



## The UAE Federal Arbitration Law: A new beginning?<sup>1</sup>

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The UAE Federal Arbitration Law<sup>2</sup> was finally adopted on 3<sup>rd</sup> May 2018 and entered into effect on 16 June 2018. I anticipated the adoption of the new Law in a trilogy of blogs published on Thomson Reuters Practical Law Blog in the summer of 2017.<sup>3</sup> The draft law that I commented on then was the official draft bill that was fed into the UAE legislative process in May last year and that has now been adopted in slightly amended form. The comments I made previously on the continuing similarities between the new Law and the UAE Arbitration Chapter, which the new Law is to replace, remain true; I will, therefore, not repeat them here. A number of modifications, however, that may raise eyebrows deserve further scrutiny.

Needless to say, the adoption of the UAE Federal Arbitration Law, which is based on the UNCITRAL Model Law, marks a new era for arbitration in the UAE. It places the UAE on par with other Model Law jurisdictions and sends a strong signal to arbitration users and the arbitration community at large that arbitrations in the UAE follow best procedural practice and procedure. That said, as I have demonstrated elsewhere,<sup>4</sup> arbitration under the UAE Arbitration Chapter – albeit procedurally challenging – never was unnavigable unlike impressions created by one-sided, selective and at times opportunistic reporting. To the contrary, the construction of the provisions of the UAE Arbitration Chapter by the UAE courts over the past quarter of a century has given rise to a *jurisprudence constante* that has provided reliable (and mostly arbitration-friendly) guidance on arbitration practice and procedure under the UAE Arbitration Chapter. In actual fact, the new Law raises procedural concerns of its own and will not serve as a panacea for all procedural irregularities that were the bane of practice under the UAE Arbitration Chapter.

A number of points that I did not have an opportunity to discuss in further detail previously deserve further scrutiny here:

- **Scope of application** – The new Law applies to arbitrations seated inside the UAE or to arbitrations in relation to which the parties have contracted into the application of the new Law.<sup>5</sup>

<sup>1</sup> This article is based on G. Blanke, “The UAE Federal Arbitration Law: an initial verdict (Part 1)”, Practical Law Arbitration Blog, Thomson Reuters, 8 June 2018, available online at <http://arbitrationblog.practicallaw.com/the-uae-federal-arbitration-law-an-initial-verdict-part-1/>; and G. Blanke, “The UAE Federal Arbitration Law: an initial verdict (Part 2)”, Practical Law Arbitration Blog, Thomson Reuters, 2<sup>nd</sup> July 2018, available online at <http://arbitrationblog.practicallaw.com/the-uae-federal-arbitration-law-an-initial-verdict-part-2/>.

<sup>2</sup> Law No. 6 of 2018 Concerning Arbitration or simply the “new Law”. In the following, articles references are to Articles of the new Law unless otherwise specified.

<sup>3</sup> G. Blanke, “UAE Federal Arbitration Law v UAE Arbitration Chapter: old wine in a new bottle? (Part 1)”, Practical Law Arbitration Blog, Thomson Reuters, 12 July 2017, available online at <http://arbitrationblog.practicallaw.com/uae-federal-arbitration-law-v-uae-arbitration-chapter-old-wine-in-a-new-bottle-part-1/>; G. Blanke, “UAE Federal Arbitration Law v UAE Arbitration Chapter: old wine in a new bottle? (Part 2)”, Practical Law Arbitration Blog, Thomson Reuters, 14 August 2017, available online at <http://arbitrationblog.practicallaw.com/uae-federal-arbitration-law-v-uae-arbitration-chapter-old-wine-in-a-new-bottle-part-2/>; and G. Blanke, “UAE Federal Arbitration Law v UAE Arbitration Chapter: old wine in a new bottle? (Part 3)”, Practical Law Arbitration Blog, Thomson Reuters, 15 September 2017, available online at <http://arbitrationblog.practicallaw.com/uae-federal-arbitration-law-v-uae-arbitration-chapter-old-wine-in-a-new-bottle-part-3/>. For a summary of my findings, see also G. Blanke, “The new UAE Federal Arbitration Law: What difference does it make?”, MENA Legal Outlook, Thomson Reuters, May 2018, available online at [https://www.comunigator.co.uk/login/Instances/thomsonreuterslz/documents/Mena\\_Newsletter/May18/The\\_new\\_UAE\\_Federal\\_Arbitration\\_Law.pdf](https://www.comunigator.co.uk/login/Instances/thomsonreuterslz/documents/Mena_Newsletter/May18/The_new_UAE_Federal_Arbitration_Law.pdf); and G. Blanke, “The New UAE Federal Arbitration Law: Old Wine in a New Bottle”, 84(3) *Arbitration* (2018), pp. 252-260.

