

UNITED ARAB EMIRATES (UAE)

DELOS GUIDE TO ARBITRATION PLACES (GAP)

CHAPTER PREPARED BY

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline all responsibility in this regard.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

UAE Federal Arbitration Law No. 6 of 2018 on Arbitration has been recently issued and gazetted. It repeals the Arbitration Chapter of the UAE Civil Procedures Law No. 11 of 1992. The new law came into effect on 16 June 2018 and will apply to all ongoing and future arbitral proceedings. The new law is expected to significantly revamp arbitration in the UAE.

This GAP chapter on UAE is currently being updated to incorporate the provisions of the new UAE Federal Arbitration Law.

Arbitration has become a popular method of dispute resolution in the United Arab Emirates ("UAE"). The UAE has a number of popular seats for arbitration, including onshore Dubai and Abu Dhabi and the offshore financial centres such as the Dubai International Financial Centre ("DIFC") and Abu Dhabi Global market ("ADGM"). The recent trends have shown parties' willingness to submit their commercial disputes to arbitration, rather than only specialized disputes (e.g. construction). The arbitration rules of the UAE arbitration centres, such as the Dubai International Financial Centre-London Court of International Arbitration ("DIFC-LCIA") and Dubai International Arbitration Centre ("DIAC"), are generally modern and reflect the best practices of the international arbitration institutions.

Key places of arbitration in the jurisdiction	Dubai and Abu Dhabi.
Civil law / Common law environment?	The UAE is a civil law environment (excluding DIFC and ADGM, which are common law environments).
Confidentiality of arbitrations?	The UAE law does not provide for confidentiality of the arbitrations.
Requirement to retain (local) counsel?	There is no requirement to retain counsel. Parties can either retain outside (local or non-local) counsel or be self-represented.
Ability to present party employee witness testimony?	The UAE Civil Procedure Law No.11 of 1992 ("CPC") permits parties to present party employee witness testimony.
Ability to hold meetings and/or hearings outside of the seat?	Parties can hold meetings and hearings at any location of their choosing. However, for the arbitral award to be enforceable, it must be signed and issued in the UAE.
Availability of interest as a remedy?	The parties can recover interest as a remedy, subject to the provisions in the CPC.
Ability to claim for reasonable costs incurred for the arbitration?	The CPC does not confer a general right in relation to claims for costs. The ability to claim for reasonable costs incurred throughout the course of the arbitration depends on the parties' agreement and/or the applicable rules of the arbitration institution.
Restrictions regarding contingency fee arrangements and/or third-party funding?	The UAE law does not prohibit third-party funding in general. For example, the UAE permits subrogation of claims by insurers (Article 1030 of the UAE Civil Transaction Code). However, contingency fee arrangements are prohibited.

<p>Party to the New York Convention?</p>	<p>The UAE is a signatory of the New York Convention. The New York Convention entered into force in the UAE on 19 November 2006.</p>
<p>Other key points to note</p>	<p>The UAE has few unusual features. The CPC requires UAE arbitral awards to be physically signed in the UAE to comply with the technical requirements required for a valid award and be enforceable. In addition, a corporate party to an agreement must be expressly and strictly authorised to agree to arbitration as a means of resolving disputes under the agreement. More recently, in 2016, Article 257 of the Federal Penal Code No.3 of 1987, as amended by Federal Decree Law No.7 of 2016 (the “Penal Code”) expanded potential criminal liability of arbitrators in the UAE. Previously, Article 257 only applied to experts. At present, Article 257 states that an arbitrator and an expert may be punished with imprisonment for issuing a decision or report <i>“in contravention of the requirements of the duty of neutrality and integrity”</i>. The potential criminal liability extends to arbitrators and experts sitting in the DIFC and ADGM since they are also subject to the criminal laws of the UAE.</p>
<p>WJP Civil Justice score (2018)</p>	<p>0.68</p>

ARBITRATION PRACTITIONER SUMMARY

UAE Federal Arbitration Law No. 6 of 2018 on Arbitration has been recently issued and gazetted. It repeals the Arbitration Chapter of the UAE Civil Procedures Law No. 11 of 1992. The new law came into effect on 16 June 2018 and will apply to all ongoing and future arbitral proceedings. The new law is expected to significantly revamp arbitration in the UAE.

