

# Arbitration

## in United Arab Emirates

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## Contributors

### United Arab Emirates



**Chatura Randeniya**  
crandeniya@afриди-angell.com  
*Afridi & Angell*



**Mevan Bandara**  
*Afridi & Angell*

**LEGAL FRAMEWORK****National arbitration laws**

What legislation applies to arbitration in your jurisdiction?

If the arbitration is seated in any emirate in the United Arab Emirates (other than in a financial free zone), the Federal Arbitration Law 6/2018 (the Arbitration Law) will apply.

There are currently two financial free zones established in the United Arab Emirates that have separate arbitration legislation. The financial free zone in Dubai is under the Dubai International Financial Centre (DIFC) and the financial free zone in Abu Dhabi is under the Abu Dhabi Global Market (ADGM).

The DIFC Arbitration Law 1/2008 applies to arbitrations seated in the DIFC and the Arbitration Regulations 2015 apply to arbitrations seated in the ADGM.

This guide covers arbitrations seated in the United Arab Emirates (onshore) where the Arbitration Law is applicable and excludes arbitrations seated in the DIFC and ADGM.

**Mandatory laws**

Are there any mandatory laws?

There are no mandatory laws insofar as applicable substantive law is concerned. However, the Arbitration Law applies to arbitrations seated in the United Arab Emirates (aside from the financial free zones as explained above).

**New York Convention**

Is your country a signatory to the New York Convention? If so, what is the date of entry into force?

Yes, it was ratified by Federal Decree No 43 on 13 June 2006.

Are there any reservations to the general obligations of the convention?

No.

**Treaties and conventions**

What other treaties and conventions in relation to arbitration is your jurisdiction party to?

N/A.

**UNCITRAL**

Has your jurisdiction adopted the UNCITRAL Model Law?

No, but the Arbitration Law is largely based on the UNCITRAL Model Law.

## Reform

Are there any impending plans to reform the arbitration laws in your jurisdiction?

The Arbitration Law, which was enacted in June 2018, is the United Arab Emirates' first standalone piece of legislation on arbitration which repealed and replaced the arbitration chapter in the Civil Procedure Code. There are currently no plans for further reform.

## ARBITRATION AGREEMENTS

### Validity

What are the validity requirements for an arbitration agreement?

The following validity requirements apply to arbitration agreements:

- The arbitration agreement must be in writing. The agreement can be included in the form of written or electronic correspondence. An arbitration agreement can be incorporated by reference to another document containing an arbitration clause, provided that the reference is clear that the arbitration clause is being incorporated.
- The person agreeing to arbitration on behalf of a body corporate must have specific authority to agree to arbitration. Ordinarily, this authority must be evidenced by a shareholders' resolution or by the articles of association of a company.

### Enforcement of agreements

How are arbitration agreements enforced in your jurisdiction? What is the attitude of the national courts towards arbitration agreements?

The national courts will generally uphold a valid arbitration agreement and decline jurisdiction, provided that the defendant asserts that the courts have no jurisdiction because of the arbitration clause. The defendant must assert this in the form of a jurisdictional objection before a defence is submitted on the merits of the dispute.

### Consolidation

Can an arbitral tribunal with its seat in your jurisdiction consolidate separate arbitral proceedings under one or more contracts, and, if so, in what circumstances?

The Federal Arbitration Law 6/2018 (the Arbitration Law) does not provide for the consolidation of separate arbitral proceedings. However, this should be possible provided that the institutional rules provide for such a mechanism and the parties agree to such consolidation. For example, the Dubai International Finance Centre-London Court of International Arbitration (DIFC-LCIA) Rules and the International Chamber of Commerce (ICC) Arbitration Rules specifically provide for the consolidation of separate arbitral proceedings.

### Choice of law

How is the substantive law of the dispute determined? Where the substantive law is unclear, how will a tribunal determine what it should be?

If the parties have not agreed on the substantive law governing the dispute, the tribunal is required to apply the law that it deems to be most closely connected to the dispute. In determining this issue, the tribunal should take into consideration:

- the terms of the contract
- the subject matter of the dispute
- the usages of the trade applicable to the transaction; and
- past practices between the parties.

