

A Focus on Dispute Resolution

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This edition of the Law Update focuses on dispute resolution. In particular, we consider the impact of COVID-19 on dispute resolution in the region – both in terms of how litigation and arbitration proceedings are conducted and the types of disputes it has given rise to. This edition also takes the reader through some notable recent developments in the field of dispute resolution in the region.

In this edition, we have devoted significant attention to addressing the significant impact that COVID-19 has had on litigation and arbitration proceedings.

In the UAE, for example, the Abu Dhabi Courts have shifted all the courts' hearings, post COVID-19, to online hearings with the aim of minimising the spread of COVID-19. The new online court system allows parties to upload court statements to an online portal and allows lawyers to attend via teleconference. The measures implemented are an important step for the Abu Dhabi Courts to adopt, and the courts' procedures that utilise technology to continue serving justice during the current COVID-19 pandemic. As a result of the new technologies implemented, the Abu Dhabi courts have experienced minimal disruption during the pandemic and have, in many instances, become more efficient.

Arbitration too has felt the effects of the pandemic but has demonstrated that arbitral proceedings can proceed effectively and efficiently in the face of COVID-19. In *'Mitigating the impacts of COVID-19 on your arbitration'*, we discuss different practical strategies to ensure the smooth running of arbitration proceedings commenced before the onset of the pandemic. In *'Use of modern technology in arbitration: evolution through necessity'*, we provide a regional perspective on the legal and practical aspects associated with the use of technology in international arbitration. *'The use of technology to conduct ADGM*

arbitrations’ discusses the lack of express provisions on the use of technology in the conduct of hearings in the ADGM Arbitration Regulations of 2015 and its likely impact on the conduct of remote hearings. In *‘Data protection considerations in UAE related arbitrations’*, we discuss the different data protection regimes within the UAE and the key considerations for arbitrations connected to the UAE in light of these regimes. These articles are especially relevant today because of the surge in the use of technology in arbitration triggered by the pandemic.

As one would expect, COVID-19 has led to a spike in certain types of disputes. The invocation of *force majeure* clauses, in particular, has seen a significant rise this year. For example, in an important judgment (although subject to appeal), the Dubai Rental Committee recently determined that COVID-19 is a valid reason to terminate a lease agreement, as long as it is evidenced that COVID-19 has negatively affected the party who seeks the early termination of the lease agreement.

In this Committee dispute, a party became unable to continue the lease for the duration of the agreement term. Nevertheless, the Dubai Rental Committee allowed the landlord to claim compensation for early termination.

We also consider the applicability of *force majeure* clauses in situations created by COVID-19 by looking at their treatment in this region. *‘COVID-19: Force Majeure under Saudi Law and Shari’ah’* provides an insightful look at the treatment of *force majeure* clauses in Saudi Arabia and, on the basis of this, recommends strategies that may be adopted in dealing with contractual disputes that have arisen or are likely to arise from COVID-related conditions. In *‘Tourism contractual obligations in light of the Pandemic in the Sultanate of Oman’*, we discuss the impact of COVID-19 on the tourism industry in Oman. *‘Relief for commercial tenants in Qatar under COVID-19 situation’* discusses the impact COVID-19 has had on commercial leases in Qatar and the relief available to tenants under Qatari Law.

More generally, this edition of the Law Update also provides updates on issues of interest in the context of dispute resolution in the UAE and in the MENA region.

Recent developments have also cemented the UAE’s status as a pro-arbitration state. The Dubai Court of Cassation recently highlighted that the UAE Civil Procedure Code permits the recognition and enforcement of foreign arbitration awards, (unless Article V of the New York Convention is applicable, or it is evidenced that the arbitration award had been nullified in the country of issue). Throughout the precedent, the Court confirmed that the New York Convention provisions prevail over the UAE local laws, including the UAE Civil Procedure Code. In *‘UNCITRAL confirms UAE arbitration laws as model law-based’*, we comment on the recent formal recognition by the United Nations Commission on International Trade Law (‘UNCITRAL’) of the UAE’s three arbitration laws: Federal Law No. (6) of 2018 on Arbitration; the DIFC’s Arbitration Law No. 1 of 2008 (as amended in 2013)’ and the ADGM Arbitration Regulations of 2015 ,as laws based on the UNCITRAL Model Law on International Commercial Arbitration.

With respect to arbitration in the region more generally, in *‘Qatari Arbitration Law: to apply or Not to apply’*, we discuss a recent judgment of the Qatari Court of Cassation wherein the Court held that Law No. 2 of 2017 promulgating the Civil and Commercial Arbitration Law in Qatar would not apply to arbitrations arising from contracts signed prior to the effective date of the law. In *‘Another venture to no-man’s land: ICSID jurisdiction cannot be established using the MFN clause in the OIC investment agreement – Itisaluna v. Iraq’*, we note the recent jurisdictional award rendered in the *Itisaluna Iraq LLC and others v. Republic of Iraq* that case and its contribution to the debate of whether a most favoured-nation (‘MFN’) clause contained in an investment treaty applies to the dispute resolution provisions in the treaty is explored.

We also consider the growing importance of mediation in the region. We discuss the recent ratification of the United Nations Convention on International Settlement Agreements Resulting from Mediation, known as the Singapore Convention on Mediation in *‘Saudi Arabia ratifies the Singapore Convention on Mediation’*. The Singapore Convention, as previously discussed in *‘[Mediation in the Middle East: before and after the Singapore Convention](#)’* (published in the [October 2019](#) edition of the [Law Update](#)), establishes a

framework for the cross-border recognition and enforcement of settlement agreements.

In other litigation matters, we discuss a recent decision of the DIFC Courts on the treatment of documentary credit in '*The treatment of performance bonds and guarantees by the DIFC Courts: an update*'. In '*The mandatory requirement for payment of taxes prior to filing an objection*' we provide an instructive explanation of the process for filing objections to tax decisions issued by the UAE Federal Tax Authority.