

**Arbitration:  
Theory and Practice in the United Arab Emirates**

**AL TAMIMI  
& COMPANY**

*Advocates & Legal Consultants*

**التميمي  
و شركاه**

*للمحاماة والاستشارات القانونية*

## TABLE OF CONTENTS

---

Introduction .....	1
Arbitration Clause .....	1
Enforcement of the Arbitration Clause .....	1
Urgent and Interlocutory Applications .....	2
Arbitration Procedure .....	3
Enforcement of Foreign Arbitration Awards .....	6
Arbitration Practice .....	8
Choice Arbitrators .....	9
Validity of Award - Claimant's Perspective .....	9
Validity of Award - Defendant's Perspective .....	11
Authentication through UAE Courts .....	12
Legal Costs .....	13
Conclusion .....	14

# ARBITRATION: THEORY AND PRACTICE IN THE UNITED ARAB EMIRATES

## INTRODUCTION

---

Arbitration in the United Arab Emirates (UAE) is still developing although the UAE has two arbitration centers located in the Emirates of Abu Dhabi and Dubai. Abu Dhabi Chamber of Commerce has established independently an Arbitration Center called the Abu Dhabi Commercial Conciliation and Arbitration Centre, and has introduced procedural rules and a schedule of costs for conducting arbitrations in the UAE. These rules deal with local and international arbitration and a few arbitration cases have already been conducted under the said rules.

The UAE however does not have an arbitration law nor has there been any serious attempts to introduce an independent arbitration law. Arbitration is currently being conducted under the UAE Civil Procedures Law, which governs litigation before the Courts. Articles 203 to 216 of the Civil Procedures Law specifically address arbitrations, validity of the arbitration award and the appointment of arbitrators.

Article 235 to 246 of the UAE Civil Procedures Law deal with the enforcement of foreign arbitration awards in the UAE. The UAE has not yet become a member of the New York or Geneva Conventions for recognition and enforcement of foreign arbitration awards. However, the UAE has ratified the GCC treaties for the enforcement of judgments delivered by the GCC courts and arbitration awards delivered by the GCC countries and has also entered into a bilateral agreement with France by signing the Paris Bilateral Agreement. The UAE judiciary is, however, still reluctant to enforce foreign arbitration awards.

## ARBITRATION CLAUSE

---

For the arbitration clause to be upheld it must be agreed in writing by both parties. The court will not uphold the arbitration clause which is printed as a standard clause in fine print in the general conditions of an insurance policy, or at the back of an invoice or a delivery note. The arbitration clause may be drafted in any language.

## ENFORCEMENT OF THE ARBITRATION CLAUSE

---

The courts in the UAE will not hear an action if the parties have agreed to refer the matter to arbitration. However, this is not a matter of public policy and the person who is challenging the jurisdiction of the court must bring to the court's attention that the parties have agreed to refer the matter to arbitration at the first hearing of the case. Only if the jurisdiction of the court is challenged at the first hearing of the case, will the court stay the proceedings and refer the dispute to arbitration. Otherwise, the court will assume that the parties have waived their rights to refer the matter to arbitration and submit it to the jurisdiction of the court. In Dubai, the challenge to the court's jurisdiction to hear the dispute must be brought at the first hearing of the case irrespective of whether the parties have submitted their pleadings whereas in Abu Dhabi and the Federal Courts challenging the

jurisdiction must be brought at the first time the defendant makes any submissions in response to the action, even if it was not actually at the first hearing.

If either party challenges the jurisdiction of the court, the court will stay the proceedings unless there is a reason for the court to invalidate the arbitration clause. The court will normally hear the submissions and the arguments of the parties while the case is possibly adjourned for two to four hearings before reserving the case for judgment to determine whether to stay the proceedings or not. On some occasions the court may decide to join such challenge to the merit of the case and request the parties to make their submissions on the jurisdiction of the court as well as the merit of the case and then decide on all the issues involved in the case including arbitration once the case has been reserved for judgment.

## URGENT AND INTERLOCUTORY APPLICATIONS

---

Having agreed to refer the matter to arbitration does not prevent the UAE court from hearing urgent applications for appointment of custodians, liquidators or for ordering an attachment against the assets locally in the UAE. The court will always have jurisdiction to hear urgent applications or applications for an attachment against the assets irrespective of whether the parties have agreed to arbitration. The only exception to this is if the parties have agreed to refer all disputes including any urgent applications or interlocutory applications that may be made by the parties in the future to arbitration as well. While this is possible, the rules on this issue are still not clear and there has been no precedence where the arbitrator has granted the party in arbitration an order for an urgent application or an attachment against the assets, which can be enforced through the court.

