

# DUBAI: THE HEART OF ARBITRATION IN THE MIDDLE EAST

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Legal Briefings

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Arbitration is growing in use in contracts with a nexus to the Middle East, with parties increasingly willing to consider arbitral institutions and seats in the region. Over the past few years, there have been a number of notable developments in arbitration in the Middle East: institutional rules, legislative changes and significant decisions of the courts, including in relation to enforcement of arbitral awards. These developments have the potential to influence the choice of dispute resolution mechanism in Middle East-related contracts. Partner Caroline Kehoe and Senior Associate Anna Wren comment on these developments and predicted trends – focussing, in particular, on Dubai – and reflect on a number of key considerations for commercial parties.

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## **GROWTH OF DUBAI'S ECONOMY**

Dubai is popularly known for its long sandy beaches, year-round sunshine and its wealth of 5-star hotels. But Dubai is much more – from its early beginnings as a pearl export centre, Dubai has grown into a world-class centre for international trade and business. And not just for oil companies – although Dubai's early growth was fuelled by the discovery of oil in the late 1960s, contrary to popular belief, less than 5% of Dubai's GDP is oil-based.

Indeed, Dubai's success is derived not from a wealth of oil, but the lack thereof, as compared to its neighbouring Emirate, Abu Dhabi. This led the Dubai government to diversify its economy, in particular in the construction, tourism, aviation, finance and trade sectors. Dubai is now home to more than 20,000 international companies, including offices from 124 of the Fortune 500, and has a GDP of over US\$108 billion.<sup>1</sup> Dubai's liberal economic regulation and business friendly policies have caused Dubai's total international trade to grow on average by over 11% per year since 1988.<sup>2</sup>

### **The trend in the Middle East is definitely pro-arbitration, ...**

Part of Dubai's success is due to the establishment of economic "Free Zones", which group businesses from the same sector in the same geographical location. Free zones invite foreign investment into Dubai as they offer investors full ownership rights (as compared with the 51% local ownership requirement for establishment onshore Dubai) along with significant tax incentives, minimal regulation and government intervention, and full repatriation rights for capital and profit. Dubai's free zones span a variety of sectors and activities from IT and media, to healthcare, commodities (the Dubai Multi Commodities Centre (DMCC) is the world's fastest-growing free zone), and, of course, finance (the Dubai International Financial Centre (DIFC)).

### **GROWTH OF ARBITRATION IN THE MIDDLE EAST**

The growth in the economy and international trade in Dubai, and more generally in the region, has brought with it an increase in dispute resolution offerings. Parties are becoming increasingly willing to have their disputes resolved in the region rather than relying on seats in Paris, London, Geneva or elsewhere.

This is reflected in the establishment of various different seats of arbitration in the region. For example, the UAE alone hosts the following arbitration centres located onshore and offshore (ie in the freezones):

#### **Onshore UAE**

- Dubai International Arbitration Centre (DIAC);
- Abu Dhabi Conciliation and Arbitration Centre (ADCCAC);
- Sharjah International Commercial Arbitration Centre;
- Ras Al-Khaimah Commercial and Arbitration Centre;

#### **Offshore UAE**

- DIFC-LCIA Arbitration and Mediation Centre (DIFC-LCIA), a joint venture with the LCIA (located offshore Dubai in the DIFC);
- the Emirates Maritime Arbitration Centre (EMAC) (located offshore in the DIFC); and
- the Abu Dhabi Global Markets Arbitration Centre (located offshore in Abu Dhabi Global Markets, which will also soon be home to an ICC representative office to be opened this year).

Other regional arbitration centres include the Bahrain Chamber for Dispute Resolution (BCDR-AAA) (partnered with the American Arbitration Association); the Commercial Arbitration Centre of the Kuwait Chamber of Commerce and Industry (KCAC); the Qatar International Center for Conciliation and Arbitration (QICCA); and the Saudi Center for Commercial Arbitration (SCCA).

