UNITED ARAB EMIRATES (UAE)

DELOS GUIDE TO ARBITRATION PLACES (GAP)

CHAPTER PREPARED BY

JOHN GAFFNEY, SARA KOLEILAT-ARANO AND MALAK NASREDDINE
OF AL TAMIMI & COMPANY

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

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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

Arbitration is a popular method of dispute resolution in the United Arab Emirates ("UAE"). The UAE is unique because it has two forms of arbitration jurisdictions in one country. In this regard, the UAE offers a number of popular seats, 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"), which each have their own legislative frameworks for arbitration. Recent trends have shown parties’ willingness to submit their general commercial disputes to arbitration, rather than only their specialized disputes (e.g. construction).

The UAE Federal Arbitration Law No. 6 of 2018 on Arbitration ("Arbitration Law") governs arbitrations in the United Arab Emirates. The law, which came into effect on 15 June 2018, repeals Articles 203-218 of Federal Law No 11 of 1992, commonly known as the Civil Procedures Code, ("CPC"), which previously governed arbitrations seated in the UAE. Several provisions of the Arbitration Law can be traced to the UNCITRAL Model Law. The Arbitration Law applies to all ongoing and future arbitral proceedings, even if these were based on an arbitration agreement entered into prior to the entry into force of the Arbitration Law, i.e. it has retroactive effect.

This GAP chapter on the UAE incorporates the provisions of the recently-enacted Arbitration Law ("Part 1") and also includes developments on arbitration seated in offshore UAE, namely the Dubai International Financial Centre ("DIFC") and the Abu Dhabi Global Market ("ADGM") ("Part 2"). Arbitration in the DIFC is governed by the DIFC Law No.1 of 2008 ("DIFC Arbitration Law"), which was enacted in September 2008 and amended in December 2013. Arbitration in ADGM is governed by the ADGM Arbitration Regulations of 2015 ("ADGM Arbitration Regulations"), which were enacted on 17 December 2015.

Key places of arbitration in the jurisdiction?
The key places of arbitration in the UAE are Dubai (onshore and offshore through the DIFC), Abu Dhabi (onshore and offshore through ADGM) and Sharjah.

Civil law / Common law environment?
Onshore UAE, which excludes the DIFC and ADGM offshore free zones, is a civil law environment. The DIFC and ADGM essentially constitute common law jurisdictions.

Confidentiality of arbitrations?
As regards onshore arbitration, the Arbitration Law provides that arbitration hearings and arbitral awards are confidential, unless otherwise agreed by the parties (see Articles 33 and 48 of the Arbitration Law). However, the Arbitration Law permits the publication of judicial orders that include the arbitration award (see Article 48 of the Arbitration Law).

As for offshore arbitration:
- The ADGM Arbitration Regulations (Art. 40) prohibit parties from disclosing any confidential information to a third party, unless otherwise agreed by the parties, ordered by the arbitral tribunal or as may be required by legal duty or to protect or pursue a legal right.
- The DIFC Arbitration Law (Art. 14) provides that all information relating to the arbitral proceedings shall be kept confidential, unless otherwise agreed by the parties, and except where disclosure is required by an order of the DIFC.

Requirement to retain (local)
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| Requirement to retain (local) | There is no requirement, whether onshore or offshore, to retain |
| **Ability to present party employee witness testimony?** | There is no prohibition on parties from presenting 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 or through modern means of communication. In the absence of the parties' agreement, the arbitral tribunal will decide on the location while taking into consideration the circumstances of the claim and the parties' convenience (Article 28 of the Arbitration Law; Article 27 of the DIFC Arbitration Law; Article 33 of the ADGM Arbitration Regulations). |
| **Availability of interest as a remedy?** | Onshore, the parties can recover interest as a remedy subject to certain limitations provided by the applicable laws in the UAE. Offshore, the DIFC Arbitration Law does not expressly provide for the possibility for arbitral tribunals to award interest. In the ADGM, subject to any contrary agreement by the parties, the tribunal's powers as regards the awarding of interest shall be in accordance with the substantive law governing the claim for which an award of interest is sought and include the possibility of awarding simple or compound interest (Art. 47 of the ADGM Arbitration Regulations). |
| **Ability to claim for reasonable costs incurred for the arbitration?** | In onshore arbitration, an arbitral tribunal can assess the costs of the arbitration, unless the parties agree otherwise (Art. 46 of the Arbitration Law). The Law defines the 'costs of arbitration' as including the fees and expenses incurred by any member of the arbitral tribunal in the exercise of his/her duties including expenses of appointed experts. The arbitral tribunal may order either party to bear all or part of the expenses. Upon the request of a party, and unless there is an agreement as to the apportionment of the costs, the competent Court of Appeal may amend the sum of expenses to be awarded (Article 46 of the Arbitration Law). In such an exercise, the Court will be guided by considerations of the tribunal's efforts, the nature of the dispute, and the arbitrators' experience. In offshore arbitration, the DIFC Arbitration Law (Article 38(5)) and the ADGM Arbitration Regulations (Article 50(5)) both provide that the arbitral tribunal may fix the costs of the arbitration in the award. They also both enable the arbitral tribunal to include the legal costs of the successful party within the meaning of arbitration costs to such extent that the arbitral tribunal determines that the amount of such costs, or a part of them, is reasonable. |
| **Restrictions regarding contingency fee arrangements and/or third-party funding?** | Onshore, UAE law does not expressly prohibit or allow third-party funding. For example, the UAE permits subrogation of claims by insurers (Article 1030 of the UAE Civil Transaction Code). However, contingency fee arrangements are prohibited in the UAE. Offshore, the ADGM enacted Litigation Funding Rules, which apply |
to ADGM arbitration and ADGM litigation proceedings. The rules focus on certain fundamental issues, such as qualifying requirements for third-party funders, financial and other interests in third-party funders, litigation funding arrangements, and conflicts of interest (Section 225 of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015).