It is also not clear, under the UAE judicial system, how the party would proceed with an attachment against the assets in the UAE, or file for an urgent application while the main action is being arbitrated through the arbitration locally or internationally. The issue which is of concern is the requirement under Articles 255 Section 2 and 261 Section 2 of the UAE Law of Civil Procedures which requires the parties to bring their action within 8 days after attachment. The question that arises is whether bringing the arbitration proceedings within 8 days will satisfy the requirement under this Article or rather would the party need to, in addition to the arbitration proceedings, bring an action before the court within 8 days to uphold the attachment proceedings which they have originally obtained in the first place. The law is silent about this and there has not been clear indications from the court through the process on what is actually the principle. The principle in general, however, is that it is possible to obtain an attachment in the UAE against an asset or apply for an urgent application even if the party has agreed to refer the matter to arbitration as an urgent application and an order for an attachment would fall outside the scope of the arbitrator unless the parties agree otherwise in their arbitration clause or during the arbitration process.

The arbitrators, however, may order the parties to exhibit documents, call on witnesses, forward documents to be checked by the forensic laboratory on whether they are forged (if they are challenged by either of the parties during the arbitration process), or take any action possible under the law. If such an order requires enforcement through the courts or one of the witnesses needs to be compelled to

attend before the arbitration or a summons is to be served officially, the arbitrator if locally, may request the assistance of the court to enforce the arbitrator's decision by communicating such an order to the Chief Justice of the court requesting the order to be enforced through the court. This is usually done by the arbitrator writing to the Chief Justice providing him with information about the arbitration and the authority of the arbitrator which is derived from the arbitration agreement and requesting the court to enforce the order after having set out the reasons for such an order, and the need to obtain the assistance of the court to obtain such an order. Normally, the court (subject to an issue relating to public order) will enforce the arbitration order immediately through the execution court without having to go through the filing procedure. While this process is true relating to arbitration carried out in the UAE, it is unlikely that the UAE courts will entertain a request of an arbitrator that has been decided in an arbitration carried out abroad or under different rules. The UAE is unlikely to entertain an application or a request from a foreign arbitrator to enforce a decision although the law in general does not distinguish between a request made by an arbitrator in connection with arbitration carried out locally or internationally.

## ARBITRATION PROCEDURE

---

If either of the parties fail to proceed to arbitration or the parties have not agreed on the procedure or the name of the arbitrator, either party may apply to the court to enforce the arbitration clause and request the court to appoint the arbitrator or compel the other party to proceed with arbitration. Such an application will have to be filed in the normal course of action before the court citing the relevant agreement and the arbitration clause and the court to either compel the other party to proceed to arbitration or to appoint an arbitrator. The court in such cases will normally hear the case in the normal course of action where both parties will be invited to make their submissions and will then make a decision to join the parties to arbitration and appoint the arbitrator that has been agreed by the parties in the agreement, or appoint an arbitrator from the list registered with the court and request the parties to proceed with arbitration. Any order made by the court in such a case will be subject to an appeal to the Court of Appeal, and further to the Court of Cassation. The arbitration, however, will not proceed until the judgment becomes final.

Any agreement or acceptance of an arbitrator must be in writing. If the parties have named an arbitrator in the agreement, the acceptance of the arbitrator must be in writing, and if he has not been named in the agreement the parties agreeing to a particular name to act as an arbitrator must also be in writing.

An arbitrator who has been appointed in the proceedings must inform the parties within 30 days of the first hearing to hear their arguments and submissions. He must provide the parties with the date and the location and the time for the meeting. Proper service of summons must be served on both parties to attend the hearing. The arbitrator may proceed with the arbitration in the absence of the other party if that party failed to attend the arbitration proceeding or make its submission.

If arbitration is conducted by more than one arbitrator it must be an odd number and decision must be made by a majority. All the arbitrators must hear the arguments, the submissions, and sign on the hearing records and the arbitration award.

Arbitrators have no powers to impose fines or compel any party to do something or to request certain documents or information from third parties. Any action of this sort must be done through the court by a special application to the Chief Justice of the court who will decide on such an application. The arbitrator however may decide to suspend the arbitration if challenged by one of the parties according to its discretion if an action has been filed before the court in other related matters or criminal proceedings which has been brought which may effect the decision made in this arbitration process. In such circumstances, the arbitrator may also refer such a request or liaise with the Chief Justice of the court for guidelines.