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Arbitration has been a widely-used method for resolving commercial disputes arising out of domestic and international commercial transactions in the UAE. The UAE's ascension to the New York Convention in 2006 and the drafting of a proposed UAE Federal Arbitration Law (to replace the existing Federal Code of Civil Procedure) highlights the UAE's commitment to utilising arbitration as a popular commercial dispute resolution regime in the region. The UAE courts are generally supportive of and respect an agreement to arbitrate between parties (although they have tended to adapt a restrictive approach to confirming arbitration agreements as an exception to their general jurisdiction). The UAE courts also respect domestic, international and foreign arbitral awards and recognise and enforce them, subject to the provisions of the law, without examining the merits of the case.

Date of arbitration law?	At present, the CPC governs all arbitrations conducted in the UAE (excluding those that take place in the context of the DIFC and the ADGM). The CPC arbitration provisions were drafted in 1992 and have remained largely unchanged since then. Article 203 (arbitration agreement) and Article 241 (conduct of the execution bailiff) were amended in 2005 pursuant to Federal Law No. 30 of 2005.
UNCITRAL Model Law? If so, any key changes thereto?	The CPC is not based on the UNCITRAL Model Law. The new federal arbitration law is based on the UNCITRAL Model Law and replaces Articles 203 to 218 of the CPC.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	There are no specialised arbitration courts or judges in the UAE.
Availability of <i>ex parte</i> pre-arbitration interim measures?	The parties can apply for precautionary attachment orders on an <i>ex parte</i> basis as a pre-arbitration interim measure.
Courts' attitude towards the competence-competence principle?	The CPC does not expressly provide for the competence-competence doctrine. However, this principle is recognised by the UAE courts. There are no statutory provisions, which prohibit the arbitrator(s) from determining their jurisdiction.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	N Under the CPC, awards may be challenged for the following reasons: (1) the award was rendered without an arbitration deed or was based on an invalid arbitration agreement or deed, (2) the arbitrator was invalidly appointed, (3) the award was issued by one arbitrator in the absence of other members of the tribunal without their permission, (4) the award was issued out

	of time, (5) a material procedural flaw in the arbitral proceedings (6) the award relates to a matter that is not capable of being arbitrated, or (7) the award is contrary to the public policy of the UAE. This reflects the criteria under Article V of the New York Convention.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	This issue has not been addressed by the courts to date.
Other key points to note?	∅

JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

1.1 Is the arbitration law based on the UNCITRAL Model Law?

At present, the arbitration law is not based on the UNCITRAL Model Law.

The CPC governs all arbitrations conducted in the UAE (excluding DIFC and the ADGM). These provisions are: (a) Articles 203 to 218 which set out the general framework for arbitration in the UAE, (b) Articles 235 to 238 which govern the enforcement of foreign judgments and arbitral awards, and (c) Article 239 to 243 which govern execution proceedings.

The UAE accepted in 2006, without reservation, the 1958 New York Convention on the Recognition and Enforcement of Arbitral Awards, and thus the provisions of the convention became part of UAE law and bind the UAE courts. Where there is any contradiction between the UAE law and the convention, the latter prevails.

As indicated above, CPC arbitration provisions are not based on the UNCITRAL Model Law at present, but will likely incorporate the UNCITRAL model law into the forthcoming federal arbitration law.

1.2 When was the arbitration law last revised?

The CPC arbitration provisions were drafted in 1992 and have remained largely unchanged since then. Only Article 203 (arbitration agreement) and Article 241 (conduct of the execution bailiff) were amended in 2005, pursuant to Federal Law No. 30 of 2005.

2. The arbitration agreement

2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

The CPC does not contain express provisions that regulate how the courts and/or tribunals should determine the substantive law. In the meantime, the CPC law does not prevent the parties to an arbitration agreement from agreeing on a substantive law. Therefore, the tribunal has procedural freedom under the CPC and, in practice, determines the substantive law using the applicable conflict-of-laws rules.

2.2 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

The CPC does not contain express provisions in relation to severability of the arbitration clause. However, the trend of the UAE courts has been towards recognising the severability of the arbitration clause in instances where the rest of the contract (in which the arbitration clause is set forth) is cancelled/terminated.

2.3 What are the formal requirements (if any) for an enforceable arbitration agreement?

For an arbitration agreement to be enforceable, it must fulfil the following requirements:

1. Article 203.2 of the CPC requires that the arbitration agreement is evidenced in writing.
2. The arbitration agreement should be signed in person or electronically by an authorised person in his/her legal capacity.
3. Pursuant to Ministerial Resolution No.406/2 of 2003, UAE governmental bodies may not enter into an arbitration agreement without prior approval from the Cabinet of Ministers (such

contracts are reviewed by the Ministry of Justice, Islamic Affairs and Awqaf in coordination with the Ministry of Finance and Industry).