### Separability

Are there any provisions on the separability of arbitration agreements?

Yes, the Arbitration Law provides that an arbitration agreement must be treated as an agreement independent from the other terms of a contract. The Arbitration Law also provides that the termination or nullification of a contract in which an arbitration agreement is incorporated does not affect the validity of the arbitration agreement.

### Multiparty agreements

Are multiparty agreements recognised?

The Arbitration Law does not specifically recognise or disallow multi-party arbitration agreements. In practice, multiparty arbitration agreements are recognised. Institutional rules (eg, the Dubai International Arbitration Rules, the DIFC-LCIA Rules and the ICC Arbitration Rules) specifically recognise multi-party arbitration rules.

## ARBITRAL TRIBUNAL

### Criteria for arbitrators

Are there any restrictions?

Yes, the following arbitrator restrictions apply:

- An arbitrator must be a natural person who is not:
  - a minor;
  - under a court interdiction order; or
  - deprived of civil rights due to bankruptcy, committing a felony, misdemeanour or conviction for a crime involving moral turpitude or breach of trust.
- An arbitrator cannot be a member of the trustees or the administrative body of the institution administering the arbitration (the arbitral institution).

## Contractual stipulations

### What can be stipulated about the tribunal in the agreement?

The following can be stipulated about the tribunal in the agreement:

- the number of arbitrators and the appointment procedure; and
- the qualifications required for an arbitrator.

## Default requirements

### Are there any default legal requirements as to the selection of a tribunal - for example, concerning the number of arbitrators or their characteristics?

In the absence of an agreement between the parties, the Arbitration Law provides that an arbitration should be heard by three arbitrators. Each party is required to nominate an arbitrator and the chairperson of the tribunal will be nominated by the parties' nominated arbitrators. If the party-nominated arbitrators are unable to agree on the chairperson, the appointment will be made by the arbitral institution.

## Challenging the appointment of an arbitrator

### Can the appointment of an arbitrator be challenged? Can an arbitrator be disqualified? What is the procedure for this?

The appointment of an arbitrator can be challenged under the Arbitration Law if:

- circumstances exist that give rise to justifiable doubts about the impartiality or independence of the arbitrator; or
- the arbitrator does not possess the required qualifications agreed on by the parties.

The procedure to challenge an arbitrator is as follows:

- A challenge to the appointment of an arbitrator must be made in writing within 15 days after becoming aware of the appointment of the arbitrator or within 15 days after becoming aware of any circumstances justifying the challenge. The challenge must be addressed to the challenged arbitrator and copies must be sent to the arbitration counterparties and the other members of the tribunal.
- If the challenged arbitrator does not withdraw or if the arbitration parties do not agree with the challenge within 15 days, the challenging party may require the arbitral institution to make a decision.
- The arbitral institution must provide its decision within 10 days.

In addition to the above, there may be separate or different procedures applicable under the institutional rules.

## Jurisdictional objections

### How should an objection to jurisdiction be raised?

A jurisdictional objection should be raised no later than with the submission of the respondent's statement of defence. The fact that the party seeking to assert a jurisdictional objection appointed or was involved in the appointment of an arbitrator will not preclude it from asserting a jurisdictional objection.

## Replacement of an arbitrator

### Why and how can an arbitrator be replaced?

The Arbitration Law provides that an arbitrator can be removed and replaced:

- following the death or incapacity of an arbitrator;
- following a challenge of appointment; or
- if the arbitral institution finds that the arbitrator:
  - is unable to perform their functions or ceases to perform their functions;
  - acts in a manner that leads to unjustifiable delays in the arbitral proceedings; or
  - deliberately fails to act in accordance with the arbitration agreement.

## Powers and obligations

### What powers and obligations do arbitrators have?

In addition to the powers and obligations set out in any applicable institutional rules, arbitrators' powers and obligations include:

- the power to make findings on the merits of the dispute;
- the power to grant interim relief;
- the power to determine their own jurisdiction; and
- the obligation to treat the parties with equality and give each party a full opportunity to present its case.