The arbitrators need not follow the legal process in the arbitration proceedings which have been set out under the UAE Law of Civil Procedures designed for court actions. Arbitration need not follow the technical requirements that have been provided for court action before the court. Arbitration will be conducted in accordance with the rules governing arbitration or as the party agrees or as conducted by the arbitrator in the absence of rules.

The arbitration award will usually be delivered by a majority decision, and will be governed as per the Arbitration Rules of Procedure agreed by the Parties relating to arbitration if delivered in the UAE, otherwise if the arbitration award is delivered outside the UAE, it will be governed by the procedure that governs arbitration in the country where it has been delivered. Arbitration awards must be accompanied with the arbitration agreement, summary of the submission made by the parties and reasoning of the award and the date on which it has been delivered signed by all the arbitrators. If one of the arbitrators however failed to sign the arbitration award, the arbitration award will be valid if it is signed by majority.

The arbitration award usually needs to be delivered in Arabic, however, the parties may agree for the arbitration award to be delivered in another language. However, if the arbitration award needs to be enforced in the UAE, it must be accompanied by an Arabic translation. An arbitration award is normally considered to be delivered on the date it has been signed.

If arbitration was conducted under the supervision of the court the action actually should be filed before the court. In such a case the matter will be referred to the arbitrator, but the court will still have a general jurisdiction over the matter. In other words, if arbitration was conducted outside the court, arbitration will proceed as normal without the interference of the court. However, if the party submits to the court to refer their dispute to arbitration and to uphold the clause, the court may refer the matter to arbitration and continue to supervise the arbitrators. Arbitrators will then have to file the final arbitration award before the court for ratification together with all supporting documents and minutes within 15 days from the date on which the arbitration award was delivered. Copy of the same will be delivered to both parties within 5 days from the date on which the arbitration award is lodged with the court. The judge will then schedule a hearing within 15 days of the date the party requests a hearing to look into the case for ratification of the arbitration award.

However, if arbitration is conducted outside the court without the court's involvement, the arbitration award will be delivered by the arbitrator and copy of

the same will be delivered to the parties within 5 days from the date on which the arbitration award is delivered. The party may then apply to the court independently to ratify the arbitration award by a normal course of action or file a case to annul the arbitration award as the case may be. This will be by way of a normal statement of claim with supporting documents to be filed with the court as a normal course of action after the payment of the fee requesting for the court to ratify the arbitration award which is usually filed by the judgment creditor or a request to annul the arbitration award which can be done by a case filed by the judgment debtor. The court will then consider both parties arguments and submissions and the matter may go into several hearings where both parties will submit facts, evidence and arguments before the case is reserved for judgment for the court to decide whether to ratify the arbitration award or nullify the same. While the arbitration award is not submitted to any appeal, however, the judgment delivered by the court to ratify or annul the arbitration award is subject to an appeal to the Court of Appeal and further to the Court of Cassation. It is unlikely that the arbitration award can be executed or annulled until a final judgment is delivered by the Court of Cassation to ratify or annul the arbitration award. An arbitration award will not be good for execution unless it is ratified by a final judgment.

On some occasions the judges are empowered while ratifying the arbitration award to refer the matter back to the arbitrator to deal with issues that they have failed to deal with, or to complete certain sections of the arbitration award relating to the subject matter of the arbitration which they have failed to resolve or that need further clarification. In such a case the arbitrator must provide their final decision on this matter within 3 months from the date on which the arbitration award is referred to them to be amended or supplemented. Such a decision from the court to refer the matter back to arbitration is not subject to an appeal until final judgment is delivered on the application to ratify or nullify the award. It cannot be appealed independently from the main action. The arbitration award usually has to be delivered within 6 months from the first hearing otherwise either party may pursue its case through the court in a normal court action irrespective of the agreement to arbitrate. However, the parties may directly or by implication authorize the arbitrator to extend the period, and the court upon the request of the arbitrator may also extend the period appropriately. It has been held by the UAE courts that continuing the arbitration after a period of 6 months where both parties continue to make submissions is considered an implied authorization to the arbitrator to extend the period beyond 6 months. Any objection to proceed with the case beyond 6 months must be brought to the attention of the arbitrator by the parties otherwise their silence is considered a consent to continue with the arbitration.