Practice Direction No. 2 of 2017 on Third Party Funding in the DIFC Courts (the “Direction”) permits third-party funding in the DIFC Courts, subject to certain requirements, including a notice requirement where the funded party is required to notify every other party to the proceedings of the identity of the funder and the fact that a litigation funding agreement has been entered into. However, neither the Direction nor the DIFC Arbitration Law provide express provisions relating to third-party funding in DIFC-seated arbitrations. Notwithstanding this, it is our view that the DIFC's friendly approach to third-party funding implies that such an arrangement should not be of an issue. Particularly, the DIFC Courts, as the supervisory court of a DIFC-seated arbitration, are unlikely to refuse to recognise and enforce an arbitral award resulting from an arbitration in which one of the parties benefited from third-party funding.

### Party to the New York Convention?

The UAE is a signatory of the New York Convention. The UAE acceded to the New York Convention on 13 June 2006 by Federal Decree No. 43 of 2006. The New York Convention entered into force in the UAE on 19 November 2006. The UAE made no reservations to the New York Convention. The DIFC and ADGM are also bound by the New York Convention by virtue of the fact that they are part of the UAE.

### Other key points to note?

Some “unusual features” may sometimes arise. For example, the representative of a corporate entity must be expressly and duly authorised to agree to arbitration as a means of resolving disputes in order to bind the company to arbitrate (see Article 4.1 of the Arbitration Law). The UAE Courts adopt a formalistic approach and often scrutinize, in much detail, the authority granted to the parties agreeing to arbitration. While the new arbitration regime reaffirms the requirement that the requisite authority/ies must agree to arbitrate, it remains to be tested whether the courts will continue to conduct a stringent review of the validity of the parties’ agreement to arbitrate. With that said, the formalistic approach is expected to continue, at least for the time being. It is therefore prudent for an arbitral tribunal to request proof of authority at the outset. It is also prudent for the tribunal, absent an agreement to the contrary by the parties, to continue to administer the oath of the witnesses and experts (see Article 33.7 of the Arbitration Law).

In addition, experts, translators and investigators may be criminally liable where they knowingly make a false statement. An arbitrator could be held criminally liable if s/he was held guilty of...
corruption. The standard applied to an arbitrator’s potential criminal liability for corruption is the same as that applied to public servants.

Under the old regime, as per Article 257 of the UAE Penal Code, an arbitrator could be exposed to criminal liability for issuing a decision “in contravention of the requirements of the duty of neutrality and integrity”. However, this is no longer the case. On 23 September 2018, Federal Decree Law No. 24 of 2018 amended Article 257 of Federal Law No. 3 of 1987 (as amended), known as the UAE Penal Code, by excluding arbitrators from being subject to criminal prosecution as a result of a breach of their duty of “neutrality and integrity”.

WJP Civil Justice score (2019) 0.66
**ARBTRATION PRACTITIONER SUMMARY**

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 accession to the New York Convention in 2006, on a no-reservations basis, and the enactment of the UAE Federal Arbitration Law No. 6 of 2018 on Arbitration ("Arbitration Law") (which replaced Articles 203 to 218 of the UAE Federal Code of Civil Procedure No. 11 of 1992), the provisions of which can be traced to the UNCITRAL Model Law, highlight the UAE's commitment to arbitration as a popular commercial dispute resolution regime for the region. The UAE courts are generally supportive of, and respect, arbitration agreements between parties (although they have tended to adopt a restrictive approach to upholding 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.

