

ARBITRATION MECHANISM IN UNITED ARAB EMIRATES

Written By Anukirat Singh Baweja & Ananaya Khare

** 5th Year BA LLB (H) Student, Amity Law School, Noida, Uttar Pradesh*

*** 5th Year BA LLB (H) Student, Amity Law School, Noida, Uttar Pradesh*

ABSTRACT

Arbitration can be seen as one of the most emerging setups through which the parties in dispute tend to resolve their legal issue at present time all across the world. This paper tends to lay down the importance of Arbitration in reference to the legislation in the state of UAE. The author has deeply analyzed the mechanism of Arbitration in the country of UAE. The entire procedures of the arbitration have been broken down into stages with the reference to the concerned legislation and have been properly examined. The author has also emphasized the concerned authorities who are entrusted with the responsibility to carry on the process of arbitration in UAE. Some of the unique features of the arbitration procedure in the state of UAE have also been discussed in detail further. At the end, the author tends to highlight some of the features which lead to UAE, mechanism of Arbitration becoming tardier and more obtuse.

Keywords: Administration Procedure, Arbitration Agreement, Arbitrator, Dispute Resolution, Federal Laws

INTRODUCTION

Arbitration can be seen as one of the most renowned or moreover a preferred mode for Dispute Resolution in the United Arab Emirates (UAE) and also in the Middle East. Tremendous and speedy growth in Arbitration as a dispute resolution mechanism can be clearly ascertained from the fact that there are now several emerging arbitration centres in UAE that have contributed to the development of institutional arbitration.¹ Arbitration, as a dispute resolution mechanism, has long been governed by rules, policies and procedures which are designed to ensure fair and efficient resolution of disputes. With the steady and enhancing growth in the economy and

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international trade in the region of UAE, have lead to increased preferential value towards the system of Arbitration in the state of UAE.

Arbitration in the UAE is governed by “*Federal Law No. 6 of 2018*”ⁱⁱⁱ (“Arbitration Law”), based on the UNICTRAL Model Law, this is termed as UAE’s first augmented and framed legislation in the field of arbitration, this law was framed in May 2018 and it leads to the annulment of Article 203-208 of the UAE Civil Procedure Law No. 11 of 1992ⁱⁱⁱ which tackled some provisions relate to arbitration in the UAE. The newly enacted law consists of 61 Articles and it has the jurisdiction on all the arbitration proceedings conducted in the premise of UAE unless and until the parties have agreed on something otherwise, any international commercial arbitration conducted in abroad wherein the parties choose this law as the law governing its arbitration, any arbitration arising from a dispute in respect of a legal relationship, whether contractual or not, governed by UAE law unless it is excluded by a special provision. These laws have assured that parties can effectively resolve commercial disputes in the UAE.

In addition to “*Federal Law No. 6 of 2018*” on arbitration, arbitration is also governed by “*Federal Law No. 11 of 1992*”^{iv} concerning the Civil Procedure Laws.

ARBITRATION AGREEMENTS

According to the *Federal Law No. 6 of 2018*, which governs the Arbitration laws in UAE all the agreements which are meant to be dealt via the procedure of Arbitration must be in writing under **Article 7**^v. The agreement might be included in the separate document or in the contract which was originally signed among the parties in dispute. By the means of a separate document, the parties might agree to refer to the disputes by the means of arbitration by incorporating reference which is called addendum after the original contract is entered into. In this regard, new amendments have been made in the legislation according to which the oral agreement to solve the dispute through arbitration can also be taken into consideration if such agreement has been entered into a court and has been recorded as well.

The arbitration agreement can only be entered into by the people, who are competent and have the requisite capacity to enter upon. All the constituting parties must carefully scrutinize the documents of the counterpart, to ensure that the other person is authorized to enter into the

agreement of arbitration or not? The person, who is listed in the list of the managers of the company, may not be authorized to enter into the agreement of arbitration.^{vi}

Under **Article 6** of *Federal Law of Arbitration of USA*^{vii}, the arbitration clauses have been associated with the doctrine of severability. There will be no bar or restriction on the agreement of arbitration even in the case of nullity, termination or recession of the original contract entered between the party.^{viii}

It is very important to focus on the drafting details of the arbitration clauses like the language of the arbitration proceeding, seat of application, the application of bespoke or institutional procedure rules where appropriate and other consecutive clauses. It is important to focus on the vitals of the arbitration agreement with respect to the application, formalities and procedures so that the arbitration procedure could be made more efficient and expeditious subsequently.

