgate.net/publication/322357587_The_Evolution_of_Arbitration_in_the_United_Arab_Emirates> accessed 18 August 2022.