<sup>4</sup> See G. Blanke, *Commentary on the UAE Arbitration Chapter*, Sweet&Maxwell/Thomson Reuters, 2017.

<sup>5</sup> Article 2.

- **International v. domestic** – The new Law also introduces the notion of international arbitration: References under the new Law are international in the event that the seat of arbitration is outside the UAE; the place related to the subject matter of the dispute or the performance of the parties’ contractual obligations is located outside the UAE; the subject matter of the dispute relates to more than one country; and the head offices of the arbitrating parties were in different countries at the time of entering into the arbitration agreement.<sup>6</sup> Importantly, the qualification of an arbitration as international will produce a foreign award enforceable under an international enforcement instrument, such as the 1958 New York Convention<sup>7</sup>.
- **Party representation** – Under the new Law, there is a continued requirement for special powers of attorney for valid representation of a party in arbitration or a party’s valid submission to an arbitration process<sup>8</sup> (subject, of course, to the application of apparent authority to the formation of arbitration agreements in the terms ordained by the UAE courts under the UAE Arbitration Chapter)<sup>9, 10</sup>
- **Arbitrability** – In terms similar to those of the UAE Arbitration Chapter,<sup>11</sup> the new Law limits arbitrability to matters that are capable of conciliation.<sup>12</sup> That said, both contractual and non-contractual causes of action, such as (common law) torts, can be submitted to arbitration under the new Law.<sup>13</sup>
- **Arbitration defense** - The arbitration defense no longer needs to be raised “*in the first session/hearing*” before the court, a term that used to cause interpretive challenges under Article 203(5) of the UAE Arbitration Chapter<sup>14, 15</sup> That said, for procedural efficiency, it will no doubt be necessary to raise the arbitration defense before the court at the earliest possible opportunity.
- **Formation of the tribunal** – The new Law specifically prohibits institutional nepotism: Members of the boards of trustees or case-handlers of an arbitral institution may not be appointed as arbitrators in a reference administered by that institution.<sup>16</sup> In the exercise of default appointments, the competent court will be assisted by a “*list of specialised*” arbitrators sourced from a local arbitration

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<sup>6</sup> Article 3.

<sup>7</sup> On the recognition and enforcement of foreign arbitral awards, done at New York, 10 June 1958.

<sup>8</sup> Article 4.

<sup>9</sup> See G. Blanke, “Dubai onshore and offshore courts confirm application of apparent authority to arbitration under UAE law”, Practical Law Arbitration Blog, Thomson Reuters, 24 May 2017, available online at <http://arbitrationblog.practicallaw.com/dubai-onshore-and-offshore-courts-confirm-application-of-apparent-authority-to-arbitration-under-uae-law/>; and G. Blanke, *Commentary on the UAE Arbitration Chapter*, Sweet&Maxwell/Thomson Reuters, 2017, at II-017 and II-040.

<sup>10</sup> For the position under the UAE Arbitration Chapter, see G. Blanke, *Commentary on the UAE Arbitration Chapter*, Sweet&Maxwell/Thomson Reuters, 2017, at I-073 and II-037.