ARBITRATION PROCEDURE

UAE Arbitration law does not have elaborative details about the procedures of the arbitration. On the other hand, the parties are given the freedom to decide over the conduct of the procedure under **Article 23** of the act concerned^{ix}. Supposedly, the rules which are agreed upon must conform to the institutional rules of the centre of arbitration or institution by reference. This set-up shall not give the impression of one party being autocratic or being more influential than others. It is the rule of arbitration that all the parties must be treated equally, and they must be given equal and fair chance to present themselves before the deciding authority. The procedure must conform to these rights of the parties.^x

The legal professionals, who are on duty in onshore UAE, are subjected to *Federal Law No. 23 of 1991* which governs the activities of the council who have been given the charge of the arbitration proceeding. The council must be a registered lawyer in UAE and he or she must carry the duty by the virtue of the just and valid power. The same standard of ethical conduct is expected from National as well as the International legal professionals who are entrusted with the duty of arbitration proceedings provided that they are registered with Ministry of Justice and/ or Legal Affairs Department.

Under the *Federal Law No. 23 of 1991*, only the local lawyers can appear in the arbitration proceedings of the onshore courts. Non-UAE or GCC Nationals can get the permission to witness the proceedings as the audience and such right will be granted by the Ministry of Justice. There is no such bar or limitations on the arbitration proceeding carried on in UAE.

General Jurisdiction is allocated to the courts of UAE, to deal with the cases of arbitration after receiving the application from the parties under **Article 18** of Arbitration Law^{xi}. The courts have the responsibility to ensure the procedure of the arbitration goes smoothly by looking into the matters like the appointment of the arbitrator, jurisdictional barriers, calling of the witnesses, imposing sanctions, third-party disclosures and etc. The courts have a tremendous responsibility to uphold the value and the belief of the people of the nation on the procedure of the arbitration.

INTERIM RELIEF IN ARBITRATION

In arbitration laws, it has been explicitly acknowledged under **Article 21**^{xii} the power of arbitral tribunals to award interim or conservatory measure, either if one of the party applies for it or on its own motion, which even include ordering the respective party to provide adequate security to cover the cost of such measures.^{xiii}

In accordance to **Article 21(4)**^{xiv} in a case where the interim measure has been announced in favour of the party, by written permission may request a competent court for enforcement of such order within 15 days of receiving the request.

Also, in accordance to **Article 18**^{xv} of Arbitration Laws if the party or the tribunal requests, the Chief Justice of the court may order such interim measures which are necessary to be taken in respect to the proceedings which are existing or are of any potential, whether before the commencement or during the course of arbitral proceedings. In such instances, the jurisdiction of the tribunal remains unaffected.

In Arbitration law under **Article 21**^{xvi} of new legislation introduces important measures which allow the tribunals to give an order at the request of a party or on its own violation, unless and until the parties have already agreed otherwise.^{xvii}

There are the following interim orders which are available which even include ordering the parties to, given the nature of dispute:

1. *Order to maintain and preserve the evidence which is relevant or deemed substantial in resolving the dispute;*
2. *Order for taking measures for preserving the goods that form part of the subject matter of the dispute which even includes depositing goods with a third party or selling those which might be susceptible to damage;*
3. *Order to keep & preserve assets, funds and properties for the satisfaction of subsequent award;*
4. *Order to retain and restore their status & effectively avoid the procedure of insolvency; and*
5. *Order to take or abstain from measures that were likely to cause damage or prejudice to the proceedings of the arbitration itself;*

This new legislation which is introduced also states that the arbitral tribunals have the power to order the party requesting an interim measure so that appropriate security can be provided for costs.

Also, in Arbitration law under **Article 46^{xviii}** the Arbitral tribunals are empowered with the power to issue an order under which either party can be asked to incur the expenses spent while the conduction of the arbitration procedure by the Arbitration Panel under the course of carrying on the arbitration process and the expenses incurred by them for the appointment of experts in the panel if needed. But this provision remains silent about the payment of the attorney and the fees of the experts appointed by the party, which can add up to a significant amount.

AWARD IN ARBITRATION

In the Arbitration law under **Article 41^{xix}**, it details about the form, particulars and content of any arbitral award. It is necessary for an award to have been issued at the arbitration venue which was allotted whereas the physical presence of the arbitrator is not needed in UAE when

they sign the award, but the award must be signed by the arbitrator. In this era of modern international practice, awards now can even be signed with the help of electronic means (e-Signatures) unless the parties have agreed and otherwise. It is necessary that the award must be in writing. In **Article 53(1)(g)^{xx}** of the Arbitration law, it states that an award can be nullified by a party if it is not rendered within the prescribed limit of time.

The Arbitration Law provides that the Arbitral Tribunal shall render its award within the time limit agreed between the parties. Absent an agreement, the arbitral award is to be rendered within six months from the first hearing of the arbitration procedures. Under **Article 42^{xxi}** it is mentioned that The Arbitral Tribunal can only stretch the time limit up to six months unless and until the parties are willing to extend it for longer. After the expiration of this time, the Federal Court or Lower Court has the authority to extend the time limit, and their decision will be considered as final unless either challenge the decision.