The parties may apply to the court to nullify the arbitration award at the time when the court is looking into ratifying the arbitration award, and the court will consider whether to look into the application to nullify in light of the following conditions under Article 216 of the UAE Civil Procedures Law:

- a. If the award was given without a deed of arbitration or if based on an invalid deed, or if it lapsed through prescription, or if the arbitrators have exceeded the limits of the deed.

- b. If the ruling has been given by arbitrators not appointed according to the law, or if given by some of them without being so empowered in the absence of the others, or if given under a deed of arbitration in which the subject of the dispute is not stated, or if given by someone not competent to agree to arbitration or by an arbitrator who does not fulfill the legal requirements.
- c. If there is something invalid in the ruling or in the procedures affecting the ruling.

It will not be possible for either party to waive their right to challenge the arbitration award if the ground for nullification was based on the above. They can always raise such a challenge even if they have waived their rights during the arbitration process.

An application to ratify the arbitration award or to nullify the arbitration award, will go through the normal course of action before the court as in any other case.

### ENFORCEMENT OF FOREIGN ARBITRATION AWARDS

---

The principle applied to foreign judgments will apply to the enforcement of foreign arbitration awards as provided in Article 236 of the UAE Civil Procedures Law. The UAE is not a signatory to the New York or Geneva Conventions and therefore, the conditions set out in the New York or Geneva Conventions will not be applicable to an arbitration award which needs to be enforced in the UAE. The reciprocal arrangement under the New York Convention will also not be applicable to the UAE, as the UAE is not a signatory to the New York Convention. However, the conditions set out under the GCC Treaty or Paris Bilateral Agreement will apply to the enforcement of GCC state judgments or judgments delivered in France or vice-versa. Therefore, the conditions set out in the GCC Treaty or the Bilateral Agreement signed will supercede the conditions set out in Articles 235 to 238 of the UAE Civil Procedures Law with regard to the enforcement of a Foreign Arbitration Award.

The above is the rule in theory, however, it should be pointed out that at the time of publication of this brochure, except for a judgment delivered in France, there has not yet been any instance of a foreign arbitration award ratified by a UAE court of law.

Nevertheless, in order to enforce a foreign arbitration award an action must be instigated before the UAE Courts in the normal course of action to request the court to ratify the foreign arbitration award and enforce the same locally. The court will only ratify the award after ascertaining that the following conditions have been satisfied:

#### **Article 235 of the UAE Civil Procedures Law:**

- a. That the State Courts do not have jurisdiction in the dispute in which the judgment or award has been given or the order made, and that the foreign courts which issued it have jurisdiction therein under the international rules for legal jurisdiction prescribed in their laws.
- b. That the judgment or award has been issued by a court having jurisdiction under the law of the country in which issued.

- c. That the opposing parties in the case in which the foreign judgment or award has been given have been summoned to appear, and have duly appeared.
- d. That the judgment or award has acquired the force of a *fait accompli* under the law of the court which issued it.
- e. That it does not conflict with a judgment or award previously issued by a court in the State and contains nothing in breach of public morals or order in the state.

In normal circumstances, the court will consider whether the foreign arbitration award is good for execution in the UAE by applying the same standards and procedures that are applicable to the award in the country of its origin. However, on occasion the UAE Courts go beyond that by trying to ensure that the judgment not only satisfies the procedures in the country of origin, but also the UAE procedures which seem to some extent to be outside the meaning of Article 235, Section 1 of the UAE Civil Procedures Law, which reads as follows:

"Judgments and orders issued in a foreign country may be executed in the UAE in the same conditions prescribed in the law of that country to execute the judgments and orders issued in the State."

Judges in the UAE tend to ensure that the arbitration award satisfies the UAE Law of Civil Procedures as well as the foreign procedure although according to the UAE Law, an arbitration award need not follow the UAE Law of Civil Procedures and it should only adhere to the procedure that is applicable in the arbitration award's country of origin.

It is quite difficult to enforce a foreign arbitration award in the UAE especially if it was based on foreign rules. The courts tend to request proof that the arbitration award is final and valid for execution in the country of origin by evidence submitted from the Judicial Authority in that country. In other words, the courts in the UAE are not satisfied by the fact that the arbitration award is valid and delivered according to the process in the country where it is delivered according to the laws and regulations in that country and the agreement of the parties, but also requires evidence that the arbitration award is final and valid for execution before the court of that country.

Such evidence must be of strong judicial evidence, such as by stamping the award from the Supreme Court of the country of origin to confirm that the award can be enforceable and executed as a court judgment, or an affidavit or letter from the arbitrators or from a legal counsel. The UAE courts will also want to ensure that the party was well summoned to attend the hearing and the service was properly effected on them especially in cases where an arbitration award was given in default or in absentia.

