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The UAE's new Arbitration Law: a significant step towards making the Emirates a global arbitration hub

A description of the United Arab Emirates (UAE) as the preferred seat of arbitration in the Middle East and North Africa (MENA) region is unlikely to be contradicted. The past ten years in particular have seen significant developments in arbitration and dispute resolution overall in the UAE – for example, the establishment of the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM) (the two financial free zones in the UAE which have their own laws and English-language common law courts), as well as the DIFC-LCIA Arbitration Centre and a representative office of the International Chamber of Commerce (ICC) in Abu Dhabi.

Notwithstanding these developments, the UAE's growth as a global arbitration hub was held back by its archaic law on arbitration (comprising a handful of provisions in the UAE Civil Procedures Law). This fetter was removed in June 2018, with the enactment of Federal Law no. 6 of 2018, the UAE's first stand-alone arbitration law (the 'Arbitration Law'). Over ten years in the making, the Arbitration Law is modelled after the United Nations Commission on International Trade Law (UNCITRAL) Model Law.

Application and important changes

The Arbitration Law is applicable to all new and pending arbitrations seated in the UAE, unless the parties agree otherwise. The Arbitration Law does not have any applicability in any arbitrations seated in the DIFC and the ADGM, since each of these free zones has their own separate arbitration laws.

An important change is that the Arbitration Law recognises that an arbitral award is binding on the parties and shall constitute *res judicata* with respect to the underlying dispute and also clarifies that ratification proceedings are required for the purposes of enforcement. Article 52 provides that: 'an arbitral award

made in accordance with this Law shall be binding on the Parties, shall constitute *res judicata*, and shall be as enforceable as a judicial ruling, although to be enforced a decision confirming the award must be obtained from the Court.'¹ This is a welcome development which puts to rest the debate in the UAE over whether an arbitral award is binding until it is ratified by a competent court, thereby making it easier for a UAE-seated arbitral award to be enforced under the New York Convention.²

The UAE, for the first time, also recognises a tribunal's power to issue interim awards and supporting orders. The Arbitration Law provides that tribunals may issue the following types of interim orders on its own accord or on the application of a party and thereafter be enforced *via* the courts:

- orders preserving evidence that is likely to be essential to the dispute;
- orders to take the necessary measures to protect the goods that constitute part of the disputed subject matter (for example, to deposit goods with a third party, to sell perishable goods);
- orders to preserve the assets out of which a subsequent award may be satisfied;
- orders to maintain the status quo; and
- orders to take appropriate measures to prevent a current or imminent damage or a prejudice to the arbitration proceedings, or abstention from any act that may cause damage or prejudice to the arbitration.

The foregoing is important in the UAE for a number of reasons. First, while most institutional rules of arbitration in the UAE recognise the power of tribunals to issue interim awards and orders, they were rarely utilised as there was no mechanism to enforce interim orders issued by a tribunal. Following legislative recognition of enforceable interim relief (and the mechanism for such enforcement) in the Arbitration Law, it is now expected that parties in the UAE will apply

for interim relief more frequently. Second, the UAE courts (save for the courts in the DIFC and ADGM) do not generally award injunctive relief. The possibility of obtaining enforceable interim relief is likely to add to the popularity of arbitration as a means of dispute resolution in the UAE. A drawback, however, that is likely to persist is the time it will take for the enforcement of an interim order by a UAE court.³

The Arbitration Law also seeks to address a long-standing issue under UAE law relating to authority to enter into an arbitration agreement. Arbitration is considered an exceptional means of dispute resolution under UAE law, and consequently the agreement of the parties to divest the jurisdiction of the court must be established in unequivocal terms. Prior to the Arbitration Law, it was unclear whether a party entering into an arbitration agreement required 'specific authority' to do so, or whether 'apparent authority' was sufficient.⁴ The Arbitration Law now requires that a party entering into the arbitration agreement has 'specific authority' to enter into an arbitration agreement, which was confirmed recently by a judgment of the Dubai Court. Specific authority will be determined under the laws governing capacity as applicable to the party entering into the arbitration agreement. Consequently, apparent or implied authority (eg, perceived authority of a manager of a company to enter into an agreement to arbitrate) no longer appears to be sufficient. It is therefore important to verify the authority of the parties at the time of entering into an agreement which contains an arbitration clause.

While the Arbitration Law is largely based on the UNCITRAL Model Law, there are some differences. Notable provisions of the UNCITRAL Model Law which are missing in the Arbitration Law include an express provision preventing local courts from interfering in arbitrations⁵ and provisions encouraging global uniformity in principles of arbitration,⁶ rather than the application of country-specific principles and customs. Other points of divergence include:

- the Arbitration Law expressly requires a signatory to an arbitration agreement to be specifically authorised to agree to arbitration;
- the Arbitration Law expressly confirms and protects the confidentiality of arbitration proceedings and awards;

- the Arbitration Law requires a party seeking to set aside an award to institute proceedings within 30 days of notification of the award, whereas the time limit under the Model Law is three months;
- the Arbitration Law caters to the use of technology in arbitrations by making provision for conducting hearings through modern technological means; and
- the Arbitration Law makes express provision with respect to the joinder of third parties to arbitration proceedings.

