

# FEDERAL DECREE LAW 15/2023 AMENDING THE UAE FEDERAL ARBITRATION LAW WILL AFFECT BOTH ARBITRATORS AND PARTIES TO ARBITRATION

Federal Decree law 15/2023 was issued on 4 September 2023 to amend the UAE Federal Arbitration Law (Law 6/2018).

We summarise the amendments here for the benefit of parties to arbitration proceedings and, also, for the benefit of arbitrators, as the amendments are of relevance to both.

The amendments are relatively light touch and do not have a major impact on the substance of the law. We set out the detailed amendments below and would like to highlight that:

- Pursuant to Article 10 Bis (2), an arbitrator and an arbitral institution can become liable for damages to the parties of an arbitration. The instances where this is a possibility are limited and specific. However, this amendment appears to remove the relative immunity of arbitrators afforded under numerous arbitration rules.
- Article 28 is updated to expressly allow hearings to be held virtually. Additionally, arbitration centres are now required to "provide the necessary technologies to conduct arbitration proceedings through modern technical means or in technical communities in accordance with the necessary technical standards and controls."

While the amendments are unlikely to affect the majority of arbitration users, they are a sign that the UAE retains its intent to be a modern arbitration hub.

Relevant Article	Previous Position	Updated Position
<b>Article 10 – The Requirements to be met by an Arbitrator</b>	In addition to the requirements agreed upon by the Parties, under Article 10, the arbitrator was required to be a physical person, and was not permitted to be: <ul style="list-style-type: none"> <li>• a minor,</li> <li>• incapacitated,</li> <li>• bankrupt (unless exonerated),</li> <li>• convicted of any felony or misdemeanour (even if exonerated),</li> <li>• a member of the Board of Trustees or the administrative branch of the competent Arbitration Institution administering the arbitration case in the State.</li> </ul>	<b>Article 10</b> now expressly adds a further prohibition to the appointment of an arbitrator, namely that the arbitrator may not have a direct relationship with any of the parties to the arbitration that may prejudice the arbitrator’s impartiality and independence.
<b>Article 10 bis - Conditions for Appointing an Arbitrator from Among Members of the Supervisory or Regulatory Authorities in the Competent Arbitration Institution</b>		<b>Article 10 bis</b> is a new article which has been added to the Federal Arbitration Law to provide an exemption to the prohibition in Article 10(2) on the appointment of an arbitrator who is also a member of the Board of Directors, the Board of Trustees, or the administrative branch of the competent Arbitration Institution administering the arbitration case. Under Article 10 bis such appointment may be made under certain conditions, which include:

		<ul style="list-style-type: none"> <li>• That the respective arbitrator may not act as Chair;</li> <li>• The parties shall acknowledge in writing the nature of the arbitrator's connection with the institution and confirm that there is no objection or reservation on their part to the appointment; and</li> <li>• The implementation of a governance system to avoid exploitation by the arbitrator of the connection with the institution in a way that may create a conflict of interest or which may influence the conduct of the arbitration case in any way.</li> </ul> <p>The aim of the new article is to enable arbitrators to act as co-arbitrators in proceedings administered by institutions in which they hold supervisory roles.</p> <p>The new article confirms that any violation of the conditions set out in Article 10 bis shall invalidate the award and give the parties the right to seek compensation from the institution and the arbitrator.</p>
<p><b>Article 23 - Determination of the applicable proceedings</b></p>	<ol style="list-style-type: none"> <li>1. Subject to the prohibition on a member of the Board of Trustees or the administrative branch of the competent Arbitration Institution administering the arbitration case in the State under Article 10(2), the Parties may agree on the procedures that the Arbitral Tribunal is required to follow in the arbitration.</li> <li>2. If there is no agreement to follow certain procedures, the Tribunal may determine the procedures that it deems appropriate subject to the provisions of the procedural Law, and basic principles in litigation and international agreements to which the State is a party.</li> </ol>	<p>As a result of the addition of Article 10 bis (which provides an exemption to the prohibition in Article 10(2) on the appointment of an arbitrator who is also a member of the Board of Directors, the Board of Trustees, or the administrative branch of the competent Arbitration Institution administering the arbitration case under certain conditions), Article 23 has been amended to remove the reference to it being subject to Article 10(2).</p>
<p><b>Article 28 - Place and Proceedings of arbitration</b></p>	<ol style="list-style-type: none"> <li>1. The Parties may agree on the place of arbitration, failing which the Tribunal shall make such determination having regard to the circumstances of the case, and convenience of the Parties.</li> <li>2. Unless otherwise agreed by the Parties, the Arbitral Tribunal may: <ol style="list-style-type: none"> <li>a. Hold the arbitration hearings in person at any place as it deems appropriate.</li> <li>b. Hold the arbitration hearings by all means of communication and modern electronic technologies. The Arbitral Tribunal shall deliver or send the minutes of the hearing to the Parties.</li> </ol> </li> </ol>	<p>Reflecting the increase in virtual hearings, revised Article 28 clarifies that both determination of the place of the arbitration and arbitration hearings may be conducted virtually, through modern technical means or in technical communities (as well as in-person).</p> <p>Further, the amendments to Article 23 require that arbitration centres in the UAE provide the necessary technology to conduct such virtual proceedings using modern technical means or within technical communities.</p>
<p><b>Article 33 - Arbitration Hearings and Proceedings</b></p>	<ol style="list-style-type: none"> <li>1. Unless otherwise provided by the Parties, the arbitration hearings shall be held at private meetings.</li> <li>2. Unless otherwise agreed by the Parties, the Arbitral tribunal may decide whether to hold oral hearings for the production of evidence or for oral arguments, or whether to proceed with the proceedings</li> </ol>	<p>Article 33 has been amended to remove the reference to hearings held through modern means of communication which is now clarified under amended Article 28.</p> <p>Also, the Tribunal's discretion to determine the rules of evidence that shall be followed, in the event that the applicable law lacks</p>

	<p>on the basis of documents and other material evidence. The Arbitral Tribunal may decide to hold these hearings at an appropriate state of the proceedings at the request of a party.</p> <ol style="list-style-type: none"><li>3. The hearings may be held through modern means of communication which do not require the Parties to appear in person at the hearings.</li><li>4. The Arbitral Tribunal shall notify the Parties of the dates of the hearings, in sufficient time before said hearings as the Arbitral Tribunal may deem appropriate, and as the case may be.</li><li>5. The Parties may, on their own costs, seek the assistance of experts and legal representatives such as attorneys and others to represent them before the Arbitral Tribunal. The Arbitral Tribunal may request any party to submit a proof of the power granted to his representative in the form specified by the Tribunal.</li><li>6. A summary of the facts of each hearing held by the Arbitral Tribunal shall be inscribed in a minute, a copy of which is delivered to each party.</li><li>7. Unless otherwise agreed by the Parties, the statements of the witnesses including experts may be heard according to the applicable laws in the State.</li><li>8. The Arbitral Tribunal shall have a discretionary power to determine the applicable rules of evidence, and the extent of admissibility, relation or evaluation of the evidence submitted by any party on an incident or expertise; moreover, it may determine the time, method and form in which said evidence is exchanged between the Parties, and the method of its provision to the Tribunal.</li></ol>	<p>evidence to rule on the dispute, is now subject to any alternative agreement of the parties regarding the rules of evidence that shall be followed.</p>
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