Bilateral agreement is also a matter of concern to the courts in the UAE and an arbitration award will only be ratified if it was issued in a country which has a bilateral agreement for the enforcement of awards with the United Arab Emirates. In the absence of a formal agreement, evidence must be provided that the two countries have a bilateral respect for the enforcement of arbitration awards, which

is often difficult to provide in the absence of precedents, specific agreements or specific clauses in the country's laws. This can be proven by submitting a copy of the country of origin's laws, which confirm that in absence of a bilateral agreement, a valid UAE arbitration award can be enforceable in the country of origin. This should also be accompanied by an affidavit sworn by an independent legal counsel.

Once an arbitration award is ratified, whether local or international, it will be valid for execution once it becomes final. Execution of the arbitration award will go through the normal execution of the judgment according to the process set out in the UAE Law of Civil Procedure for the execution of a judgment through the Court Execution Department. It will be at this stage considered as a valid judgment delivered from the UAE Court.

An arbitration award in the UAE can be delivered by a Muslim or Non-Muslim, national or non-national, and there is no restriction on the nationality or the religion of the arbitrators or the place of arbitration, other than what is previously mentioned above with regard to the difficulty of enforcing a foreign arbitration award. There is also no restriction on the subject of the arbitration other than that it may not be possible to arbitrate matters relating to labour and commercial agency. Also, it will not be possible for any of Dubai Government's agencies or authorities to enter into any agreement to arbitrate unless a special consent is given by the government authorizing the department or the agency to enter into an arbitration agreement.

When looking into ratifying the arbitration award, the court will not look into the merit of the case, the facts or the evidence and will only ensure that the arbitration award has confirmed the formalities required under the law and have given both parties the right to defend themselves and to present their case properly according to the principle of justice and fair trial. The court will only look at the criteria set out above for the ratification of the arbitration award without having to look into the merit. However, on occasion when the cost (other than the subject matter of the arbitration) awarded by the arbitrator is quite high or the interest is excessive, the court may interfere in the arbitration award in reducing the cost of arbitration or the interest rate awarded in connection therewith. However, such power will only be exercised in extreme circumstances.

## ARBITRATION PRACTICE

---

Arbitration is gradually becoming a popular dispute resolution mode in the UAE. Specialised experts from various fields (particularly construction) are appointed as arbitrators in view of their better appreciation of the technical aspects of a dispute and their wealth of experience on the basic principles of dispute resolution. This, together with the time limit of six months (subject to extension by mutual agreement) for issuing an award provided for in Article 210 of the UAE Civil Procedures Law should in theory tackle the prevailing drawbacks of litigation before the UAE Courts namely lack of specialised expertise and length of proceedings.

However, in practice, both parties and arbitrators should be alert to a number of pitfalls and critical points that if overlooked can defeat the purpose of arbitration as a swift and fair dispute resolution mode. The most important of these are as follows.

## CHOICE OF ARBITRATORS

---

Arbitration proceedings are essentially a trial that is taking place privately rather than publicly in courts. Ultimately the parties would have agreed to be bound by the award issued by the arbitrators, which will subsequently be converted into a judgment (through the relevant authentication by the UAE Courts). Since the judges in court litigation are of legal background, the same should apply to the appointed arbitrators, at least one of whom, should be either a qualified lawyer, legal consultant or, possessing a mixture of technical and legal background. This is important for two reasons:

- Firstly, so that the legal arguments raised by the Parties' representatives (who are invariably lawyers or legal consultants) are understood and evaluated: arbitrators with a purely technical background and experience would have difficulties in deciding whether to uphold or reject legal arguments raised by either party. Often these arguments may have very little to do with the technical merits of the dispute but they can, nevertheless have a critical impact on the overall fair assessment of the case.
- The second reason relates to the fact that an arbitrator with a strong legal background would be more cautious in ensuring that the award becomes enforceable and that it has not only efficiently dealt with the substantive aspects of the dispute but also with the legal aspects of the award's enforceability, as set out in Article 216 of the UAE Civil Procedures Law.

It is of course essential that Arbitrators do possess a substantial degree of competence and expertise on the technical aspects of the dispute they have been requested to resolve. Ultimately, however, their award will take the form of a judgment and as such it is the arbitrators' implied obligation to ensure that it is as legally sound as possible so that its nullification by the UAE Courts is avoided.