4. Article 203.3 of the CPC provides that wherever the arbitration agreement takes the form of an arbitration deed, then the subject dispute must be determined in the deed.
5. Article 206.1 of the CPC states that it shall not be permissible for a minor or a person under a legal disability or a person deprived of his civil rights by reason of a criminal penalty or an unrehabilitated bankrupt to be an arbitrator.
6. Article 206.2 of the CPC stipulates that if there is more than one arbitrator, their number must in all cases be uneven.
7. Article 210.1 of the CPC provides that the arbitration award shall be issued within six months as of the date of the first arbitration hearing, unless otherwise agreed.

2.4 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?

Under UAE law, a third party normally cannot be bound by an arbitration clause contained in an agreement to which it is not a party.

2.5 Are there restrictions to arbitrability? In the affirmative:

2.5.1 Do these restrictions relate to specific domains (such as IP, corporate law, etc.)?

Article 203.4 of the CPC states that "[i]t shall not be permissible to arbitrate matters in which conciliation is not permissible". These matters include matters related to public policy, criminal matters and family matters. Also, certain commercial agency and distributorship disputes (see e.g. Articles 6-7 of the Federal Law No.18 of 1981, as amended also known as the UAE Commercial Agency Law) and all labour disputes (see e.g. Federal Law No.8 of 1980, also known as the UAE Labour Law) may not be resolved through arbitration.

In recent years, the issue of arbitrability has been a key consideration as a result of a Dubai Court of Cassation judgment that seemed to interpret public policy extremely widely to include all real estate disputes and disputes concerning the circulation of wealth. However, recent judgments in both Dubai and Abu Dhabi have clarified that such disputes are indeed arbitrable, save for issues concerning registration of ownership, which is reserved to the State.

2.5.2 Do these restrictions relate to specific persons (i.e. State entities, consumers, etc.)?

In general, the UAE law does not permit a minor or a person with a legal disability to arbitrate. In addition, pursuant to Ministerial Resolution No.406/2 of 2003, UAE governmental bodies may not enter into an arbitration agreement without prior approval from the Cabinet of Ministers (such contracts are reviewed by the Ministry of Justice, Islamic Affairs and Awqaf in coordination with the Ministry of Finance and Industry).

3. Intervention of domestic courts

3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?

Yes, irrespective of whether the place of arbitration is inside or outside of the jurisdiction. However, in order for this to occur, one of the parties must object to the litigation at the first hearing. The court will not do so *sua sponte*.

3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?

This issue does not appear to have been considered yet.

3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to the anti-suit injunction, but not only)

This issue does not appear to have been considered yet.

4. The conduct of the proceedings

4.1 Can parties retain outside counsel or be self-represented?

Parties can opt for either. They can retain outside counsel or be self-represented.

4.2 How strictly do courts control arbitrators' independence and impartiality? For example: does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances justify this outcome?

While there are no explicit independent and impartial disclosure obligations imposed on arbitrators in the CPC, the courts are strict in relation to this issue. Potential arbitrators are highly encouraged to disclose any circumstances likely to give rise to justifiable doubts to his/her impartiality or independence in order to avoid a potential request for disqualification and/or criminal sanction pursuant to Article 257 of the Federal Penal Code No.3 of 1987, as amended by Federal Decree Law No.7 of 2016 ("Penal Code").

4.3 On what grounds to courts intervene to assist in the constitution of the arbitral tribunal (in case of *ad hoc* arbitration)?

The CPC provides, under Article 204.1, that where a dispute arises and the parties have not appointed the arbitrators or if one or more of the appointed arbitrators refuses to act or retires or is removed or judgment is passed rejecting him or if an obstacle arises preventing him from conducting the arbitration and there is no agreement in that respect between the parties, the court with the original jurisdiction to hear the dispute shall appoint the required arbitrators on application by one of the parties. This is conducted through the regular procedures for bringing an action and the number appointed by the court shall be equal to the number agreed upon by the parties.

4.4 Do courts have the power to issue interim measures in connection with arbitrations?

Under the CPC, the UAE courts rarely grant such relief and it is unlikely that any order for interim relief made by a tribunal would be enforced by the court. The UAE courts can grant orders stopping a tribunal from proceeding with arbitration, but this is extremely rare.

4.4.1 If so, are they willing to consider *ex parte* requests?

The parties can apply for precautionary attachment orders on an *ex-parte* basis as a pre-arbitration interim measure.

4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?

Yes, the CPC regulates the conduct of the arbitration proceedings. For example, the CPC regulates the appointment and challenge of arbitrators. It also provides that the arbitrators must require testifying witnesses to take an oath. In addition, the CPC regulates the time limit for an arbitrator to produce an arbitral award and the requirements of issuing the award.

