

International arbitration

ARBITRATION IN INTERNATIONAL
CONTRACTS UNDER THE UAE CIVIL
PROCEDURES CODE BY **TONY MAALOULI**
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The negotiation of any international contract should include a thorough discussion of dispute resolution procedures.



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Arbitration has become a popular dispute resolution mode in many jurisdictions, including the UAE. In fact, in view of the many advantages that arbitration offers over litigation in the international arena, such clauses should be de rigueur in most international contracts.

For businessmen, litigation in court is rarely a comforting prospect. In the international context, the usual burdens and risks of litigation are compounded by the unfamiliarity of foreign laws, procedures and judges, the fear of partiality and the necessity of entrusting the dispute to foreign counsel.

Contrast that with the perspective of the client whose international dispute will be arbitrated. The client can be represented by his own counsel and need not obtain foreign counsel, arbitral proceedings will likely be in the language of the agreement and the client will have substantial involvement in the selection of the arbitrators. The process is clearly more accessible and expeditious when compared with the alternative of foreign judicial proceedings.

Arbitration further ensures a neutral forum and impartial administration. Problems of personal jurisdiction and service of process, often obstacles in international litigation, are avoided.

In contrast to the formal procedures of national legal systems, international arbitration procedures are less rigid, permitting the parties to adjust procedures to the particular demands of their dispute.

International rules combine civil and common law approaches to evidence-gathering and other issues. This blended approach usually entails reasonable limitations on document exchanges and the use of witness statements instead of depositions, resulting in more cost-effective procedures for pre-hearing disclosure and discovery.

Arbitration rules grant arbitrators broad powers with respect to the conduct of the proceedings and the fashioning of relief, including interim and conservatory measures.

The grounds upon which arbitration awards may be challenged are usually limited, and awards may not be challenged on the merits.

Under UAE laws in effect, arbitration is governed and regulated by the UAE Civil Procedures Code of 1992. For the interest of clarity, I will attempt to give a brief outline of the relevant provisions of the code in this regard.

The arbitration award must be rendered in the UAE for it to be deemed to be a local award otherwise it will be treated as a foreign award and will be subject to the rules pertaining to the enforcement of foreign arbitral awards. Such rules lay upon the party applying for the enforcement of an arbitral award, the duty of proving the existence of an agreement to refer the case to arbitration, that the parties have been properly summoned, that the award is enforceable and that it does not violate the public policy of the UAE. All claims must go through a channel of legalisation and be notified by the UAE embassy in the country concerned and the Ministry of Foreign Affairs in the UAE.

It is to be noted that the UAE is not yet a party to the New York convention on the enforcement of foreign arbitral awards. Hence, it is important for a party potentially interested in enforcing an arbitration award against UAE-based entity or assets, to avoid agreeing a foreign arbitration clause. However, there are some bilateral agreements with certain countries making enforcement of arbitration awards issued in those countries possible.

The arbitration clause or agreement should specify the rules under which the arbitration proceedings should be conducted. For a more effective supervision and conduct of arbitration proceedings held in the UAE it is advisable to agree to local rules. This will facilitate the certification of the award by the supervising body and subsequently its authentication through the UAE courts.

An award rendered by an arbitrator is final and may not be appealed against. However, for the award to be

enforceable the award must be ratified by a UAE court that examines only the formalities involved and does not review the merits of the award. The judgment ordering the enforcement of the award may, however, be appealed in the normal course of appealing a judgment unless the parties explicitly agree otherwise.

There is frequently a compelling need to seek interim relief in connection with arbitration. Although the UAE Civil Procedures Code remains silent on this issue, in line with Egyptian and Kuwaiti jurisprudence the Dubai Court of Cassation upheld that in the absence of the parties' mutual understanding in the arbitration agreement to empower the arbitrators to issue interim injunctions and orders, such powers shall not be recognised for the arbitrators.

A case study shows that the Dubai Court of Cassation upheld on various occasions that arbitration is an exceptional way of dispute resolution, restricted to what the parties specifically agreed with regard to referring the dispute to the arbitrators.

To conclude, we believe that arbitration may be the most adequate dispute resolution mode available on the local market, for disputes related to international contracts. However, uncertainties or silence under the UAE Civil Procedures Code regarding certain fundamental issues, and procedural complexities related to the enforcement of foreign arbitration awards, lead us to believe that the solution for such dilemmas lies in the amendment of national legislation. ■