## VALIDITY OF AWARD – CLAIMANT'S PERSPECTIVE

---

From the point of view of the Claimant who instigates the arbitration procedure and demands resolution of its dispute, it is imperative that throughout the Arbitration procedure (indeed from the stage of drafting the arbitration clause or arbitration agreement) attention is focused on the ultimate validity of the arbitration award. The Claimant needs to ensure that the arbitration award, when issued, will "survive" any attempt made by the Defendant through the three tiers of the UAE judicial system (Court of First Instance, Court of Appeal and Court of Cassation) to nullify it on the basis of a lapse of procedure or a breach of a mandatory provision of UAE law.

Some of the basic points that the Claimant should bear in mind in this respect, include the following:

- Clear Arbitration Clause – Arbitration Agreement

The arbitration clause or agreement should specify the rules under which any dispute resolution by way of arbitration should be conducted. These may be the

Rules of the Dubai Chamber of Commerce & Industry, Dubai Municipality Rules, UNICITRAL, ICC etc. For a more effective supervision and conduct of arbitration proceedings held in the UAE it is advisable to agree to local (as opposed to international) rules. This will facilitate the certification of the award by the supervising body and subsequently its authentication through the UAE Courts. In addition, it is preferable that the parties to the dispute, rather than their lawyers, sign any arbitration agreement. This is because in most cases, although a Power of Attorney (see below) gives a lawyer rights to conduct an arbitration on behalf of his client, vary rarely will such Power of Attorney include an express right for the lawyer to sign binding arbitration agreements.

- Determination of whether the dispute will be resolved by one or three Arbitrators.

Very often this issue is left unclear in arbitration clauses or agreements and becomes the object of a separate dispute. The options available are essentially three:

- either one arbitrator appointed by mutual agreement of the parties or by a neutral entity (such as a Chamber of Commerce & Industry) or
- three arbitrators, one appointed by each party and the third appointed by the two arbitrators or a neutral entity, the majority of whom will determine the dispute

or finally

- two arbitrators one appointed from each party and an Umpire who will only determine the dispute if the two Arbitrators disagree on their findings.
- Powers of Attorney

It is essential that under UAE Law parties are represented by authorised attorneys who should carry with them during all arbitration hearings a letter of authorisation or ideally, a Power of Attorney appointing them as legal representatives of the parties with powers to draft pleadings (written submissions) and attend hearings.

- Arbitrators should not take actions that exceed the limits of their powers under the arbitration clause / agreement.

If this aspect is overlooked paragraph 1(a) of Article (216) of the UAE Civil Procedures Law clearly states that the award will be invalid – at least to the extent that it includes decisions that have been made beyond the powers of the arbitrators as these are set out in the arbitration clause / agreement.

- Arbitrators should not violate or overlook any of the Rules of Arbitration agreed to by the parties.

Paragraph 1(c) of Article (216) of the UAE Civil Procedures Law sets out the rather general provision that "if there is something invalid in the ruling or in the procedures affecting the ruling" the Arbitrator's Award may be nullified.

In practice, this provision has allowed the Defendant to submit various arguments before the UAE Courts with regard to procedural and sometimes bureaucratic aspects of the arbitration in an attempt to nullify the Award.

- The Award is issued within the time limit prescribed by Law.

Any time extensions need to be agreed upon at an early stage with the Defendant. Time extensions need to be in compliance with the agreed rules of Arbitration and, if the dispute is subject to UAE Civil Procedures Law, with Article 210 of the UAE Civil Procedures Law, which states:

**Article (210):**

- "1. If the opposing parties do not specify a time for a ruling to be given in the arbitration agreement, the arbitrator is to give his ruling within six months from the date of the initial arbitration hearing, otherwise any of the opposing parties may raise the dispute to the court or may pursue it before the court if already raised.
2. The opposing parties may explicitly or implicitly agree to extend the date prescribed by agreement or by law, and they may empower the arbitrator to extend it to a particular date. At the request of the arbitrator or one of the opposing parties, the court may extend the date specified in the foregoing paragraph for such period as it deems appropriate for settlement of the dispute.
3. The period shall be interrupted whenever the proceedings are suspended, and shall be resumed from the date on which the arbitrator becomes aware that the cause of the interruption or suspension has been eliminated. If the remaining period is less than a month, it shall be extended to a month."

It is quite possible for the Defendant to apply for nullification of the Award on the basis that it has been issued out of time. It is therefore imperative that the Claimant always oversees this issue and ensures that if it becomes obvious that the arbitration award will not be issued within the prescribed time limit, an agreement for extension is obtained as soon as possible.