The UAE government is empowered to establish financial free zones pursuant to Federal Law No. 8 of 2004 Regulating the Financial Free Zones, and has notably established the Dubai International Financial Centre ("DIFC") and the Abu Dhabi Global Market ("ADGM"). Both are both bound by treaties and conventions to which the UAE is a party.

The DIFC, established in 2004, is a financial free zone located in Dubai. It has its own civil, commercial and arbitration laws, and largely follows the English common law approach. It also has its own English-language common law courts and has been designed to appeal to the international business community. The DIFC was established pursuant to Federal Decree No 35 of 2004. Dubai Law No 9 of 2004 set out the law of the DIFC and formation of Judicial Authority. Dubai Law No 12 of 2004, as amended by Law No 6 of 2011, or the Judicial Authority Law, set out the court of First Instance and Court of Appeal. The DIFC Court Law was enacted by DIFC Law No 10 of 2004, with Article 19 and 24 setting out the jurisdiction.

The ADGM, established in 2013, is a financial free zone located in Abu Dhabi. It has its own civil, commercial and arbitration laws. The ADGM was established pursuant to Federal Decree No. 15 of 2013 and Cabinet Resolution No. 4 of 2013. Abu Dhabi Law No. 4 of 2013 sets out the governance, legislative and regulatory framework and activities to be carried out in the ADGM. ADGM is the first jurisdiction in the Middle East to directly apply English common law. ADGM courts are broadly modelled on the English judicial system, and are the supervisory courts in respect of arbitrations seated in ADGM. English common law, including the rules and principles of equity, is directly applicable in ADGM. In addition, a wide-ranging set of English statutes on civil matters are also applicable in ADGM.

<table>
<thead>
<tr>
<th>Date of arbitration law?</th>
<th>The Arbitration Law was published in the Federal Official Gazette no. 630 of 15 May 2018 and came into effect on 15 June 2018. The Cabinet Decision No (57) of 2018 (&quot;Cabinet Decision&quot;) regarding the Executive Regulation of the UAE Civil Procedure Law came into force on 16 February 2019. Arbitration in the DIFC is governed by the DIFC Law No.1 of 2008 (&quot;DIFC Arbitration Law&quot;), which was enacted in September 2008 and amended in December 2013. Arbitration in ADGM is governed by the ADGM Arbitration Regulations of 2015 (&quot;ADGM Arbitration Regulations&quot;), which were enacted on 17 December 2015.</th>
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<td>UNCITRAL Model Law? If so, any key changes thereto?</td>
<td>Many provisions of the Arbitration Law, the DIFC Arbitration Law and the ADGM Arbitration Regulations can be traced back to the UNCITRAL Model Law. Key changes from the UNCITRAL Model Law:</td>
</tr>
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</table>
### In the Arbitration Law

(i) The signatory must be authorised to enter into the arbitration agreement, otherwise the arbitration agreement is considered null and void (see Article 4 of the Arbitration Law). No such requirement exists under the UNCITRAL Model Law;

(ii) Arbitral proceedings are deemed to have commenced from the date following the formation of the arbitral tribunal, unless otherwise agreed by the parties (Article 27 of the Arbitration Law). However, the UNCITRAL Model Law provides that the arbitral proceedings are deemed to have commenced on the date on which the request for arbitration is received by the respondent (Article 21 of the UNCITRAL Model Law);

(iii) Unless otherwise agreed by the parties, the arbitral tribunal may hold the arbitration hearings through modern means of communication and technology (e.g., video conferencing) (Article 28 of the Arbitration Law). The UNCITRAL Model Law does not provide for arbitration hearings through modern means of technology;

(iv) Expressly protection of the confidentiality of arbitration hearings and arbitral awards, unless otherwise expressly agreed by the parties (Articles 33 and 48 of the Arbitration Law). The UNCITRAL Model Law does not expressly provide confidentiality provisions;

(v) The arbitral tribunal may join a third party to the arbitral proceedings, provided that the latter is a party to the underlying arbitration agreement and upon the request of a party or the third party itself (Article 22 of the Arbitration Law). The UNCITRAL Model Arbitration Law does not provide for the joinder of a third party;

(vi) A party seeking to set aside the arbitral award must submit the request within 30 days from the date of the notification of the award (Article 54 of the Arbitration Law). However, the UNCITRAL Model Law provides for a duration of 3 months from the date of receipt of the award (Article 34 of the UNCITRAL Model Law);

(vii) Where a party submits an application to annul or set aside the award, the UNCITRAL Model Law empowers the courts to stay enforcement even if the parties have not requested it (see Article 36.2 of the UNCITRAL Model Law). However, while the Arbitration Law empowers the courts to stay enforcement, it may not do so sua sponte but only at the request of either party (see Article 56.1 of the Arbitration Law).

