

United Arab Emirates

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GENERAL

1. How is commercial arbitration used in your jurisdiction? What are the recent trends? What are the general advantages and disadvantages of arbitration compared to court litigation in your jurisdiction?

Historically, parties preferred litigation and were generally reluctant to use arbitration. Arbitration was considered relatively expensive and there was an element of uncertainty surrounding the enforcement of arbitral awards. However, following the real estate boom between 2004 and 2008, driven by the opening up of the real estate sector to foreign investment, developers and investors began including arbitration agreements in the contracts of sale of off-plan property. Since the recent off-plan real estate market downturn, there has been a significant increase in arbitrations in relation to the sale and purchase of off-plan properties, and also in the construction sector.

Some general advantages of arbitration as opposed to litigation are as follows:

- The proceedings are confidential (if the parties so agree).
- Arbitrators with the requisite expertise can be appointed to deal with disputes involving technical subject matters.
- Arbitration can be conducted in English, whereas court litigation is always in Arabic.
- Oral evidence is permitted in arbitration, whereas only written submissions are generally permitted in the courts.
- Very limited avenues of appeal of arbitral awards.

Some general disadvantages of arbitration as opposed to litigation are as follows:

- Arbitral proceedings are generally more costly, considering the tribunal and administrative fees.
- There are very limited avenues for appeal (this can be seen as an advantage, depending on the circumstances).
- To be enforceable, arbitration awards must be ratified by the courts. This may cause delays during the enforcement of the award.

2. Which arbitration organisations are commonly used to resolve large commercial disputes in your jurisdiction?

The most commonly used organisations to resolve large commercial disputes in the UAE are the:

- Dubai International Arbitration Centre (DIAC) (www.diac.ae).

- Abu Dhabi Chamber of Commerce & Industry (www.abudhabichamber.ae).
- DIFC LCIA Arbitration Centre (www.difcarbitration.com).

(See box, Main arbitration organisations.)

3. What legislation applies to arbitration in your jurisdiction? To what extent has your jurisdiction adopted the UNCITRAL Model Law on International Commercial Arbitration 1985 (UNCITRAL Model Law)?

The legislation applicable to arbitration is the Civil Procedures Law of the United Arab Emirates, Federal Law No. (11) of 1992, as amended (Civil Procedure Code (CPC)).

The applicable provisions of the CPC are not based on the UNCITRAL Model Law. While there was some debate that a new law on arbitration may be enacted soon, and it was understood that this law would be based largely on the UNCITRAL Model Law, this is yet to materialise.

4. Are there any mandatory legislative provisions? What is their effect?

Mandatory legislative provisions relate to a party's right to apply to invalidate an award on limited grounds (*Article 216, CPC*) (see *Question 24*) and the arbitration agreement (see *Question 6*). In addition, witnesses must be placed under oath (*Article 211, CPC*).

5. Does the law of limitation apply to arbitration proceedings?

The legal provisions relating to limitation periods apply to arbitrations. The general limitation period is 15 years (*Article 473, UAE Civil Transactions Law*). However, the limitation periods depend on the subject matter. For example, the limitation period for:

- Employment actions is one year from the moment the cause of action arises.
- The enforcement of guarantees is six months from the date on which the debt becomes due.

If the parties have not set out a time limit for the rendering of an award in the arbitration agreement, the arbitrator must render an award within six months of the first arbitration hearing, failing which any of the parties can refer the dispute to the court (*Article 210, CPC*).

ARBITRATION AGREEMENTS

6. For an arbitration agreement to be enforceable:

- What substantive and/or formal requirements must be satisfied?
 - Is a separate arbitration agreement required or is a clause in the main contract sufficient?
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Substantive and formal requirements

The following requirements must be satisfied (*Article 203, CPC*):

- An arbitration agreement must be in writing.
- The subject matter of the dispute must be specified in the arbitration agreement.

In addition, the wording of the arbitration agreement must be clear and unequivocal. Agreements to arbitrate are construed narrowly and are considered an exceptional means of dispute resolution.

Separate arbitration agreement

The contracting parties can refer a dispute that may arise between them to arbitration either through a clause in the main contract or a separate arbitration agreement (*Article 203, CPC*).

7. Does the applicable legislation recognise the separability of arbitration agreements?

The CPC does not expressly provide for the doctrine of separability. However, this doctrine is recognised by the UAE courts. The DIAC also recognises the separability of arbitration agreements and the DIAC Arbitration Rules of 2007 (DIAC Rules) provide that unless the parties agree otherwise, an arbitration agreement which forms, or was intended to form, part of another agreement must not be regarded as invalid, non-existent or ineffective because that other agreement is invalid, or did not come into existence or has become ineffective, and the arbitration agreement must for that purpose be treated as a distinct agreement (*Article 6.1*).