## Liability of arbitrators

### Are arbitrators immune from liability?

The Arbitration Law and most institutional rules provide specific provisions exempting arbitrators from liability. Arbitrators could be held criminally liable between 2017 and 2019.

## Communicating with the tribunal

### How do the parties communicate with the tribunal?

Ex-parte communications with the tribunal are prohibited. The parties are free to agree the mode of communication with the tribunal in the terms of reference. Ordinarily, communication with the tribunal is made via email.

## Reaching decisions

### Is unanimous agreement of the tribunal required? If there is disagreement, does the will of the majority suffice? What are the implications of this?

The majority decision will suffice. If authorised to do so by the parties or the other arbitrators, the presiding arbitrator may decide on procedural matters.

## Arbitrability

Are there any disputes incapable of being referred to arbitration?

Yes, such disputes include:

- labour disputes;
- disputes relating to registered commercial agencies; and
- matters relating to public policy.

Can the arbitrability of a dispute be challenged?

Yes, such a challenge may be asserted as a jurisdictional objection in the arbitration proceedings and through an application to court, before, during or at the conclusion of arbitration proceedings.

## Jurisdiction and competence-competence

Is the principle of competence-competence recognised in your jurisdiction? Can a party to an arbitration ask the courts to determine an issue relating to the tribunal's jurisdiction and competence?

The principle of competence-competence is recognised in the United Arab Emirates. A tribunal's decision on its own jurisdiction and competence may be appealed to the Court of Appeal within a limited timeframe.

However, there is nothing in the law to prevent a party from requesting a court to determine issues relating to the tribunal's jurisdiction.

## ARBITRAL PROCEEDINGS

### Starting an arbitration proceeding

What is needed to commence arbitration?

Arbitration is commenced following the filing of a request for arbitration. The requirements for the request for arbitration are generally contained in the applicable institutional rules. If arbitration is to be commenced by lawyers, evidence of authority by way of a power of attorney is usually required.

### Limitation periods

Are there any limitation periods for the commencement of arbitration?

Any contractual limitation periods and procedures are binding and applicable, in addition to limitation periods set out by law. There is no unified law on limitation in the United Arab Emirates and the applicable periods range from three years for an insurance claim and a claim for acts causing harm (the equivalent of tort in the United Arab Emirates) to 10 years for a contractual claim.

### Procedural rules

Are there any procedural rules that arbitrators must follow?

The procedural rules set out in the applicable procedural law (eg, the Federal Arbitration Law 6/2018 (the Arbitration Law), the Dubai International Financial Centre (DIFC) Arbitration Law or the Abu Dhabi Global Market (ADGM) Arbitration Regulations) and the applicable institutional rule must be followed.

### Dissenting arbitrators

Are dissenting opinions permitted under the law of your jurisdiction?

Yes.

### Judicial assistance

Can local courts intervene in proceedings?

Local courts can intervene in limited circumstances, including:

- when an appeal is filed from a decision in the tribunal's jurisdiction;
- to assist in the taking of evidence;
- to compel a witness to give evidence; and
- to direct a third party to produce documents.

Can the local courts assist in choosing arbitrators?

Local courts can assist in choosing arbitrators only if the court is the institution administering arbitration or if the parties have agreed to seek the assistance of the court.

What is the applicable law (and prevailing practice) where a respondent fails to participate in an arbitration? Can the courts compel parties to arbitrate? Can they issue subpoenas to third parties?

The courts will not compel a respondent to participate in arbitration. In order to ensure that an award is not subsequently set aside, the arbitral institution should ensure that the notice of arbitration has been duly served on the respondent. If the notice of arbitration is properly served (or deemed to be served) and the respondent fails to participate, arbitrations ordinarily proceed *ex parte*.

However, courts can issue subpoenas to third parties to give evidence.

### Third parties

In what instances can third parties be bound by an arbitration agreement or award?

A third party cannot be bound by an arbitration agreement or an award under UAE law.

### **Default language and seat**

Unless agreed by the parties, what is the default language and location for arbitrations?