<sup>11</sup> See G. Blanke, *Commentary on the UAE Arbitration Chapter*, Sweet&Maxwell/Thomson Reuters, 2017, at I-062 *et seq.* and II-032 *et seq.*

<sup>12</sup> Article 4(2). For further guidance, see also Article 733, UAE Civil Code.

<sup>13</sup> Article 2(3).

<sup>14</sup> For commentary on the position under the UAE Arbitration Chapter, see G. Blanke, *Commentary on the UAE Arbitration Chapter*, Sweet&Maxwell/Thomson Reuters, 2017, at II-076 - II-077.

<sup>15</sup> Article 8(1).

<sup>16</sup> Article 10(2).

institution.<sup>17</sup>

- **Preliminary meeting** - Under the new Law, there is also no longer a formal requirement for a Preliminary Meeting in the terms of Article 208(1) of the UAE Arbitration Chapter<sup>18</sup>. This will streamline the arbitration process and remove one of the procedural obstacles that existed under the UAE Arbitration Chapter.<sup>19</sup>
- **Court of Appeal** - Under the new Law, all court supportive functions are initiated before the competent court of appeal.<sup>20</sup> In other words, cassation will remain as the only stage of appeal. This also applies to the process for recognition and enforcement of arbitral awards<sup>21, 22</sup>. The decisions of the court of appeal are mostly final and binding and cannot be appealed.<sup>23</sup> This will undoubtedly promote the overall efficiency of the arbitration procedure.
- **Interim measures** - The new Law expressly confers wide powers upon the courts and tribunals to support the arbitral process through interim measures both before (in the case of the courts) and after initiation of the arbitration.<sup>24</sup>
- **Third-party joinder** - The tribunal is granted a power to join to the arbitration process a third party that is bound by the underlying arbitration agreement.<sup>25</sup>
- **Confidentiality** - The new Law stipulates the confidentiality of the arbitration process.<sup>26</sup>
- **Video-conferencing** - Hearings, including the hearing of witnesses, as well as tribunal deliberations may be conducted by means of modern means of communication (such as video-conferencing).<sup>27</sup> There is therefore no requirement for witnesses to be physically present at a hearing, nor for arbitrators to meet in person for deliberations.
- **Oath-taking** - In stark contrast to the position under Article 211 of the UAE Arbitration Chapter<sup>28</sup>, there is also no longer an express requirement for taking witness testimony on oath. This requirement may, however, survive given the mandatory character it has been accorded by existing case law

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<sup>17</sup> Article 11(8).

<sup>18</sup> For further detail, see G. Blanke, *Commentary on the UAE Arbitration Chapter*, Sweet&Maxwell/Thomson Reuters, 2017, at I-079, I-123, I-125, II-040–II-041.

<sup>19</sup> On which see *ibid.*

<sup>20</sup> E.g. in relation to the appointment of arbitrators (Article 11), the challenge procedure (Article 15), the court's residual powers to decide on jurisdiction (Article 19) and the court's enforcement powers with respect to interim measures ordered by a tribunal (Article 21(4)).

<sup>21</sup> Article 55.

<sup>22</sup> As well as to challenges of an award: Article 53.

<sup>23</sup> E.g. Articles 11, 15, 16 and 19.

<sup>24</sup> Articles 18 and 21.

<sup>25</sup> Article 22.

<sup>26</sup> Article 33(1).

<sup>27</sup> Articles 33(3) and 35.

<sup>28</sup> On which see G. Blanke, *Commentary on the UAE Arbitration Chapter*, Sweet&Maxwell/Thomson Reuters, 2017, at I-118, I-155, II-097 – II-099 and II-141.

precedent.<sup>29</sup> In this context, it is worth recalling that the new Law subjects the hearing of oral testimony to applicable UAE laws<sup>30</sup>, which in turn may require compliance with the oath-taking requirement under the UAE Law of Evidence.