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

The CPC does not expressly provide that arbitration proceedings are confidential. Parties should explicitly request that the arbitration proceedings be confidential or opt for rules of an arbitration institution which provide for a confidential treatment of the proceedings. However, the confidentiality of the arbitration

proceedings can no longer be assured once the proceedings are adjudicated before the local courts (e.g., in relation to the ratification and execution of the award).

4.5.2 Does it regulate the length of arbitration proceedings?

Yes. The proceedings must be completed within six months from the date of the first arbitration hearing unless the parties agree to extend the time limit (Article 210 of the CPC).

4.5.3 Does it regulate the place where hearings and/or meetings may be held?

No, but generally hearings and meetings can take place anywhere. However, the arbitral award must be signed and issued in the UAE.

4.5.4 Does it allow for arbitrators to issue interim measures?

The CPC does not explicitly vest the tribunal with such powers. Since the UAE courts do not tend to regularly grant such measures in practice, any grant of such measures by a tribunal is likely to face enforcement challenges.

4.5.4.1 In the affirmative, under what conditions?

Not applicable.

4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence?

The UAE courts expressly stipulate that the arbitrators are empowered to evaluate the weight of the evidence presented, and accordingly the courts do not review this issue during the ratification process.

4.5.6 Does it make it mandatory to hold a hearing?

In the case of documents-only proceedings, it is not mandatory for parties to hold a hearing. However, in the case where the parties provide witness statements, the UAE law provides that it is mandatory for witnesses to give evidence under oath. In such cases, it is necessary for the parties to ensure that a hearing takes place even if it is for the sole purpose of having the witness swear an oath as to the truth of their statement.

4.5.7 Does it prescribe principles governing the awarding of interest?

The UAE law does not prohibit awarding of interest. Awards of interest in the UAE generally vary between 9% and 12% and are granted on a single/simple interest basis. The UAE courts are unlikely to enforce an award of interest if such an award is calculated on a compounded basis. Alternatively, the UAE courts may grant enforcement for the award except for the part dealing with the compound interest.

4.5.8 Does it prescribe principles governing the allocation of arbitration costs?

Article 218 of the CPC states that the assessment of their fees and the costs of the arbitration shall be left to the arbitrators to decide, and they may make an award in respect of the whole or part thereof against the losing party. The court may, upon the application of one of the parties, vary such assessment to make it appropriate to the effort expended and the nature of the dispute.

4.6 Liability

4.6.1 Do arbitrators benefit from immunity to civil liability?

The UAE law does not provide immunity for arbitrators. The arbitrators under UAE law could be liable if they have acted criminally. An arbitrator may, however, be required to compensate the parties where the arbitrator withdraws from the proceedings without a good reason (Article 207.2 of the CPC). The arbitrators further may be criminally liable under Article 257 of the Penal Code as noted above in Paragraph 4(B). The

arbitrators also may be subject to a civil liability if it is proved that they committed a gross error in line with the general rules of tort liability, however, it is difficult under the UAE law to evidence the gross error, and we may say that it is very rare.

4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?

The recent amendment of Article 257 of the Penal Code expanded the potential criminal liability of arbitrators in the UAE. Previously, an arbitrator could be held criminally liable when he or she was held guilty of corruptions. At present, Article 257 states that an arbitrator may be punished with imprisonment for issuing a decision “in contravention of the requirements of the duty of neutrality and integrity”. The amended provision puts arbitrators at risk of criminal prosecution which may result in imprisonment if he/she is found to have issued a decision which violates the arbitrator(s) duty of neutrality and integrity. The potential criminal liability extends to arbitrators sitting in the DIFC and ADGM since they are also subject to the criminal laws of the UAE.

5. The award

The general requirements of for an award to be enforceable are as follows:

1. Article 212.5 of the CPC states that the award of the arbitrators shall be issued by a majority; it must be in writing, with the dissenting view, if any, and it must in particulate include a copy of the arbitration agreement, a summary of the statements and documents of the parties, the reasons for the award and the order(s) made, the date of issue, the place at which it was issued, and the signature of the arbitrators, and if one or more of the arbitrators has refused to sign the award such fact shall be stated, and the award shall be valid if signed by the majority of the arbitrators.
2. Article 212.6 of the CPC stipulates that the award shall be written in Arabic unless the parties have agreed otherwise, and in that even it must, on being deposited, be accompanied by an official [notarised] translation.
3. Article 216.1(a) of the CPC stipulates that the arbitration award must be issued with a terms of reference.

Article 215.1 of the CPC provides that the arbitration award must be ratified by the competent court in order to be enforceable.