Under the Arbitration Law, the default language for arbitration is Arabic and the location of the arbitration will be determined by the tribunal having regard to the circumstances of the case, including the convenience of the parties. The institutional rules also provide the default language and the seat of arbitration in the event that there is no agreement between the parties (eg, the default seat under the DIFC-London Court of International Arbitration Rules is the DIFC, while the default seat in the Dubai International Arbitration Centre Rules is Dubai).

### **Gathering evidence**

How is evidence obtained by the tribunal?

Evidence can be obtained in writing and orally. Video and voice recordings are also permitted as forms of evidence. Witnesses must generally be sworn in.

What kinds of evidence are acceptable?

Documentary evidence, witness statements and oral evidence are all acceptable.

### **Confidentiality**

Is confidentiality ensured?

Yes, unless the parties agree otherwise, arbitration proceedings are confidential.

Can information in arbitral proceedings be disclosed in subsequent proceedings?

Information cannot be disclosed in subsequent proceedings without the consent of the parties.

### **Ethical codes**

What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your jurisdiction?

The Arbitration Law provides that a code of conduct for arbitrators will be issued by the Ministry of Economy, although this has not yet been issued. Counsel will be subject to the relevant codes of conduct that apply in the jurisdictions in which they are licensed to practise. The Dubai Legal Affairs Department has a draft charter for the conduct of advocates and legal consultants.

## COSTS

### Estimation & allocation

How are the costs of arbitration proceedings estimated and allocated?

The estimation of arbitration costs will depend on the applicable institutional rules (eg, the Dubai International Arbitration Centre calculates arbitration fees based on the value of the claim, whereas the Dubai International Financial Centre-London Court of International Arbitration Rules use hourly rates).

### Security for costs

Can the national court or tribunal order security for costs under the law in your jurisdiction?

No specific provision under UAE law permits the UAE courts or tribunals to order security for costs. However, the interim or conservatory measures available in the Federal Arbitration Law 6/2018, may be used to seek security for costs orders from the tribunal. Nevertheless, the granting of such a remedy is at the discretion of the tribunal.

## THE AWARD

### Requirements

What legal requirements are there for recognition of an award? Must reasons be given for the award? Does the award need to be reviewed by any other body?

The following legal requirements apply for the recognition of an award:

- The award must be in writing and signed by the arbitrators. The signatures of the majority of the arbitrators is sufficient, provided that the reason for any omitted signature is stated.
- Unless the parties have agreed to the contrary, the award must include the reasons for the decision.
- The award must include specific information, including:
  - the names and addresses of the parties;
  - the names, nationalities and addresses of the arbitrators;
  - the text of the arbitration agreement;
  - a summary of the parties' claims, statements and documents; and
  - the date and place of issue of the award.

### Timeframe for delivery

Are there any time limits on delivery of the award?

Yes, the final award must be issued within the period agreed by the parties. If there is no such agreement, the final award must be issued within six months from the date of the first hearing of the arbitration. The tribunal may extend this period by up to six additional months, unless the parties agree to a longer extension.

### Remedies

Does the law impose limits on the available remedies? Are some remedies not enforceable by the court?

There is no limitation provided in the applicable legislation. Declaratory relief is sought and granted in arbitration, whereas declaratory relief is rarely granted by the national courts.

What interim measures are available? Will local courts issue interim measures pending constitution of the tribunal?

Yes, local courts will issue interim measures according to the constitution of the tribunal, which are usually freezing orders. Interim measures are granted at the discretion of the court. The Federal Arbitration Law 6/2018 (the Arbitration Law) empowers the tribunal to grant interim or conservatory measures that it considers necessary given the subject matter of the dispute, including orders to:

- preserve evidence;
- preserve goods which constitute part of the subject matter of the dispute;
- preserve assets and funds;
- maintain or restore the status quo; and
- take action that would prevent or refrain from taking action that is likely to cause imminent harm or prejudice to the arbitration process.

The above measures can also be granted by a local court through an application to the chief judge of the Court of Appeal.

## Interest

Can interest be awarded?

Yes.

At what rate?

If the interest rate is not agreed between the parties, UAE law permits a maximum rate of 12% under the Commercial Transactions Law. The courts generally award interest at a rate of 9% and this is usually adopted in arbitrations.