The trend in the Middle East is definitely pro-arbitration, with several jurisdictions enacting, or moving to enact, arbitration-friendly procedural laws, in many instances based on the 1986 UNCITRAL Model Law on International Commercial Arbitration (as amended in 2006) (the "Model Law"). For example, Qatar recently enacted Law No. 2 of 2017 promulgating the Law of Arbitration in Civil and Commercial Matters.

It is also anticipated that the UAE will enact a Federal Arbitration Law this year, also based on the Model Law. The Federal Arbitration Law will replace and supersede Articles 203 to 218 of the Federal Civil Procedure Code which currently govern arbitrations seated onshore UAE, and has been eagerly awaited since the UAE acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) (the "New York Convention") over a decade ago. The draft law has been circulated to the UAE's National Assembly and Cabinet of Ministers and is understood to be in the final stages of approval. It is anticipated that the new law will provide a properly structured procedural framework for domestic and international arbitrations seated in the UAE, with clear rules on when an award may be challenged, as well as easing the route to enforcement of awards by giving arbitration awards the status of court judgment which can be ratified in the UAE Courts (thereby avoiding lengthy enforcement proceedings).

## **ARBITRATION IN THE UAE**

In circumstances where many Middle Eastern counterparties require that the parties choose a regional seat for their arbitration clause, Dubai offers perhaps the safest and most practical seats for arbitration.

- It is a peculiarity that certain countries in the Middle East, despite having signed the New York Convention, may be more favourable to enforcement of arbitral awards if that award is rendered in a fellow Islamic country. A UAE-seated Award, recognised by the Dubai Courts, may in principle therefore be more enforceable than an award from a Western country.
- There are also numerous practical reasons why Dubai is a good choice of seat in the region. Regional unrest makes Dubai more attractive for local and foreign investors into the region – it offers a safe and stable environment for dispute resolution. Dubai is also incredibly well-connected. Situated in the "middle" of the world map, Dubai is an airline hub, offering direct flights to over 200 destinations around the world, including most capital cities and business centres, making it easily accessible for all parties.
- Although there have been some recent unhelpful developments in UAE legislation which have impacted on arbitration, it is clear that there is an intention to address these and to continue the pro-arbitration trend. For example, it is understood that the recent amendment to Article 257 of the UAE Penal Code (which had the effect of extending the law such that arbitrators that fail to maintain the requirements of integrity and impartiality may be found guilty of a criminal offence and sentenced to imprisonment) will be amended or repealed this year, although the scope or nature of the any forthcoming amendment is as yet unknown.
- One significant drawback of a choosing a Dubai seat, however, is the enforcement process. Until the new UAE Federal Arbitration Law is enacted, enforcing an onshore Dubai-seated arbitration award through the Dubai courts will continue to be fraught with difficulties, including uncertainty (there is no system of binding precedent in the UAE), significant delay (enforcement proceedings can take up to three years), and costs (legal costs are not recoverable in the Dubai Courts).

It is for this reason that many international parties choose to seat their arbitration in the Dubai International Financial Centre (DIFC), which has seen particular growth in recent years.

**... Dubai offers perhaps the safest and most practical seats for arbitration.**

### **ARBITRATION IN THE DIFC**

The DIFC was established in 2004 and is now home to more than 1750 companies as well as NASDAQ Dubai. More importantly, however, the DIFC also boasts its own judicial system and legal framework based on English common law, which is separate and distinct from the onshore UAE legal system and courts. It also has its own internationally recognised regulator, the Dubai Financial Services Authority (the DFSA). This means that regulations, judgments or awards issued in the DIFC are issued in English, rather than Arabic, and are not subject to Shari'a law.

The DIFC is also home to the DIFC-LCIA Arbitration and Mediation Centre. A joint venture with the LCIA, the DIFC-LCIA was launched in February 2008 at the same time as enactment of the DIFC Arbitration Law<sup>3</sup>, which is based largely on the provisions of the Model Law. The DIFC-LCIA rules of arbitration are substantially based on the LCIA Rules. The DIFC-LCIA was relaunched in November 2015 to operate in parallel to and independently from the DIFC Courts, which provide supervisory jurisdiction over arbitrations seated in the DIFC.