8. In what circumstances can a third party be joined to an arbitration, or otherwise be bound by an arbitration award?

The parties to an arbitration must have entered into an arbitration agreement. There is no provision in the CPC which allows a third party to be either:

- Joined to an arbitration.
 - Bound by an arbitration award.
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ARBITRATORS

9. Are there any default provisions in the legislation relating to the number and qualifications/characteristics of arbitrators?

While the law does not set a limit on the number of arbitrators, the number of arbitrators must be odd (if there is more than one arbitrator).

An arbitrator cannot be (*Article 206, CPC*):

- A minor.
 - An interdict.
 - Stripped of his civil rights because of a criminal conviction.
 - Bankrupt (unless he is rehabilitated).
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10. Are there any requirements relating to independence and/or impartiality of arbitrators?

Most of the institutional arbitration rules have express provisions requiring arbitrators' independence or impartiality (for example, Article 9.1 of the DIAC Rules).

An arbitrator can be recused or disqualified for the same reasons as a judge. A judge is recused if (*Article 114, CPC*):

- He is the spouse of any of the litigants, or if he is the litigant's relative or in-law to the fourth degree.
 - His wife has an existing dispute with any of the parties (or their wives).
 - He is an agent, trustee or guardian of any of the parties in his private capacity.
 - He has given a legal opinion or has pleaded for any of the parties in the lawsuit, or any written statement during it.
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11. Does the applicable legislation contain default provisions relating to the appointment and/or removal of arbitrators?

Arbitrators cannot be dismissed, except with the approval of all of the parties to the dispute. However, at a party's request, a competent court (that is, a court having jurisdiction to hear the dispute) can remove an arbitrator if it is proved that the arbitrator deliberately neglected to act in accordance with the arbitration agreement (*Article 207(3), CPC*).

An arbitrator cannot be recused, except for reasons that are discovered after his appointment. The grounds for recusal are the same as those applicable to a court judge (*Article 207, CPC*) (see Question 10).

An application to remove an arbitrator must be made to the original court having jurisdiction to hear the dispute within five days from either:

- The arbitrator's appointment.
- The date on which the cause of recusal occurs or becomes known.

An application to remove an arbitrator will not be accepted if the court has given judgment or if the pleadings are closed (*Article 207(4), CPC*).

PROCEDURE

12. Does the applicable legislation provide default rules governing the commencement of arbitral proceedings?

In relation to the start of arbitral proceedings, the arbitrators must, within 30 days after accepting an arbitration, inform the parties of the date and place of the first session fixed for hearing the dispute (*Article 208(1), CPC*).

13. What procedural rules are arbitrators likely to follow? Can the parties determine the procedural rules that apply? Does the legislation provide any default rules governing procedure?

The parties can, and often do, determine the applicable procedural rules in the arbitration agreement. If the arbitration agreement is silent, the parties decide on the applicable procedural rules in the terms of reference. In arbitration proceedings before the DIAC, the DIAC Rules apply. If the parties cannot agree on the procedural rules, the arbitrator(s) must decide on the applicable rules, provided that the selected rules meet the minimum requirements of the CPC.

14. What procedural powers does the arbitrator have? If there is no express agreement, can the arbitrator order disclosure of documents and attendance of witnesses (factual or expert)?

The procedural powers of the arbitrator are determined in the arbitration agreement (*see Question 13*).

Under the DIAC Rules, the arbitrator can order, at any time during an arbitration:

- Disclosure of documents and taking of evidence.
- Attendance of experts.
- Witness testimony and hearings.

In addition, an arbitrator can apply to the President of the competent court to (*Article 209(2), CPC*):

- Penalise witnesses who fail to appear or abstain from answering questions.
- Order third parties to produce documents in their possession that are necessary to render award.
- Appoint a judicial delegation.

However, to make this application, an arbitrator must suspend the arbitral proceedings.

EVIDENCE

15. What documents must the parties disclose to the other parties and/or the arbitrator(s)? Can the parties determine the rules on disclosure? How, in practice, does the scope of disclosure compare with disclosure in litigation?

The scope of disclosure is very limited in the UAE, both in litigation and arbitration.

A party is not obliged to disclose any document which is detrimental to its case, unless ordered by the court to do so.