As regards the issuance and recognition and enforcement of the arbitral award, a subject that is of particular importance given the globally coveted finality of arbitral awards, the most relevant points to note on the subject in the light of the new Law are the following:

- **Issuance of the award** - The award is deemed issued at the seat of the arbitration, there being no requirement for arbitrators e.g. from outside the UAE to be present in the UAE for valid execution of the award<sup>31</sup>. This is different from the position that prevailed under the UAE Arbitration Chapter,<sup>32</sup> which required the physical signing of a domestic award in the UAE to ensure that it would not qualify as a foreign award instead (and possibly attract a challenge of *extra petita*, the tribunal having been mandated to render a domestic, not a foreign arbitral award).
- **Partial and interim awards** - The new Law confers upon the tribunal an express power to render interim and partial awards.<sup>33</sup> Only interim awards are stated to be enforceable before the UAE courts.<sup>34</sup> This raises the question as to whether partial awards are intended to receive the same enforcement-friendly treatment. Given that interim awards are of a temporary nature only and partial awards are *res judicata* in terms of the findings they make, it is likely that Article 39(2) was intended to cover partial awards also (or that partial awards are regarded as enforceable for the stated reason in any event, there being no need to single them out as enforceable).
- **Content requirements of the award** – Article 41(5) of the new Law expressly requires the arbitrators’ nationality to be listed in the text of the award. This is in addition to the content requirements under the UAE Arbitration Chapter, which persist under the new Law, i.e. date and place of issuance, a summary of the arbitration agreement, a summary of the parties’ respective cases, the tribunal’s reasoning, a dispositive part and the tribunal’s signature.<sup>35</sup>
- **Tribunal’s power to award party costs** – Under the new Law, the tribunal does not have a power to award party costs, these being expressly “at [a party’s] own expense”<sup>36</sup>, thus confirming the position taken under the UAE Arbitration Chapter<sup>37</sup>.
- **Time-limit for rendering an award** – Article 42 of the new Law requires a tribunal to render an award

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<sup>29</sup> See Case No. 503/2003 - *International Bechtel Co. Ltd v. Department of Civil Aviation of the Government of Dubai*, ruling of the Dubai Court of Cassation of 15 May 2005 and subsequently confirmed by Case No. 322/2004, ruling of the Dubai Court of Cassation of 11 April 2005.

<sup>30</sup> Article 33(7).

<sup>31</sup> Article 41(6).

<sup>32</sup> On which see G. Blanke, *Commentary on the UAE Arbitration Chapter*, Sweet&Maxwell/Thomson Reuters, 2017, at II-107 *et seq.*

<sup>33</sup> Article 39.

<sup>34</sup> Article 39(2).

<sup>35</sup> On which see G. Blanke, *Commentary on the UAE Arbitration Chapter*, Sweet&Maxwell/Thomson Reuters, 2017, at II-102 and II-109 – II-110.

<sup>36</sup> Article 33(4) read together with Article 46.

<sup>37</sup> See Dubai Court of Cassation Case No. 282/2012, ruling of the Dubai Court of Cassation of 3<sup>rd</sup> February 2013. For comment, see G. Blanke, *Commentary on the UAE Arbitration Chapter*, Sweet&Maxwell/Thomson Reuters, 2017, at I-139 and II-153.

“within six months from the date of the first session in the arbitration”, subject to extension by the arbitrator by an additional six months and to party agreement to any further extensions (further extensions without party agreement being subject to approval by the UAE courts). This essentially confirms the cumbersome provisions on time-limits under the UAE Arbitration Chapter.<sup>38</sup>