The most significant and welcome changes are seen with respect to the enforcement of arbitral awards. A common complaint before the enactment of the Arbitration Law was the time-consuming ratification and enforcement process in the UAE. Under the Arbitration Law, an application to ratify and enforce an arbitral award is made to the Court of Appeal (thereby bypassing the Court of First Instance level altogether).

The Arbitration Law requires the Court of Appeal to render its judgment within sixty days of the date the application is made. In the handful of cases heard under the new law thus far, this deadline has been complied with. An application to set aside an award must be made within thirty days from the date of notification of the award or during the pendency of enforcement proceedings. An application to set aside an award does not automatically stay its enforcement, although a party may, with 'good cause', apply for a stay of execution. The court is to make a determination on granting such a stay within fifteen days from the date of the first scheduled hearing.

Setting aside an arbitration award

Article 53 of the Arbitration Law provides that an arbitration award may be set aside only on the following grounds:

- where no arbitration agreement exists, or if the arbitration agreement is void, or the time limit for rendering the award has expired;
- where a party at the time of entering into the arbitral agreement was a minor or lacked capacity pursuant to the law governing his/her capacity;
- if a party to the arbitration was unable to present its case because such party was not properly notified of the appointment of an arbitrator or of the arbitral proceedings;

- if the arbitral award excludes the application of the parties' choice of governing law of the dispute;
- if the composition of the arbitral tribunal or the appointment of the arbitrators has occurred in a manner contrary to the law or the agreement of the parties;
- if the arbitral proceedings 'are tainted by nullity' affecting the arbitral award;
- if the award contains decisions on matters not included in the arbitration agreement or beyond the scope of such agreement (any portion of the award separable from the rest which comes within the scope of the agreement may be held valid).

These provisions mirror the grounds for refusal to enforce an arbitral award set out in the New York Convention.

The new law requires that a court execute a ratified arbitral award, unless it finds a cause for nullity as set out above.

Enforcement of a foreign arbitral award

A notable lacuna in the Arbitration Law was its silence on the enforcement of foreign arbitral awards. For a time, it was mooted that the provisions on the enforcement of domestic awards under the Arbitration Law would also apply to the enforcement of awards issued in New York Convention signatory-seated arbitrations in light of Article III of the New York Convention, which requires that each contracting state does not impose 'substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic awards'.

The foregoing has been rendered moot since the UAE recently promulgated regulations under the UAE Civil Procedures Law, which sets out an efficient process to enforce foreign judgments and arbitral awards. Pursuant to the regulations, an application to enforce a foreign judgment or arbitral award may be made directly to a judge in the execution department of the UAE courts, who is required to issue a decision in three days. The execution judge is required to verify the following prior to issuing the decision:

- the UAE courts do not have exclusive jurisdiction over the matter;

- the award/judgment has been issued by an authorised court under the law of the relevant foreign jurisdiction;
- the parties to the foreign proceedings have been summoned and represented;
- the foreign award/judgment sought to be enforced is *res judicata* under the laws of the relevant foreign jurisdiction; and
- the award/judgment is not contrary to a judgement or order of a UAE court and is not contrary to the morals and public order of the UAE.

The regulations further provide where a foreign arbitration award is sought to be enforced. In addition, the court must confirm that the subject matter of the award is arbitrable, and that the award is enforceable in the jurisdiction in which it was issued. The manner in which the courts will apply the aforesaid regulations in enforcing a foreign arbitral award is yet to be tested, although in theory the regulations seem to be a step in the right direction.

Conclusion

Despite a few residual issues (such as the requirement for specific authority to enter into arbitration agreements), the Arbitration Law is unquestionably an important step in the right direction towards making the UAE a global arbitration hub. While it is too early to make a statement on the efficacy of all its various provisions, the approach of the UAE courts has thus far been positive.

Notes

- 1 Legislation in the UAE is promulgated only in the Arabic language, without any official translations.
- 2 Art 5(1)(e) of the New York Convention allows a state to refuse recognition of a foreign arbitral award if 'the award has not yet become binding on the parties'.
- 3 A party is required to first obtain written approval from the tribunal prior to a request being made to a UAE court to order the enforcement of the interim order and the court is required to make its order within 15 days from the request for enforcement.
- 4 This is to some extent exacerbated by the fact that there is no system of binding precedent in the UAE.
- 5 Art 5 of the UNCITRAL Model Law states that 'in matters governed by this Law, no court shall intervene except where so provided in this Law.'
- 6 Art 2A(1) of the UNCITRAL Model Law states that 'In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.'