In addition, the parties can determine the rules on disclosure. Under the DIAC Rules, the tribunal has the power to decide on the rules of evidence to be applied during the proceedings (*Article 27.2*). In addition, the parties are not required to disclose any document they are not intending to rely on, unless ordered by the arbitrator to do so (*DIAC Rules*).

CONFIDENTIALITY

16. Is arbitration confidential?

Confidentiality depends on the arbitration agreement and/or the terms of reference. Under the DIAC Rules, an award can be made public only on the agreement of the parties (*Article 37.9*).

COURTS AND ARBITRATION

17. Will the local courts intervene to assist arbitration proceedings?

Interlocutory relief and injunctions can be sought in the local courts. However, in practice, injunctive relief is very rarely granted by the courts.

18. What is the risk of a local court intervening to frustrate the arbitration? Can a party delay proceedings by frequent court applications?

A party can attempt to delay proceedings by frequent court applications but there are limited grounds on which these applications can be made. The applications can include, for example:

- A jurisdictional challenge.
- Applications for interim relief.
- Challenges to the appointment of the arbitrator(s).

19. What remedies are available where a party starts court proceedings in breach of an arbitration agreement, or initiates arbitration in breach of a valid jurisdiction clause?

A jurisdictional objection can be made to the local courts on the grounds that there exists an arbitration agreement between the parties. However, any such objection must be made at the first hearing, failing which the court assumes jurisdiction. Normally, the courts decline jurisdiction in the presence of a valid arbitration clause, if the objection is made during the first hearing.

If the underlying contract does not contain an arbitration clause, or provides for dispute resolution in a forum other than arbitration, the arbitral tribunal will not have jurisdiction over the dispute and will refuse to arbitrate the matter.

20. Will the local courts grant an injunction to restrain proceedings started overseas in breach of an arbitration agreement?

A party can make this application to the court, but it is unlikely to succeed. The courts do not ordinarily grant injunctions. In addition, the enforceability of this injunction, if granted, depends on the foreign jurisdiction involved.

21. What remedies are available where one party denies that the tribunal has jurisdiction to determine the dispute(s)? Does your jurisdiction recognise the concept of kompetenz-kompetenz? Does the tribunal or the local court determine issues of jurisdiction?

The concept of kompetenz-kompetenz is recognised. In the proceedings before the DIAC, if any party raises a plea relating to the existence, validity, scope or applicability of the arbitration agreement, the Executive Committee of the DIAC can decide, without prejudice to the admissibility or merits of the pleas, that the arbitration must continue if the Executive Committee is prima facie satisfied that an arbitration agreement exists. In these circumstances, the parties are not enjoined from raising any such jurisdictional objection before the tribunal, and any decision as to the jurisdiction of the tribunal will be taken by the tribunal itself. If the Executive Committee is not so satisfied, the parties will be notified that the arbitration cannot proceed. Any party then retains the right to ask any competent court to determine whether or not there is a binding arbitration agreement (*Article 6.2, DIAC Rules*).

REMEDIES

22. What interim remedies are available from the tribunal? Can the tribunal award:

- Security for costs?
 - Security or other interim measures?
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The tribunal can issue any provisional orders, or take other interim or conservatory measures it considers necessary, including injunctions and measures for conservation of goods which form part of the subject matter of the dispute (such as an order for their deposit with a third party or an order for the sale of perishable goods).

Under the DIAC Rules, the tribunal can also order that a requesting party provide appropriate security (*Article 31.1*).

23. What final remedies are available from the tribunal? For example, can the tribunal award damages, injunctions, declarations, costs and interest?

The tribunal can award:

- Damages.
- Injunctions (*see Question 22*).

MAIN ARBITRATION ORGANISATIONS

Dubai International Arbitration Centre (DIAC)

Main activities. The DIAC is an autonomous, non-profit institution, which offers arbitration services and facilities.

W www.diac.ae

Abu Dhabi Chamber of Commerce & Industry (ADCCI)

Main activities. The ADCCI is an autonomous institution that provides information related to investment opportunities, and conducts research in relation to the local and global economy and trade relations.

W www.abudhabichamber.ae

DIFC LCIA Arbitration Centre

Main activities. The DIFC LCIA Arbitration Centre provides ADR services, including arbitration and mediation.

W www.difcarbitration.com

- Costs (*see Question 26*).
- Interest.

APPEALS

24. Can arbitration proceedings and awards be appealed or challenged in the local courts? If yes, please briefly outline the grounds and procedure. Can the parties effectively exclude any rights of appeal?