And Under **Article 44^{xxii}** of Arbitration laws, it clearly states that the Arbitral Tribunal can deliver the awards from 5 to 15 days from the date of the issuance of the order.

GROUND FOR CHALLENGE

The specific grounds upon which a party may challenge an arbitral award are laid down under **Article 53** of the Arbitration Law^{xxiii}. The maximum number of grounds which are mentioned or provided for challenging under the *UNCITRAL Model law* is very much related to the fundamental rights of any party which is seeking justice. The grounds which are included in line with the *UNCITRAL Model Law* are the lack of a valid agreement of arbitration, lack of legal capacity to agree to the arbitrate at the time of entering into an agreement, defective notification of the appointment of the arbitrator, failure in an issue of the award within the time frame that is specified and failure to observe the correct arbitration procedures.^{xxiv}

Under **Article 53(1)(e)^{xxv}** of Arbitration Laws,” a cause for concern in that it seems to open up the possibility of a successful challenge to an award on the basis that the Arbitral Tribunal did not apply the “law” that the parties agreed would apply to the subject matter of the dispute”. Also, Under **Article 56^{xxvi}** of Arbitration Laws, it states that if there is any claim for nullifying an award it may result into an award to stay of execution if there are serious grounds but the

applicant may be required to pay a guarantee or security and the claim for nullification must be settled within 60 days”.

Under **Article 57^{xxvii}** of Arbitration Laws, it has been laid down that, Appeal against the execution order can be filed in the competent court within 30 days from the date of issuance of the order.

AUTHORITY PRESIDING: ARBITRATORS

Under the recent changes brought in the arbitration laws of UAE, the parties can themselves decide the arbitrator. The default number of the arbitrators has to be three, though it can differ depending upon the agreement between the parties. The capacity or the person who has been authorized to be an arbitrator must be a major, has to be a natural person, should not have any previous proved criminal record, legally incapacitated, or an unrehabilitated insolvent.

In the proceedings where the sole arbitrator has been agreed upon to preside over the arbitration proceeding, but they cannot reach to a consensus regarding who will preside over the chair of the arbitrator then, within 15 days of submission of a written request to the counterpart, the authorities presiding over the arbitration must decide the upon the position of the arbitrator after the notice is served by either party. National Court can also intervene in the appointment of the arbitrator on the request of the parties under deadlock.

In case, where three arbitrators are presiding, both the parties must appoint one arbitrator and the third arbitrator is appointed after the agreement between the two arbitrators appointed by the parties. If the arbitrators are unable to reach a consensus, then within 15 days from the last date of appointment of an arbitrator, the institution presiding over the arbitration must appoint the third arbitrator.^{xxviii}

In a case where the parties fail to appoint an arbitrator, in accordance with the procedures agreed upon then, then either of the party can file a request seeking the appointment of an arbitral tribunal in respect to the description of the dispute concerned. ADGM Regulations and DIFC Arbitration Law permit the competent court to interfere in the matter where the parties are unable to decide over a common arbitrator. Both the authorities that are ADGM and DIFC

must make sure that both the parties are well aware of the procedures without any delay unless they have already been informed.^{xxix}

Whenever their arises any doubt regarding the arbitrator being partial and discriminative towards a party then the party in doubt must disclose his or her doubt regarding the same in writing as a proof that they anticipated such biases on the part of the arbitrator.

Under *Federal Law No.24 of 2018*, penal provisions were laid down for the arbitrators whose decisions might have been found contrary to their prescribed path of duty. Under **Article 257**, any arbitrary step of the arbitrator would have been subjected to criminal liability. Amendment was made further according to which, the criminal liability will only is imposed on the experts, translators, and the people entrusted with the duty of fact-finding who are appointed by the judicial and administrative authorities. Thus, **Article 257** will also not impose on the arbitrators including experts in the field of arbitration. This amendment was meant in order to build a sense of security among the arbitrators. This is important to ensure that the UAE remains one of the sites for fluorescent Arbitration.

CONCLUSION

Arbitration procedure in UAE has a very systematic approach to deal with dispute among the parties, but there are certain limitations and shortcoming as well. The limitation on the post-arbitrational judgment creates the doubt as to what extent the judgments are certain. In terms of who have the right to announce an award, the DIAC Rules, have stated that the tribunals do not have the authority to announce or award legal costs. Due to this, there are two options left with the parties either they can hand over the rights to the tribunals, the right to award legal costs by mentioning it in arbitration agreement or they can explicitly lay done the person, who will be authorized to do so. These flexible approach leads to ambiguity leading to widening of disputes and chaos. In order to establish a fair and just Arbitration system in UAE, it is important for the authorities to ensure that the ambiguity shall be narrowed down and all the rules are laid down without any fuss and confusion.