**VALIDITY OF AWARD – DEFENDANT’S PERSPECTIVE**

---

Defendants very rarely submit a defence statement that deals purely with the merits of the dispute. More often than not, the bulk of the defence submissions relates to procedural aspects, time bars, validity of Powers of Attorney, validity of arbitration agreements, jurisdiction, etc. This type of preliminary defence is normally accompanied by a request for one or more interim awards. This has the inevitable effect of prolongation of the arbitration proceedings, the ultimate goal being either:

- To approach the time limit during which the arbitration award should be issued and before a time extension has been agreed upon, or
- to prolong proceedings and force the Claimant to an amicable settlement for an amount substantially lower than that demanded.

In addition to the prolongation, the Defendant's objective is to identify any procedural errors committed by the arbitrators, which will subsequently give it sufficient ground to request nullification of the award before the UAE Court.

## AUTHENTICATION THROUGH UAE COURTS

---

As in most jurisdictions, an award needs the authentication of the local courts for it to be equivalent to a court judgment and to be enforceable against the losing party's assets. The UAE courts cannot consider the merits of the arbitrators' findings. This is clearly stated in Paragraph 1 of Article (217) of the UAE Civil Procedures Law, which states:

### **Article (217):**

"1. Arbitrator's rulings may not be contested in any way."

In contrast to other jurisdictions, it has been noted that, in the UAE, the nullification / ratification of the award becomes, effectively, the subject of a separate legal action that progresses through the process of the three-tier local court system. This is primarily encouraged by Defendants who wish to nullify the award on the basis of procedural errors. Ultimately, the Claimant/Plaintiff will not be able to enforce the arbitration award until this is converted into a final judgment confirming validity of the original award. The result of this process, which can sometimes be lengthy, is that certainly one of the primary purposes of arbitration – a swift dispute resolution process – is defeated by what is time-wise, yet another trial between the same parties. Very rarely are arbitration awards issued within the six months time limit. Invariably there will be extensions granted/agreed and it may be more than a year before an arbitration award is issued. Thereafter, the litigation process of authentication of the award could result in an additional year's delay before a final judgment is issued. The overall time consumed is arguably equal to and sometimes greater than the time spent before the Courts through a straightforward litigation process.

However, very often the Defendant's request for scrutiny of the award and nullification by the UAE Courts is quite legitimate because arbitrators that were more focused on the technical merits of the dispute rather than the form and due process of the arbitration have overlooked important aspects of mandatory UAE law.

## LEGAL COSTS

The table below is from the Rules of Commercial Conciliation and Arbitration of the Dubai Chamber of Commerce and Industry (DCCI), showing the Chamber's Administrative fees and Arbitrator's remunerations:

The Disputed Amount In Dirhams	The Chamber's * Administration Fees		Arbitrators Remunerations in Dirhams and in Percentage	
	Conciliation	Arbitration	Minimum Amount	Maximum Amount
Upto Dhs.200,000	500	1,000	3,000	7.5% of the amount subject of dispute (Maximum amount shall be 15,000)
From 200,001 upto 500,000	1,000	2,000	3,000 + 1.5% of the amount exceeding 200,000	15000 + 6% of the amount exceeding 200,000
From 500,001 upto 1,000,000	1,500	3,500	7,500 + 1% of the amount exceeding 500,000	33,000 + 4% of the amount exceeding 500,000
From 1,000,001 upto 2,500,000	2,000	5,000	12,500 + 0.5% of the amount exceeding 1,000,000	53,000 + 2% of the amount exceeding 1,000,000
From 2,500,001 upto 5,000,000	3,000	10,000	20,000 + 0.3% of the amount exceeding 2,500,000	83,000 + 1.5% of the amount exceeding 2,500,000
From 5,000,001 upto 10,000,000	4,000	15,000	27,500 + 0.2% of the amount exceeding 5,000,000	120,500 + 0.8% of the amount exceeding 5,000,000
From 10,000,001 upto 20,000,000	5,000	20,000	37,500 + 0.1 % of the amount exceeding 10,000,000	160,000 + 0.4% of the amount exceeding 10,000,000
20,000,001 upto 50,000,000	7,500	25,000	47,500 + 0.5% of the amount exceeding 20,000,000	200,000 + 0.2% of the amount exceeding 20,000,000
More than 50,000,000	10,000	30,000	62,500 + 0.02% of the amount exceeding 50,000,000	260,000 + 0.1% of the amount exceeding 50,000,000

\* Registration Fee for conciliation and arbitration claims is Dhs.200 non-refundable

One major advantage of the arbitration proceedings is that in most cases the successful party will be awarded a greater portion of its actual expenses and legal costs than it would if it had resolved its dispute through litigation. However, the fact that higher costs are involved in arbitration coupled by the inevitable legal and court fees of the subsequent litigation (for authentication of the arbitration award) can mean that the ultimate cost exposure to the successful party in an arbitration is substantially greater than in litigation.

