



UAE arbitrators need fear no more

The United Arab Emirates (UAE) has recently published a decree intended to end the long controversy around the potential exposure of arbitrators and experts to criminal liability arising from acting in a manner that is inconsistent with their duty of impartiality and neutrality.

Federal Decree Law No. 24 of 2018 (**Decree**) was issued on 23 September 2018 by His Highness Sheikh Khalifa Bin Zayed Al Nahyan, the President of the UAE, and came into force on 8 October 2018. It amends certain provisions of Federal Law No. 3 of 1987 Promulgating the Penal Code (**Penal Code**), including the most controversial Article 257.

Are arbitrators and experts in institutional arbitral proceedings no longer exposed to criminal liability due to bias and impartiality?

The Decree amends Article 257 of the Penal Code, which had previously imposed criminal liability on arbitrators and experts who issue decisions or opinions or present facts, in a manner that is inconsistent with their duty of impartiality and neutrality.

Article 257 as amended by the Decree removes the ambiguity which had existed under its previous wording by clearly defining its scope of application. It now applies to **experts, translators and fact finders** appointed by a judicial or an administrative authority in a criminal or civil case, who **knowingly and deliberately confirm a false fact or issue an untrue interpretation**.

Therefore, arbitrators acting within the auspices of arbitration institutions, including party appointed experts in arbitration, are clearly no longer exposed to criminal liability under this article.

Are arbitrators and experts now considered as public employees for the purpose of applying the bribery provisions of the Penal Code?

Another interesting development introduced by the Decree is the new Article 236 which states that arbitrators, experts and fact finders shall be considered as public employees for the purpose of the application of Articles 234 and 237 as amended.

Article 234 and 237 are the provisions dealing respectively, with the criminal liability of public employees, foreign public employees and employees of international organizations arising from requesting, accepting or obtaining undue direct or indirect benefits (i.e. bribes), and with those who promise, offer or give the same to the aforementioned categories of individuals.

While Articles 234 and 237 provide clear criteria for the acts constituting the crimes of accepting and offering bribes, Article 236 of the Decree is not clear on whether it applies to all arbitrators and experts (including those appointed in ad hoc or private institutional arbitration proceedings), or only refers to arbitrators, experts and fact finders appointed by a judicial or an administrative authority.

What's next?

While the newly amended Article 257 is a positive and welcome development towards instilling confidence in arbitration proceedings conducted in the UAE, the general wording of Article 236 is likely to cause a new controversy on whether it is intended to apply to all arbitrators and experts or merely those who are appointed by a judicial or an administrative authority.

We would expect further guidance to be provided in the coming period through court interpretations and applications of Article 236 of the Decree.

We will continue to monitor the application of this important development and provide updates on related developments as and when they arise.

For further information, please visit our Middle East Insights blog and subscribe to get future updates: <https://me-insights.bakermckenzie.com/>

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