The upward trend in arbitration is evidenced by the DIFC-LCIA's growing caseload – the first full 12 months following the relaunch in November 2015<sup>4</sup> saw a 20% increase in cases registered on the previous year and, in 2017, the caseload was more than three times the caseload of 2016, with 51 arbitrations and six mediations registered.

Choosing the DIFC as a seat for arbitration has several advantages.

- Opting for a DIFC seat means the parties have access to the supervision and support of the DIFC Courts, not only for the purposes of enforcement, but also for the purposes of obtaining interim remedies, like temporary freezing or attachment orders, which can be important if there is a risk of dissipation of assets.
- The DIFC Courts are established, English-language, common law courts which are experienced in arbitral disputes and consistent in their treatment of arbitral awards. Cases related to arbitration before the DIFC Courts are typically private, providing parties with assurance that their matter will be kept as confidential as it would be in a more established seat, like London or Singapore.
- A DIFC award, which is recognised and enforced by the DIFC Courts, can be enforced directly throughout the MENA region through various regional treaties and conventions, in the same way as a Dubai-seated award. Constitutionally, the DIFC Court is considered part of Dubai's judicial system and, for the purposes of international treaties to which the UAE is a signatory state, are considered a court of Dubai and the UAE. The UAE is party to the New York Convention, but it is also party to the regional conventions, the Agreement of Execution of Judgments, Delegations and Judicial Notifications in the Arab Gulf Cooperation Council Countries (1996) (the "GCC Convention")<sup>5</sup> and the Riyadh Arab Agreement for Judicial Cooperation (1983) (the "Riyadh Convention")<sup>6</sup>, the latter of which includes signatories that are not party to the New York Convention (for example, Iraq).
- A DIFC Award which has been recognised by the DIFC Court will also be recognised by the Dubai Courts. Under Dubai Law No. 12 of 2004 (as amended) and the Protocol of Enforcement between Dubai Courts and DIFC Courts, the Dubai Courts are bound to enforce a DIFC Court judgment without review of the merits. This can make it easier for parties to obtain enforcement over assets located in onshore UAE or in Riyadh or GCC Convention member states.

Arbitration in the Middle East is clearly on the rise and Dubai is at the forefront with its pro-arbitration legal framework and the DIFC's established independent court system coupled with world-class arbitration centres. This must surely make them preferred seats for arbitration in the Middle East.

## **OUR MIDDLE EAST PRACTICE**

We have one of the largest disputes practices in the Middle East with three partners, eight associates and one trainee based in Dubai. We have a proven track record of successfully resolving disputes for many high profile local and international clients, advising on a wide range of commercial disputes in the MENA region. We advise local and international clients with disputes arising in the Middle East and have successfully assisted clients in arbitrations seated in the DIFC, Dubai, Abu Dhabi, Saudi Arabia, Bahrain, Syria and Qatar. Our local knowledge ensures that we are ideally placed to advise on arbitrations under local rules such as DIAC, DIFC-LCIA and the Abu Dhabi Chamber of Commerce and international rules where the arbitration is seated in the region.

**Arbitration in the Middle East is clearly on the rise and Dubai is at the forefront.**

**\*Please note that the UAE Federal Arbitration Law referenced above has now been issued. More information about this can be found on our Arbitration Notes blog [here](#).**

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1. GDP 2016 AED 397,225m,  
<https://www.dsc.gov.ae/Report/Gross%20Domestic%20Product%20at%20Currents...>
2. <http://www.dubai.ae/en/aboutdubai/Pages/DubaiEconomy.aspx>
3. DIFC Law No. 1 of 2008, as amended by DIFC Law Amendment Law No. 1 of 2013
4. From 1 January 2016 to 31 December 2016
5. Other parties to the GCC Convention are Jordan, Bahrain, Tunisia, Algeria, Djibouti, Saudi Arabia, Sudan, Syria, Somalia, Iraq, Oman, Palestine, Qatar, Kuwait, Lebanon, Libya, Morocco, Mauritania and Yemen
6. Other parties to the Riyadh Convention are Bahrain, Saudi Arabia, Oman, Qatar and Kuwait





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