



## **THE UAE'S FEDERAL ARBITRATION LAW - GOOD THINGS COME TO THOSE WHO WAIT?**

In February 2018, the UAE's Federal National Council approved a draft UAE Federal Arbitration Law. This is a welcome development for arbitration in the UAE that will further enhance the UAE's position as a regional arbitration hub. In this briefing, we take a look at the likely effects of the new law on arbitration in the UAE and the next steps for its enactment.

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### **What is happening?**

On 27 February 2018, the UAE’s Federal National Council (FNC) approved a draft UAE Federal Arbitration Law (Arbitration Law).

The Arbitration Law is intended to replace the existing legislative regime, found in the UAE Civil Procedure Law, Federal Law No. 11 of 1992, as amended (the CPL).

A draft of the Arbitration Law has not yet been released publically, but it is understood that it will be based on the UNCITRAL Model Law on International Commercial Arbitration (the Model Law) – an international “best practice” model law adopted in several jurisdictions around the world.

### **Why is it important?**

This is a welcome and long-awaited development for arbitration in the UAE. The Arbitration Law has been widely anticipated for over a decade and the FNC’s approval of a draft law marks a significant, formal step forward in bringing the Arbitration Law closer to enactment.

The Arbitration Law is also expected to modernise the UAE’s arbitration regime and bring it more in line with international best practice; currently, there are just 16 provisions governing arbitration in the UAE, set out in Articles 203 to 218 of the CPL. These are broadly drafted and a key concern for arbitrating parties has been the

wide scope for challenges permitted (or at least not expressly prohibited) under the CPL; it is not uncommon for parties to face several months (if not years) of litigation in order to enforce arbitral awards in the UAE.

Despite this, the UAE has long been seen as an attractive and progressive seat for arbitration in the Middle East and a popular choice for arbitrating parties. However, the need for a dedicated, comprehensive arbitration law in the UAE has been reinforced in recent months. In 2016, amendments to Article 257 of the UAE Penal Code exposed tribunal members and experts to criminal sanctions for failing to perform their duties (see our earlier briefing<sup>1</sup>). This resulted in arbitrators and experts being reluctant to accept or continue appointments in UAE-seated arbitrations, with many parties drafting their contracts to seat future arbitrations outside the jurisdiction.

Further, in 2017, a UAE Ministerial Resolution called into question the ability of non-Emirati lawyers to appear before tribunals, at least outside of Dubai (see our earlier briefings<sup>2</sup>).

These developments, combined with the broad nature of the provisions

of the CPL, introduce elements of risk into UAE-seated arbitration proceedings that some parties find unpalatable. After all, contracting parties (and indeed tribunals and experts) usually value certainty above all else.

The new Arbitration Law is expected to introduce a comprehensive and modern arbitration regime that will reaffirm the UAE’s commitment to arbitration as a means of dispute resolution. In particular, it is hoped that the Arbitration Law will include clear and exhaustive provisions on arbitral procedure and enforcement of awards, while narrowing the scope for challenges to awards by recalcitrant award debtors.

Above all, the Arbitration Law is expected to provide greater certainty and assurance to commercial parties when choosing where to seat their proceedings, cementing the UAE as a desirable seat for regional arbitration.

### **What does this mean for arbitration in the UAE?**

The Arbitration Law has the potential to change and improve the landscape for arbitration in the UAE as, when enacted, it is expected to replace

1. <http://www.hfw.com/Article-257-of-the-UAE-Penal-Code-April-2017>

2. <http://www.hfw.com/Arbitration-in-the-UAE-one-step-forward-two-steps-back-November-2017>

<http://www.hfw.com/Arbitration-in-the-UAE-keep-calm-and-carry-on-in-Dubai-December-2017>



the existing arbitration provisions of the CPL. Its provisions are expected to apply to all onshore UAE-seated arbitrations commenced after the date of its enactment.

However, while the Arbitration Law is understood to be based largely on the Model Law, this does not necessarily mean that it will be adopted in full. Several jurisdictions have chosen to implement a version of the Model Law that is amended to suit their particular requirements or legal system. The UAE may choose to do the same. If so, the extent to which the existing arbitration provisions of the CPL are incorporated in the Arbitration Law, and thus continue to dictate arbitral procedure in the UAE, remains to be seen.

#### **What's next?**

While approval of the draft law by the FNC is a significant development, there remain several steps to be completed before the Arbitration Law will come into force.

The draft law must now be presented to the UAE Supreme Council for ratification, signed by the President of the UAE and then published in the Federal Gazette.

Once the Arbitration Law is published it will come into force one month

after the publication date, unless another date is specified.

The timeframe for these next steps can vary considerably and it is also possible that the draft will be subject to further changes. Laws that have previously been approved by the FNC have taken some time – often years – to come into force, while others have been amended after FNC approval.

However, there is cause for optimism in respect of the Arbitration Law. The recent developments in 2016 and 2017 drew international attention and have resulted in renewed calls and a drive for a dedicated UAE Arbitration Law. It is hoped that this current momentum is maintained. At the same time, the Dubai International Arbitration Centre – arguably the most popular of all UAE arbitral institutions – has prepared new arbitration rules which it intends to release this year. These are usually issued by Decree, again adding to the hope that UAE arbitration – and the Arbitration Law – is the focus of significant political attention.

We will write further on the Arbitration Law as and when there are more developments. In the meantime, should you have any queries regarding arbitration in the UAE, please contact the author.

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