

Client Alert

May 2018

The UAE introduces long-awaited stand-alone Arbitration Law: Summary of key provisions

What has changed?

On 3 May 2018, the UAE published its first stand-alone Arbitration Law under Federal Law No. 6 of 2018. The UAE's aim is to ensure access to a method of resolving cross-border disputes which is in line with international standards and best practices. The new Arbitration Law will repeal and replace the provisions of the arbitration chapter of the UAE Civil Procedures Law No. 11 of 1992 (the **CPC**).

The new Arbitration Law is largely based on the United Nations Commission on International Trade Law (UNCITRAL) Model Arbitration Law, and embodies a more modern and favorable approach to arbitration, with fewer restrictions imposed on the parties and the arbitral tribunal. As such, the introduction of the new Law will, in theory, enable proceedings to be concluded more rapidly and economically.

As was the case under the provisions of the CPC, the majority of the new provisions in the new Arbitration Law apply only if the parties have not agreed to the contrary.

How does this impact your business?

The new Arbitration Law provides a more developed procedural framework for conducting arbitration proceedings in the UAE. It also addresses problematic procedural issues that could arise under the old law.

We will be examining the new Law in detail at our Arbitration Seminar taking place on 25 June 2018 in Dubai. In the meantime, we have set out below a summary of the key provisions of the new Law contrasting with the position under the old rules of the CPC:



Issue	Before (under the CPC)	Now (under the new Arbitration Law)
Form of arbitration agreement	An arbitration agreement had to be strictly established. A clause had to be included in the original contract or in a subsequent agreement for it to be binding.	An arbitration agreement incorporated by reference to another agreement is valid provided that the reference makes that clause part of the contract. (Article 5)
Delay tactics	Arbitration proceedings had to be suspended once a petition (e.g. a criminal petition or challenge to the arbitrator or arbitration agreement) was filed before the courts.	<p>A petition to the court in relation to the arbitration agreement or to the challenge of an arbitrator does not suspend the arbitral proceedings. (Articles 8 and 15)</p> <p>The submission of a criminal complaint also does not suspend the arbitral proceedings, except if the arbitral tribunal considers the determination by the criminal court as necessary to resolving the dispute in arbitration. (Article 43)</p>
Interim or conservatory measures	No provision was made under the old law. In practice, interim measures could be sought from the UAE courts, but in very limited grounds.	<p>The arbitral tribunal is now empowered to issue interim measures in support of a parties' position in the arbitration, including requiring the provision of appropriate security (e.g. security for costs). (Article 21)</p> <p>The UAE Federal Courts of Appeal are now directed to support the arbitral proceedings in terms of ordering interim measures, including evidentiary requests by the arbitral tribunal. (Articles 18 and 36)</p>
Service of	No provision was made under	Broader means of



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notices	the old law.	<p>communication including service of notice by email or fax is now considered valid notification. (Article 24)</p> <p>The parties and the arbitral tribunal are also allowed to conduct hearings and deliberations via video or telephone conference. (Article 28)</p>
Signing of the arbitral award	An award had to be physically signed by the tribunal in the UAE in order to be recognized and enforced as a domestic award. This resulted in the parties incurring additional costs to arrange for arbitrators to travel to the seat of arbitration to sign the award, often resulting in additional delay.	<p>The tribunal can convene meetings and hearings anywhere suitable even if not in the legal seat of arbitration. (Article 28)</p> <p>Awards can also be signed outside the seat, including electronically. (Article 41)</p>
Finality, binding nature and <i>res judicata</i> of the award	No affirmative language of binding force (Article 217(1)).	There is a provision for positive affirmation that an award is final, binding and has <i>res judicata</i> effect. The award has the same executory effect as a court judgment as recognized by the competent UAE Federal Court of Appeal. (Article 52)
Grounds for annulment of the award	There were grounds for nullifying an arbitration award that were not in line with international best practice.	<p>There are now more limited grounds on which a party can seek annulment of an award. The new Law also imposes a positive obligation on the courts to recognize and enforce awards. (Article 53)</p> <p>A party has 30 days from the date of notification of the award to submit an application</p>



Issue	Before (under the CPC)	Now (under the new Arbitration Law)
		<p>to set aside an arbitral award. (Article 54)</p> <p>The Court shall order the arbitral award confirmed and enforced within 60 days of submission of the request for its confirmation and enforcement, unless it finds one or more grounds for setting aside the award under Article 53 of the Law. (Article 55)</p>

Other key points to note

<p>Certainty of jurisdiction</p>	<p>Under the new Arbitration Law, a party can, before the competent court, challenge an arbitral tribunal's order determining its jurisdiction. While the pending challenge does not necessarily suspend the arbitration proceedings, the possibility to petition the court on the basis of a procedural order, not an award, is unusual and may lead to uncertainty and leave the process open to abuse. (Article 19(2))</p>
<p>Applicable law</p>	<p>The arbitral tribunal shall apply the “<i>substantive rules of the law that is most closely connected with the dispute</i>”, if the parties fail to designate the applicable law. This is not an uncommon power to grant the tribunal, but it is fairly broad, with little guidance provided as to how the tribunal is to determine the issue. Given the type and nature of businesses in the Middle East and a large percentage of disputes involving international parties, the choice of law most closely connected with the dispute is not always easy to determine. As such, it is crucial parties ensure that a properly drafted dispute resolution clause, designating a substantive governing law and arbitral seat (among other things), is included in their agreements. This will avoid any uncertainty should a dispute arise.</p>



What actions do you have to take?

As soon as the Law enters into force, which is expected to occur one month following its publication in the UAE's Official Gazette (end of June/beginning of July 2018), the Law will automatically apply to all parties and ongoing proceedings, even if the arbitration agreement in such proceedings might have preceded the new Law (Article 59). Hence, parties should be aware of and consider the impact of the provisions of the new Arbitration Law on both current and future proceedings, particularly if they are soon to proceed to commencement enforcement proceedings in the UAE.

Arbitration Seminar - New law, renewed commitment: UAE's New Federal Arbitration Law

Baker McKenzie Habib Al Mulla invites you to a seminar on Monday, 25 June 2018 in Dubai, where our Arbitration partners, [Dr. Habib Al Mulla](#) and [Andrew Mackenzie](#) will lead an interactive discussion on the key developments under the UAE's new Arbitration Law, the impact on foreign investment and the practical implications for those seeking to resolve disputes in the UAE going forward. A full hard **copy** of the new law in both Arabic and English will be provided to all attendees.

To RSVP for the event, please email UAE.BD@bakermckenzie.com

For further information on the new Arbitration Law, please do not hesitate to contact Arbitration partners Dr. Habib Al Mulla or Andrew Mackenzie, whose details are set out below.



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