

A New Seat is Born: Abu Dhabi Global Market Issues a UNCITRAL-based Arbitration Law

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Introduction

Abu Dhabi Global Market, the recently-created commercial free zone in the heart of the UAE's capital city, issued a modern UNCITRAL-based arbitration law on 30 December 2015, pursuant to the "Arbitration Regulations 2015". The Regulations govern all arbitrations seated in Abu Dhabi Global Market, as well as the enforcement of all arbitral awards in the jurisdiction. This article gives some background to the Regulations, discusses their focus and approach, and highlights some notable features.

Abu Dhabi Global Market

Abu Dhabi Global Market (ADGM) is an international financial centre and free zone for local, regional and international companies, which is headquartered on Al Maryah Island in Abu Dhabi. ADGM, which commenced operations in 2014, is overseen by three independent authorities: the Registration Authority, the Financial Services Regulatory Authority and the ADGM Courts.

In addition, a wide ranging set of well-established English statutes on civil matters are also applicable in ADGM. ADGM is thus the first jurisdiction in the Middle East to directly apply English common law.

The ADGM Board of Directors (ADGM Board) is empowered to enact ADGM laws and legislation.

The Arbitration Regulations

Following a consultation process, in which Al Tamimi & Company participated, the ADGM Board decided to enact comprehensive Regulations to govern arbitration and the enforcement of arbitral awards within ADGM in furtherance of its objective to offer market participants a worldclass legal system and regulatory regime.

In a break from its general approach of adopting English law, the Arbitration Regulations enacted by ADGM does not follow the English law in this area, but instead closely follow the UNCITRAL Model Law. In doing so the ADGM has enacted a modern law reflecting the most widely acknowledged best practice in international arbitration, which will encourage the wide use of ADGM as a seat of arbitration in the region.

A pervasive pro-arbitration approach has been taken in the Regulations: there is limited scope for court intervention in the arbitral process; tribunals have the power to consider and decide disputes concerning their jurisdiction; and the grounds for challenging an arbitral award are limited to narrow circumstances with no review of the merits of the dispute. The Regulations are also intended to ensure that tribunals constituted within a ADGM are independent of, and impartial as between, the parties, must respect due process and must ensure equal treatment of the parties.

Enhancements made to the Model Law

The Board has implemented a series of modifications and enhancements to the UNCITRAL Model Law to reflect the most modern and progressive arbitration practice internationally, which it believes will appeal to end users of ADGM arbitration and the regional legal community. Significant modifications and enhancements include:

Enhanced confidentiality and privacy

Given the nature of the business that will be conducted in ADGM and the prevailing culture of discretion in the region, the Model law has been amended as follows:

- The award and any information relating to the arbitral proceedings are confidential and may not be disclosed to a third party, save for certain limited circumstances.
- All arbitration-related proceedings in the Court are to be heard in closed court.

Joinder of third parties

The Regulations provide that the ADGM Court or the arbitral institution administering the arbitration (if there is one) can join a third party to the arbitration even if that third party is not a party to the arbitration agreement and other parties do not consent. The criteria, similar to that found in the LCIA Rules, is that (i) the request must be made by a party to the arbitral proceedings; (ii) the third party must consent in writing to the joinder; and (iii) it is in the interests of justice to allow the joinder and does not prejudice any of the parties.

Waiver of right to bring an action for setting aside

The Regulations provide that the parties may, by an express statement in the arbitration agreement or by a subsequent written agreement, waive fully the right to bring an action for setting aside, or to limit it to certain grounds. While the foregoing provision is intended to make the award completely final and “unappealable”, the award may nonetheless still be denied recognition and enforcement (if the award is to be enforced in the ADGM).

In addition to the foregoing, the Regulations contain comprehensive and helpful provisions on numerous issues relating to the conduct of arbitration proceedings, including a wide range of available remedies to assist the parties and the process generally.

Conclusion

The enactment of the Regulations is another important milestone for ADGM: its birth as a fully-fledged arbitral seat. It is a further indication that ADGM is committed to providing clear, transparent and robust rules and regulations to an international “best practice” standard. ADGM has taken the lead in enacting one of the most modern and progressive arbitration laws in the Middle East. The Regulations may serve as a bellwether for other initiatives, including the long-awaited enactment of a UAE federal arbitration law.