## Finality

Is the award final and binding?

Yes, the award has the effect of *res judicata* under the Arbitration Law.

What if there are any mistakes?

On its own initiative or following the request of a party, the tribunal may correct any material errors in the award which

are clerical or computational. A request to correct such errors should be made within 30 days from receiving the award.

Can the parties exclude by agreement any right of appeal or other recourse that the law of your jurisdiction may provide?

No, any right of appeal or other recourse available under law cannot be excluded by agreement of the parties.

## Appeal

What is the procedure for challenging awards?

There is no appeal available on the merits of the award. However, an award can be set aside on limited grounds. An application to set aside an award must be brought before the Court of Appeal within 30 days from receiving notice of the award or can be made during proceedings for ratification of the award.

On what grounds can parties appeal an award?

Foreign awards can be set aside on the grounds set out in the New York Convention.

Local awards can be set aside on the following grounds:

- There is no arbitration agreement or the agreement is void or has lapsed.
- A party agreeing to arbitration does not have the capacity to agree to arbitration.
- A party fails to present its case in the arbitration because it was not given proper notice of the appointment of an arbitrator, of the arbitral proceedings or for any other reason beyond its control.
- The award excludes the application of the parties' choice of law for the dispute.
- The composition of the tribunal or the appointment of the arbitrator was not in accordance with the law or the agreement between the parties.
- The arbitral proceedings were marred with procedural irregularity or the arbitral award was not issued within the specified timeframe.
- The award goes beyond the arbitrator's scope.
- The subject matter of the dispute cannot be settled by arbitration.
- The arbitral award conflicts with the public order and morality of the state.

## Enforcement

What steps can be taken to enforce the award if there is a failure to comply?

On ratification of the award it can be enforced through the local enforcement courts.

Can awards be enforced in local courts?

Yes.

### How enforceable is the award internationally?

The United Arab Emirates has ratified the New York Convention. Therefore, in theory an award rendered in the country may be enforced in any other country that has ratified the New York Convention, subject to the terms of the convention and the laws of the foreign state.

### To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

State or sovereign assets cannot be attached in the United Arab Emirates. While the concept of state immunity is not present in federal legislation, certain permissions may be required before instituting proceedings against government entities. For example, in Dubai, a complaint must first be filed before the Dubai Rulers Court (which is now part of the Dubai Legal Affairs Department) if the defendant is a Dubai government department.

### Are there any other bases on which an award may be challenged, and if so, by what?

There are no other grounds than those set out above.

### How enforceable are foreign arbitral awards in your jurisdiction?

Since the United Arab Emirates has ratified the New York Convention, a foreign award may be enforceable in the country provided that the award was rendered in a country that has ratified the New York Convention. The UAE courts generally apply the provisions of the New York Convention for the enforcement of a foreign arbitral award. New regulations have recently been introduced for the recognition and enforcement of foreign arbitral awards. These regulations have not yet been tested but in theory make the enforcement of foreign arbitral awards faster and easier than local arbitral awards.

### Will an award that has been set aside by the courts in the seat of arbitration be enforced in your jurisdiction?

It is unlikely that a local court will enforce an award if it has been set aside by the courts in the seat of arbitration.

## THIRD-PARTY FUNDING

### Rules and restrictions

#### Are there rules or restrictions on third-party funders?

There are no rules on third-party funders in onshore United Arab Emirates. Both the Dubai International Finance Centre and the Abu Dhabi Global Market have specific rules on third-party funding.

**CLASS-ACTION OR GROUP ARBITRATION****Concept**

Is there a concept in your jurisdiction providing for class-action arbitration or group arbitration? If so, are there any limitations to the arbitrability of such claims or requirements that must be met before such claims may be arbitrated?

No.

**HOT TOPICS****Emerging trends**

Are there any hot topics or trends emerging in arbitration in your jurisdiction?

There is increased interest in interim relief issued by arbitrators, following the recognition of the enforceability of interim relief in the Federal Arbitration Law 6/2018. Third-party funding is also gathering interest.