The award of an arbitrator cannot be challenged in any manner (*Article 217, CPC*). However, the parties may apply for the invalidation of the award on the following grounds (*Article 216, CPC*):

- The award:
 - was rendered without an arbitration agreement or on the basis of an invalid document;
 - has become time barred or ultra vires.
- The award was rendered by arbitrator(s) who:
 - have not been appointed in accordance with the provisions of law;
 - were not authorised to render an award;
 - did not satisfy the legal requirements.
- The award was rendered on the basis of an arbitration agreement in which the subject of the dispute had not been determined.
- The award is invalid or the proceedings were invalid in a manner that affects the award.



COSTS

25. What legal fee structures can be used? Are fees fixed by law?

Legal fees are not fixed by law and reflect the international billing arrangements. Hourly rates and fixed fee arrangements are commonly used.

26. Does the unsuccessful party have to pay the successful party's costs? How does the tribunal usually calculate any costs award and what factors does it consider?

In principle, the unsuccessful party may be liable for the successful party's costs. However, cost awards are generally rare, and each party usually bears its own costs.

ENFORCEMENT

27. To what extent is an arbitration award made in your jurisdiction enforceable in the local courts?

Arbitral awards must be ratified through the local courts (*CPC*). Therefore, the party seeking to enforce an award must apply to the court to have the award ratified. This involves filing a civil suit in the form of a plaint seeking ratification of the award in the Court of First Instance (*CPC*). The original award and any annexes must be filed with the application. If the award has been rendered outside the UAE it must, in addition:

- Undergo the process of legalisation, which involves:
 - the notarisation and consularisation of the award at the level of the UAE Embassy in the country in which it is issued; and
 - further authentication of the award by the Ministries of Foreign Affairs and Justice in the UAE.
- Be translated (where required).

The application is then served on the defendant and the matter proceeds as a civil claim, with the defendant having an opportunity to respond.

A decision of the Court of First Instance can be appealed to the Court of Appeal and thereafter to the Court of Cassation.

28. To what extent is an arbitration award made in your jurisdiction enforceable in other jurisdictions? Is your jurisdiction party to international treaties relating to this issue such as the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention)?

The UAE is party to the following international treaties:

- The New York Convention.
- Arab Convention on Judicial Co-operation (Riyadh Convention).

- Agreement of Execution of Judgments, Delegations and Judicial Summons in the Arab Gulf Cooperation Council Countries (GCC Treaty).

Therefore, arbitral awards rendered by a tribunal in the UAE are enforceable (subject to the local laws) in jurisdictions that are party to the above treaties.

In addition, the UAE has entered into bilateral treaties for judicial co-operation and enforcement of judgments with a number of countries, for example, with France and India.

29. To what extent is a foreign arbitration award enforceable in your jurisdiction?

The UAE is party to a number of international and bilateral treaties relating to, among other things, the enforcement of arbitral awards (*see Question 28*). Therefore, the enforcement of foreign arbitral awards in the UAE is subject to any applicable treaty(ies). If no treaty applies, a civil claim must be filed, and the award can be produced as evidence. Although the principle of reciprocity is supported by the *CPC*, in the absence of a treaty, the courts tend to treat the matter *de novo* (that is, the court considers all the evidence and facts of the case *afresh*).

The enforcement of a foreign arbitration award will be denied if the award either:

- Contradicts the provisions of the Islamic *Sharia* or the UAE's Constitution.
- Was issued *in absentia* (that is, the defendant was not present when the award was issued).

If the award is rendered outside the UAE, it is treated as a foreign award and is subject to the rules relating to foreign awards if:

- There was an existing arbitration agreement.
- The parties were properly summoned.
- The award is not against the public policy of the UAE.
- The ruling is in writing.

30. How long do enforcement proceedings in the local court take? Is there any expedited procedure?

The rules of summary procedure apply to the enforcement of arbitral awards (*Article 212, CPC*). Enforcement proceedings can take anywhere between six to 24 months or even longer, if the party against whom the enforcement is sought resists.



CONTRIBUTOR DETAILS



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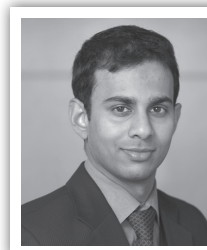
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Areas of practice. Litigation and arbitration; corporate and commercial; infrastructure and project finance.

Recent transactions

- Has represented clients in both institutional and ad hoc arbitration proceedings involving substantial claims in the construction and financial services sector.
- Advising developers, financiers and government agencies on power generation and other infrastructure projects.
- Regularly assists clients in structuring joint ventures, franchises and distributorships.

