

UNCITRAL confirms UAE Arbitration laws as model law-based

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The United Nations Commission on International Trade Law ('UNCITRAL') recently added the arbitration laws of the United Arab Emirates ('UAE'), namely the Federal Law No. 6 of 2018 on Arbitration ('UAE Federal Arbitration Law'), the Dubai International Financial Centre ('DIFC') Arbitration Law No. 1 of 2008 (as amended in 2013) ('DIFC Arbitration Law'), and Abu Dhabi Global Market ('ADGM') Arbitration Regulations of 2015 ('ADGM Arbitration Regulations') to the list of jurisdictions that have arbitration laws that are based on the UNCITRAL Model Law on International Commercial Arbitration ('Model Law').

Background on the Model Law

UNCITRAL, which was established in 1966, is the core legal body of the United Nations system in the field of international trade law. UNCITRAL's mandate focuses on commercial law reform and the modernisation and harmonisation of rules on international business, including dispute resolution.

UNCITRAL issued the Model Law in 1985 and made amendments to it in 2006. UNCITRAL designed the Model Law to provide a guiding legislative framework and assist states in reforming and modernising their laws on arbitral procedure in line with the key requirements and best practices of international commercial arbitration. The Model Law covers all stages of the arbitral process, including the arbitration agreement, the composition and jurisdiction of the arbitral tribunal, (limited) court intervention in the arbitral process, and the recognition and enforcement of arbitral awards.

The Model Law has been adopted by both civil law and common law jurisdictions from around the world: to date, 116 jurisdictions in 83 states around the world have adopted legislation based on the Model Law.

Indeed, one of the first questions that arbitration practitioners often ask when deciding where to seat or legally place an arbitration is whether the jurisdiction in question has an arbitration law that is recognised as being Model Law-compliant. While some leading arbitral jurisdictions, including the United Kingdom and the United States, have arbitration laws that are not entirely based on the Model Law per se (though they reflect many of the same principles), the Model Law has emerged as the international bellwether when it comes to drafting an arbitration law.

Some studies also suggest that the adoption of a Model Law-based arbitration law results in increased foreign direct investment into the adopting jurisdiction. For example, according to one paper by Andrew Myburgh and Jordi Paniagua (*see, Does International Commercial Arbitration Promote Foreign Direct Investment?*, 59 *Journal of Law and Economics* 597 (2016)), jurisdictions that adopt such a law “*tend to experience higher levels of investments in sectors such as construction and activities such as ICT.*”

The UAE's Three Model Law-based Arbitration Laws

The judicial landscape in the UAE is notable: a predominantly civil law jurisdiction inspired by the principles of Islamic Sharia'h where identified common law jurisdictions coexist. In this regard, the UAE offers a broad and rich spectrum of legal tools. Arbitration is no different where three arbitration laws are offered to users. First, the UAE Federal Arbitration Law, which is the generally applicable federal law relating to arbitration that applies to “onshore” arbitrations, across the seven Emirates. Second, the DIFC's Arbitration Law, Law No. of 2008, as amended in 2013 ('DIFC Arbitration Law'), which applies to arbitrations seated in the DIFC, a financial free zone located in the Emirate of Dubai. Lastly, the ADGM Arbitration Regulations which apply to arbitrations seated in the ADGM, another financial free zone located in the Emirate of Abu Dhabi.

UNCITRAL's recent recognition of all three laws as Model Law-based comes in the wake of the entry into force of the UAE Federal Arbitration Law in June 2018. The UAE Federal Arbitration Law covers the entire arbitral process and reflects the key features and principles of arbitration. Indeed, in some respects, the UAE Federal Arbitration Law goes beyond the main attributes of the Model Law and incorporates unique, state-of-the-art provisions that are particularly relevant in the current COVID-19 era in which greater emphasis is being placed on the use of modern technology in arbitration. For example, Article 28.2(b) of the UAE Federal Arbitration Law provides that “[t]he Arbitral Tribunal may, unless otherwise agreed by the Parties [...] hold arbitration hearings with the Parties and deliberate by modern means of communication and electronic technology.” Article 33.3 UAE Federal Arbitration Law likewise provides that “[h]earings may be held through modern means of communication without the physical presence of the Parties at the hearing.” Article 35 specifically states that “[t]he Arbitral Tribunal may question witnesses, including expert witnesses, through modern means of communication without their physical presence at the hearing.”

UNCITRAL has also recognised the DIFC Arbitration Law as Model Law-based legislation. The DIFC was established in 2004 as a common-law jurisdiction with its own civil and commercial laws. It has emerged as a tested and reliable arbitral seat for both UAE-based and international disputes. Indeed, back in 2008 when it was first enacted, the DIFC Arbitration Law was the first arbitration law in the UAE to be inspired by the Model Law. Similar to the UAE Federal Arbitration Law, the DIFC Arbitration Law, which was amended in 2013 to clarify the DIFC Court's power to stay court proceedings in favour of foreign-seated arbitrations, covers the entire arbitral process and reflects the key features and principles of arbitration.

The ADGM Arbitration Regulations have also been recognised by UNCITRAL as Model Law-based. ADGM, a financial free zone in the Emirate of Abu Dhabi, the UAE's capital, was established in 2013, and it too is a

predominantly common law jurisdiction with its own civil and commercial laws. ADGM law makes English common law (including the rules and principles of equity) directly applicable in the ADGM in addition to a wide range of well established statutes on civil matters. The use of the ADGM as an arbitral seat has accelerated since the Court of Arbitration of the International Chamber of Commerce ('ICC') established a representative office in ADGM in 2018. Like the UAE Federal Arbitration Law and DIFC Arbitration Law, the ADGM Regulations, which were recently complemented by the ADGM Arbitration Guidelines in September 2019, provide a comprehensive legal framework covering all stages of arbitration and incorporating the key features and best practices of the process.

Conclusion

UNCITRAL's recognition of all three laws as Model Law-based in a note by the UNCITRAL Secretariat to the United Nations General Assembly dated 1, April 2020 (A/CN.9/1020) will undoubtedly further increase user confidence and continue to cement the UAE's position as a leading multi-faceted arbitral jurisdiction in the Middle East and beyond.

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