

# Client Alert



## Recent Amendments to the Arbitration Law

By Chatura Randeniya, Mevan Bandara and Ramesh Fernando | 13 October 2023

The UAE recently enacted Federal Decree Law 15 of 2023 (the **Amendment**) making certain changes to the provisions of the law governing arbitration, Federal Law 6 of 2018 (the **Arbitration Law**). These changes are consistent with the UAE's forward-looking approach to arbitration. Some of the key amendments are highlighted below.

### 1. An individual who is a member of the administration of an arbitration institution may now act as an arbitrator subject to certain safeguards

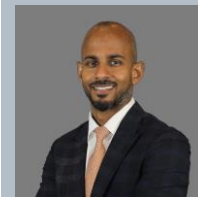
The Amendment relaxes the outright prohibition contained in Article 10 (2) of the Arbitration Law against a member of the administrative branch of an arbitration institution from acting as an arbitrator. However, this is subject to eight conditions which must be satisfied, the contravention of which would result in the award becoming invalid. This change paves the way for the UAE to attract highly skilled professionals to contribute to the administration of arbitral institutions, who will not be prevented from sitting as an arbitrator in a UAE-seated arbitration.

### 2. Arbitration institutions are required to provide the necessary technological infrastructure

With the onset of COVID-19, the UAE was quick to adapt to virtual hearings for both litigation and arbitration. Since then, virtual arbitration hearings have become the norm rather than the exception. However, getting the necessary technological support in place prior to commencing hearings (including the virtual platforms and transcription services), could be a time-consuming and expensive process as the parties were required to engage third-party service providers. Article 28 (3) of the Arbitration Law, as amended, now requires arbitration institutions to provide the technology necessary to conduct arbitrations, in accordance with the standards and controls applicable in the UAE.

This should not only make matters more convenient for the parties (and hopefully less costly), but also enhances privacy and confidentiality by restricting the involvement of third parties in arbitration proceedings. The positive impact of this amendment will be augmented by the publication of guidelines for virtual hearings by arbitration institutions in the UAE that do not already have such rules in place.

## The Authors



**Chatura Randeniya**

Partner

crandeniya@afриди-angell.com

Tel: +971 4 330 3900

Chatura's practice focuses primarily on dispute resolution. He advises and represents clients in arbitration, and has represented clients in DIAC, ADCCAC, ICC and ad hoc arbitrations. He also works with local advocates on matters before the UAE Federal courts. Chatura regularly advises clients in high value construction, and maritime and shipping disputes. He is admitted as Attorney-at-Law of the Supreme Court of Sri Lanka. He is a ranked practitioner by Chambers and Partners and recommended by Legal 500.



**Mevan Bandara**

Partner

mbandara@afриди-angell.com

Tel: +971 4 330 3900

Mevan practices in the firm's dispute resolution group. He advises and represents clients in arbitration, DIFC Court litigation and on-shore litigation. Mevan has represented clients in DIFC-LCIA, DIAC, ICC and ad hoc arbitrations seated in London, Dubai, Singapore and Sri Lanka. He specialises in cross-border disputes, tax, construction, banking, real estate, maritime and employment disputes.

### 3. Discretionary power of tribunals to determine the applicable rules of evidence now subject to party autonomy and public order

Article 33 (7) of the Arbitration Law, as amended, has modified the language so as to limit the discretionary power on arbitral tribunals to determine the applicable rules of evidence (where the rules of evidence that are applicable do not have provisions that are relevant). The amended provision indicates that parties would be able to agree to exclude such discretion from tribunals, enhancing party autonomy. Additionally, the exercise of this discretion is now subject to a public order proviso. Accordingly, a rule of evidence applied by a tribunal, in the exercise of its direction, must not be contradictory to the UAE's public order. This proviso may apply in the context of admissibility of evidence. For instance, it could operate to bar the admissibility of evidence gathered by means which are deemed unlawful under the UAE law.

The provisions of the Arbitration Law will only apply to arbitrations seated in on-shore UAE. ■



**Ramesh Fernando**

Associate

[rfernando@afриди-angell.com](mailto:rfernando@afриди-angell.com)

Tel: +971 4 330 3900

Ramesh has considerable experience in litigation and dispute resolution, with extensive abilities in contract negotiations and large-scale disputes. Ramesh advises on and drafts legal opinions and agreements for large Multi-National Corporations and other non-governmental entities and investors when retained to advise on potential legal issues, regulatory steps, and changes to applicable legislation.

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