- **Recognition and enforcement** - Even under the new Law, the enforcement and onward execution of an award still requires the completion of a ratification (or validation) process before the UAE courts<sup>39</sup> in terms similar to those under Article 215(1) of the UAE Arbitration Chapter. This is despite the stipulation in Article 52 that the award “shall have the same self-executing force as if it were a judgment”. Importantly, that Article also provides that “to enforce such awards, a decision to confirm it shall be obtained from the court.” An action for nullification must be brought within 30 days from the date of service of the subject arbitral award upon the applicant<sup>40</sup>. This, no doubt, will assist the role of the Dubai International Financial Centre (DIFC) Courts as a conduit for the recognition and enforcement of domestic (non-DIFC) awards for onward execution in onshore Dubai in situations where no onshore nullification proceedings have been brought in time<sup>41</sup>. In essence, a recalcitrant award debtor will not be able to create a situation of parallel onshore nullification and offshore enforcement proceedings, which would prompt a referral by the DIFC-Dubai Joint Judicial Tribunal, the JT,<sup>42</sup> to the onshore courts. For the avoidance of doubt, under Article 54 of the new Law, a supervisory court ruling ratifying an award as well as a ruling setting aside an arbitral award can be appealed. Equally, under the same Article, a ruling on an action for annulment generally remains subject to appeal. In this sense, the new Law will be no more enforcement-friendly with respect to domestic awards than the UAE Arbitration Chapter. Further, unlike the position under the UAE Arbitration Chapter<sup>43</sup>, the underlying arbitration agreement remains valid and the parties will have to pursue the resolution of their pending dispute in an arbitral forum. Article 54 also provides for the award to be remitted to the arbitrator to avoid nullification in the terms prevailing under Article 214 of the UAE Arbitration Chapter<sup>44</sup>. The grounds for challenge of an arbitral award under the new Law are similar to those of the UNCITRAL Model Law and hence perceived as more arbitration-friendly, even though this is not necessarily the case in practice given the UAE courts’ interpretation of the corresponding provisions *in favorem arbitrandi*. Importantly, an application for annulment does not automatically suspend the execution of the award<sup>45</sup>. For the avoidance of doubt, under the new Law, like the position under the UAE Arbitration Chapter, both a decision by the UAE court to execute an award and one to set aside can be appealed<sup>46</sup>. That said, any appeal process is shortened by one stage, any application for enforcement or nullification being initiated before the competent court of appeal, subject to further appeal only to the competent court of cassation. This compares favourably to the

<sup>38</sup> On which see G. Blanke, *Commentary on the UAE Arbitration Chapter*, Sweet&Maxwell/Thomson Reuters, 2017, at I-133–I-136, II-088–II-096.

<sup>39</sup> Article 52.

<sup>40</sup> Article 54(2).

<sup>41</sup> See, e.g., G. Blanke, “The DIFC as a conduit: resurrected from the dead?”, Practical Law Arbitration Blog, Thomson Reuters, 5 April 2018, available online at <http://arbitrationblog.practicallaw.com/the-difc-as-a-conduit-resurrected-from-the-dead/>.

<sup>42</sup> Established by virtue of Decree No. (19) of 2016 establishing the Dubai-DIFC Judicial Tribunal.

<sup>43</sup> See e.g. UAE Federal Court Case No. 166/Judicial Year 15. For comment, see G. Blanke, *Commentary on the UAE Arbitration Chapter*, Sweet&Maxwell/Thomson Reuters, 2017, at II-133.

<sup>44</sup> See e.g. Dubai Court of Cassation Case No. 173/2013. For comment, see G. Blanke, *Commentary on the UAE Arbitration Chapter*, Sweet&Maxwell/Thomson Reuters, 2017, at I-123.

<sup>45</sup> Article 56.

<sup>46</sup> Article 57.



situation under the UAE Arbitration Chapter, which required challenges to be filed with the court of first instance in a first step, followed by a two-stage appeal process before the competent court of appeal and court of cassation.

By way of conclusion, even though the new UAE Federal Arbitration Law creates new incentives for foreign direct investment into one of the leading economies in the Middle East, the changes that the new Law brings are not as far-reaching as one would have hoped. No doubt, the changes introduced to the recognition and enforcement of arbitral awards are encouraging: As has been seen, they significantly streamline the ratification process of awards and also create welcome opportunities for the revival of the DIFC as a conduit. That alone makes the new Law worth its while but does it really mark the new beginning everyone had hoped for?