## LEGAL COSTS

The table below is from the Rules of Commercial Conciliation and Arbitration of the Dubai Chamber of Commerce and Industry (DCCI), showing the Chamber's Administrative fees and Arbitrator's remunerations:

The Disputed Amount In Dirhams	The Chamber's * Administration Fees		Arbitrators Remunerations in Dirhams and in Percentage	
	Conciliation	Arbitration	Minimum Amount	Maximum Amount
Upto Dhs.200,000	500	1,000	3,000	7.5% of the amount subject of dispute (Maximum amount shall be 15,000)
From 200,001 upto 500,000	1,000	2,000	3,000 + 1.5% of the amount exceeding 200,000	15000 + 6% of the amount exceeding 200,000
From 500,001 upto 1,000,000	1,500	3,500	7,500 + 1% of the amount exceeding 500,000	33,000 + 4% of the amount exceeding 500,000
From 1,000,001 upto 2,500,000	2,000	5,000	12,500 + 0.5% of the amount exceeding 1,000,000	53,000 + 2% of the amount exceeding 1,000,000
From 2,500,001 upto 5,000,000	3,000	10,000	20,000 + 0.3% of the amount exceeding 2,500,000	83,000 + 1.5% of the amount exceeding 2,500,000
From 5,000,001 upto 10,000,000	4,000	15,000	27,500 + 0.2% of the amount exceeding 5,000,000	120,500 + 0.8% of the amount exceeding 5,000,000
From 10,000,001 upto 20,000,000	5,000	20,000	37,500 + 0.1 % of the amount exceeding 10,000,000	160,000 + 0.4% of the amount exceeding 10,000,000
20,000,001 upto 50,000,000	7,500	25,000	47,500 + 0.5% of the amount exceeding 20,000,000	200,000 + 0.2% of the amount exceeding 20,000,000
More than 50,000,000	10,000	30,000	62,500 + 0.02% of the amount exceeding 50,000,000	260,000 + 0.1% of the amount exceeding 50,000,000

\* Registration Fee for conciliation and arbitration claims is Dhs.200 non-refundable

One major advantage of the arbitration proceedings is that in most cases the successful party will be awarded a greater portion of its actual expenses and legal costs than it would if it had resolved its dispute through litigation. However, the fact that higher costs are involved in arbitration coupled by the inevitable legal and court fees of the subsequent litigation (for authentication of the arbitration award) can mean that the ultimate cost exposure to the successful party in an arbitration is substantially greater than in litigation.

## CONCLUSION

Whether arbitration can be a successful mode of dispute resolution is dependant upon a series of factors that are inextricably linked to each other, the main ones being:

- clarity of the arbitration agreement / clause,
- quality and legal competence of the arbitrators appointed,
- observance of all relevant procedural and mandatory laws as well as issues of public policy. This should lead to a swift consideration by the UAE Courts of the validity of an arbitration award

If these areas are addressed, arbitration in the UAE will become an increasingly preferred option for dispute resolution. This would be a welcome development both from the UAE Courts' perspective, who would be alleviated from the increasing volume of commercial disputes, the merits of which they would otherwise have to consider, and from the perspective of the UAE's image as an important commercial and business centre in the Gulf.

## CONCLUSION

---

Whether arbitration can be a successful mode of dispute resolution is dependant upon a series of factors that are inextricably linked to each other, the main ones being:

- clarity of the arbitration agreement / clause,
- quality and legal competence of the arbitrators appointed,
- observance of all relevant procedural and mandatory laws as well as issues of public policy. This should lead to a swift consideration by the UAE Courts of the validity of an arbitration award

If these areas are addressed, arbitration in the UAE will become an increasingly preferred option for dispute resolution. This would be a welcome development both from the UAE Courts' perspective, who would be alleviated from the increasing volume of commercial disputes, the merits of which they would otherwise have to consider, and from the perspective of the UAE's image as an important commercial and business centre in the Gulf.