ENDNOTES

ⁱ Dubai International Arbitration Centre (DIAC) (www.diac.ae), which administers arbitrations under the DIAC Arbitration Rules 2007 (DIAC Rules), DIFC London Court of International Arbitration (DIFC-LCIA) Centre (www.difcarbitration.com), which administers arbitrations under the DIFC-LCIA Arbitration Rules 2008, Abu Dhabi Conciliation and Arbitration Centre (ADCCAC) (www.abudhabichamber.ae), which administers arbitrations under the Procedural Regulations of the ADCCAC, The Emirates Maritime Arbitration Centre (EMAC), Sharjah International Commercial Arbitration Centre (Tahkeem) & Ras Al-Khaimah Centre for Reconciliation and Commercial Arbitration.

ⁱⁱ Federal Law No. 6 of 2018, (<https://www.tamimi.com/crm-media-uploader/fileupload/server/php/files/UAE%20Arbitration%20Law%20-%20Federal%20Law%20No%20%206%20of%202018.pdf>) last accessed on 9th January 9, 2021.

ⁱⁱⁱ (http://ejustice.gov.ae/downloads/latest_laws2015/Federal_Law_10_2014_en.pdf)

^{iv} Chapter – IV, Execution of Foreign Judgments (Article 235 – 238), Chapter – V, Execution Procedures (Article 239 – 243) of Federal Law No.11 of 1992.

^v Arbitration Law § 7 (Federal Law No. 6 of 2018).

^{vi} Arbitration in the UAE, Fortis Law Firm, read at- <https://fotislaw.com/arbitration-in-the-uae/>.

^{vii} Federal Law of Arbitration of USA, (<https://sccinstitute.com/media/37104/the-federal-arbitration-act-usa.pdf>), last accessed on 9th January 2021.

^{viii} Dubai Arbitration International Centre, read at- <http://diac.ae/idias/forms/DIAC%20Model%20Arbitration%20Agreement1/>.

^{ix} Arbitration Law § 23 (Federal Law No. 6 of 2018).

^x Arbitration in the UAE, Published on 30.03.2020, available at https://www.cms-lawnow.com/ealerts/2020/03/arbitration-in-the-uae-curbs-on-the-awarding-of-legal-costs?cc_lang=en.

^{xi} Arbitration Law § 18 (Federal Law No. 6 of 2018).

^{xii} Arbitration Law § 21 (Federal Law No. 6 of 2018).

^{xiii} Afridi & Angell, Interim relief prior to starting arbitration under the Federal Arbitration Law: A note on recent experiences, published on Feb 1, 2020, read at <https://www.lexology.com/library/detail.aspx?g=08bdba6e-5958-483c-ba9c-5b98f35d2e14>.

^{xiv} *Supra* Note 11.

^{xv} Arbitration Law § 18 (Federal Law No. 6 of 2018).

^{xvi} *Supra* Note 11.

^{xvii} *Id* at note 7.

^{xviii} Arbitration Law § 46 (Federal Law No. 6 of 2018).

^{xix} Arbitration Law § 41 (Federal Law No. 6 of 2018).

^{xx} Arbitration Law § 53(1)(g) (Federal Law No. 6 of 2018).

^{xxi} Arbitration Law § 42 (Federal Law No. 6 of 2018).

^{xxii} Arbitration Law § 44 (Federal Law No. 6 of 2018).

^{xxiii} Arbitration Law § 53 (Federal Law No. 6 of 2018).

^{xxiv} Challenges and Recusals of Arbitrators under UAE Arbitration Law, read at <http://www.chinagoabroad.com/en/article/challenges-and-recusal-of-arbitrators-under-the-uae-arbitration-law#:~:text=The%20general%20framework%20for%20the%20grounds%20for%20challenging,by%20the%20parties%20or%20stipulated%20by%20this%20law.%E2%80%9D>.

^{xxv} Arbitration Law § 53(1)(e) (Federal Law No. 6 of 2018).

^{xxvi} Arbitration Law § 56 (Federal Law No. 6 of 2018).

^{xxvii} Arbitration Law § 57 (Federal Law No. 6 of 2018).

^{xxviii} Hogan Lovells, New UAE Arbitration Law, read at- https://f.datasrvr.com/fr1/318/98589/Brochure_-_New_UAE_Arbitration_Law.pdf#:~:text=The%20default%20position%20under%20the%20UAE%20Arbitration%20Law,to%20the%20nationality%20of%20the%20arbitrators%20%28Article%2010%283%29%29.

^{xxix} *Ibid*.