

UAE LAW UPDATE – RECENT AMENDMENTS TO THE UAE FEDERAL ARBITRATION LAW

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The UAE recently introduced amendments to its Federal Arbitration Law No. 6 of 2018 ("FAL") through Federal Law No. 15 of 2023 (the "Amendment Law"). Following the issuance of new DIAC Rules last year, the Amendment Law provides a number of key changes to the FAL designed to streamline the arbitral process, introduce and implement cost saving mechanisms, and regulate the appointment of arbitrators (the "Amendments").

A summary of the changes introduced by the Amendment Law, which came into effect on 16 September 2023, are set out below.

ARBITRATORS (ARTICLE 10, FAL)

The Amendment Law has introduced a new Article 10 bis, easing the restrictions on the appointment of arbitrators who sit on the board of trustees or the administrative bodies of arbitral institutions.

The FAL in its original form prohibited those members from acting as arbitrators in proceedings administrated by the competent institution. The Amendment Law now extends this prohibition to members of the "Executive Management" of the competent institution. However, the new Article 10 bis provides for exceptions to these prohibitions subject to the satisfaction of the following conditions:

- the regulations of the competent institution do not prohibit the appointment;
- the competent institution has governance rules in place to (i) regulate the work of the arbitrator and ensure he/she remains impartial and free of conflicts and (ii) regulate the appointment, dismissal and withdrawal of the arbitrator as and when required;
- the arbitrator is not a sole arbitrator or chairperson;
- the parties have acknowledged in writing their knowledge of the arbitrator's connection with the arbitral institution;
- the arbitrator does not sit on more than five cases in any year; and
- the arbitrator undertakes not to exploit his/her capacity in a manner that may create a conflict of interests.

"Article 28 as amended now imposes an obligation on arbitral institutions to provide the technology necessary for conducting virtual hearings."

This new Article 10 bis may prove controversial as it opens up various avenues for the challenge of appointments and/or awards for alleged breaches of independence and impartiality. It also exposes not only the arbitrators independently, but also the associated institutions, to civil damages, for any violation of the law.

REMOTE HEARINGS AND THE USE OF TECHNOLOGY (ARTICLE 28, FAL)

Article 28 as amended now imposes an obligation on arbitral institutions to provide the technology necessary for conducting virtual hearings and to ensure that the technology used is secure and compliant in accordance with local laws. As such,

similar to what local courts currently offer, arbitral institutions will be required to provide certain e-services like virtual hosting platforms and e-bundling services, which parties previously had to outsource.

CONFIDENTIALITY OF PROCEEDINGS, RULES OF EVIDENCE (ARTICLE 33, FAL)

The Amendment Law has extended the confidentiality of the arbitration to the entirety of the proceedings. Article 33 in its original form only applied to hearings. This change is in line with modern arbitration laws and international institutional rules which commonly include a requirement to keep all the proceedings (not only hearings) confidential.

Article 33 as amended grants arbitral tribunals greater procedural flexibility by explicitly allowing them to decide disputes on a document only basis. This amendment is designed to enhance procedural efficiency as it will allow tribunals to eliminate the need for straightforward and low value claims to be heard orally. This will save costs and unnecessary expenses.

"The amended Article 33 also gives tribunals discretion to determine rules of evidence."

The amended Article 33 also gives tribunals discretion to determine rules of evidence *"provided that those rules do not prejudice the public order"*. Article 33 now expressly provides that such discretion will apply *"unless otherwise agreed by the parties"* and *"in the absence of rules of evidence to resolve the dispute in the applicable law"*. The reference to the applicable law appears to indicate that rules of evidence should primarily be determined by reference to the law of the contract rather than the law of the seat. The wording also suggests that there may be instances where foreign rules of evidence may contradict UAE public policy. It is always preferable for parties to agree in advance the applicable rules of evidence to avoid disagreement once a dispute has arisen.

CONCLUSION

Whilst it remains to be seen how the amendments may impact the practice of arbitration in the UAE, they illustrate the efforts made by the federal government to strengthen the position of the UAE as a regional and even global hub for arbitration.

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