

Arbitration in the UAE: Aiming for excellence

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The United Arab Emirates (UAE) is experiencing a period of substantial economic growth again as it continues to diversify its economy.

This will continue to attract substantial inward investment in the UAE. It goes without saying that increased inward investment ought to be complemented by effective and transparent dispute resolution mechanisms in the host State (in addition to international recourse under multilateral and bilateral investment agreements, where appropriate). The UAE increasingly favors arbitration as a suitable mechanism for alternative dispute resolution and is committed to ensuring that this mechanism develops in the UAE in line with international best practice, such as that exemplified by the ICC and other international institutions.

DRAFT FEDERAL ARBITRATION LAW

The Ministry of Economy has released various drafts of the proposed UAE Federal Arbitration Law (the "Draft Law"); the latest draft was issued by the Ministry in 2013. The Draft Law marks the UAE's desired modernization of its legislation, in effect replacing Articles 203 to 218 of the Civil Procedure Code that are currently in force, in order, among other things, to fully comply with its obligations under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Whilst enactment of the Draft Law is still pending, this latest release manifests the UAE's intentions to introduce a modern legislative framework for arbitration in the UAE.

DIAC

Replacing the former Conciliation and Commercial Arbitration Centre of Dubai Chamber of Commerce and Industry, the Dubai International Arbitration Centre ("DIAC") was inaugurated in May 2003. It is currently the busiest arbitration centre in the Gulf region. Having its location in Dubai, the DIAC is financially and administratively autonomous.

The DIAC issued its own Arbitration Rules ("DIAC Rules"), applicable to all DIAC arbitrations commenced on or after 7 May 2007, consequently replacing the DCCI Rules of Commercial Conciliation and Arbitration of 1994 ("DCCI Rules") which were drafted mainly with domestic arbitration in mind. For one, the DIAC Rules, unlike the DCCI Rules, are not limited in application to commercial disputes and the default language of the arbitration is now English rather than Arabic.

ADCCAC

The Abu Dhabi Commercial, Conciliation and Arbitration Centre ("ADCCAC") was established in 1993. ADCCAC is often the venue preferred by Abu Dhabi-based parties for the resolution of disputes, especially those related to construction and commercial contracts.

Last year, ADCCAC published new procedural regulations for the conduct of arbitration, which include a new set of regulations ("the ADCCAC Regulations"), effective from 1st September 2013 (applying to existing as well as new arbitrations). It is generally agreed that the new ADCCAC Regulations represent a very significant improvement on its former rules. The new regulations thus introduce good modern arbitration practice to the ADCCAC arbitration process, as a result of which

it is hoped that arbitrations which are administered in accordance with the new ADCCAC regulations will run more smoothly in the future to the benefit of parties and practitioners.

Practitioners should be aware that unlike the DIAC rules, however, the default language is Arabic, unless the parties expressly choose English.

DIFC

The Dubai's International Financial Centre (DIFC) is an autonomous common law jurisdiction, empowered by Federal Law No.8 of 2004 to enact its own regulatory and legal framework for all matters civil and commercial complemented by its own independent courts and law-making powers.

The DIFC Arbitration Law No. (1) of 2008, is based upon the UNCITRAL Model law. In accordance with this law, there is no requirement for parties to have any "nexus" or "connection" with the DIFC in order to provide for arbitration to be seated in the jurisdiction. Anyone, from any jurisdiction, can opt for the DIFC as an arbitration seat.

Pursuant to the Judicial Authority Law (Law No.12 of 2004), DIFC awards, once ratified by the DIFC Courts are enforceable by the Dubai Courts as if the judgment is "final and appropriate for enforcement", if accompanied by an Arabic translation.

DIFC-LCIA

Located in the DIFC and in collaboration with London Court of International Arbitration (LCIA), the DIFC-LCIA Arbitration Centre was established in February 2008. Functioning with the assistance of the LCIA Secretariat, the DIFC-LCIA Arbitration Rules are largely modeled on the LCIA Arbitration Rules. The DIFC-LCIA centre relies on the LCIA's database and know-how.

SHARJAH AND RAS AL KHAIMAH

Other Emirates, such as Sharjah and Ras Al Khaimah, also feature arbitral institutions and rules, which are intended to cater for domestic and international arbitrations. However, these feature less prominently than their counterparts in Abu Dhabi and Dubai. Also available is the Islamic Centre for Reconciliation and Arbitration which is intended to facilitate the resolution of disputes of an Islamic financial nature, thereby further increasing the choice of arbitration options in the UAE.

CONCLUSION

The modernization trend of UAE's arbitration rules and institutions towards international best practice standards is a welcome and timely response to the evolving requirements of continued global investment in the UAE. The enactment of a singular legislative framework consisting of a modern arbitration code would be a welcome next step. It is to be hoped that when ratified the draft Federal Arbitration Law will serve as yet another example of the UAE's commitment to position itself as an attractive seat for international arbitration, just as it has positioned itself as an attractive place in which to do business. For its part, in its endeavors to promote arbitration in the Arab world, the ICC's creation of a steering committee as part of the UAE national committee, chaired by Essam Al-Tamimi, Senior Partner with Al Tamimi & Company, will help contribute – through the valuable collective international and regional experience of its sub-committee members – to the achievement of that objective.

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