### In the ADGM Arbitration Regulations

- **Confidentiality:** the award and any information relating to the arbitral proceedings are confidential and may not be disclosed to a third party, save for certain limited circumstances (Article 40 of the ADGM Arbitration
The UNCITRAL Model Law does not contain provisions on confidentiality.

- **Joinder of third parties:** the ADGM Court of First Instance or the arbitral institution administering the arbitration (if there is one) can join a third party to the arbitration even if that third party is not a party to the arbitration agreement and other parties do not consent (Article 36.1 of the ADGM Arbitration Regulations). The UNCITRAL Model Law does not contain provisions on third-party joinder.

- **Waiver / limitation of right to challenge:** the parties may, by an express statement in the arbitration agreement, or by a subsequent written agreement, fully waive the right to bring an action for setting aside, or to limit it to certain grounds (Article 54 of ADGM Arbitration Regulations). The UNCITRAL Model Law does not expressly permit such a waiver.

### In the DIFC Arbitration Law

- **Confidentiality:** all information relating to the arbitral proceedings must be kept confidential, unless otherwise agreed by the parties or where the DIFC court orders the disclosure (Article 14 of the DIFC Arbitration Law). The UNCITRAL Model Law does not contain provisions on confidentiality.

- **Number of arbitrators:** In the event that the parties have not agreed on the number of arbitrators, the UNCITRAL Model Law provides that the default number of arbitrators shall be three (Article 10(2)) whereas the DIFC Arbitration Law provides that the default number of arbitrators is one (Article 16(2)).

- **Vicarious liability:** The UNCITRAL Model Law does not provide for any limitation of liability of the arbitral tribunal and others. In contrast, the DIFC Arbitration Law holds the arbitrators, employees or agents of the arbitrators, arbitral institution, appointing authority not liable to any person for any act of omission in connection with an arbitration, unless they are shown to have caused damage by conscious and deliberate wrongdoing (Article 22 of the DIFC Arbitration Law).

- **Certification of award:** An enhanced provision in the DIFC Arbitration Law is the provision relating to the recognition and enforcement of awards. The DIFC Arbitration Law requires the original award, or an original arbitration agreement to be duly certified if it is a copy that is certified in accordance with the laws of the jurisdiction in the place of arbitration or elsewhere (Article 42(3) of the DIFC Arbitration Law).

### Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?

The UAE does not have specialised courts or judges that decide on arbitration matters. However, Article 1 of the Arbitration Law designates the UAE Court of Appeal (i.e., the local or federal Court of Appeal, as the case may be) to deal with onshore UAE arbitration matters; Articles 11 and 12 of the ADGM Arbitration

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<th><strong>Regulations designate the ADGM Court of First Instance to deal with arbitration matters; and Articles 10 and 11 of the DIFC Arbitration Law designates the DIFC Court of First Instance to deal with arbitration matters.</strong></th>
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<td><strong>Availability of ex parte pre-arbitration interim measures?</strong></td>
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<tr>
<td>The parties can apply for precautionary attachment orders on an ex-parte basis as a pre-arbitration interim measure.</td>
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<tr>
<td><strong>Courts’ attitude towards the competence-competence principle?</strong></td>
</tr>
<tr>
<td>In onshore arbitration, the Arbitration Law permits the arbitral tribunal to rule on its own jurisdiction (including objections in relation to the nullity, non-existence, or expiration of an arbitration agreement), either as a preliminary question or in a final award. A party may, in the event that the tribunal rules on its jurisdiction as a preliminary matter, request the competent Court of Appeal to review and make its own determination on the matter within 15 days of notification of the tribunal's decision. The competent Court of Appeal is required to issue its decision within 30 days of the party's request. This decision is not subject to appeal. The arbitral tribunal is required to stay the arbitration proceedings pending the judicial decision on its jurisdiction unless it decides to continue the proceedings at the request of a party (see Article 19 of the Arbitration Law).</td>
</tr>
<tr>
<td>In offshore arbitration, the DIFC (Article 23 of the DIFC Arbitration Law) and ADGM (Article 24 of the ADGM Arbitration Regulation) recognise the principle of competence-competence, and grant the arbitral tribunal the discretion to rule on such pleas as a preliminary question or in a partial or final arbitral award on the merits. The ADGM provides that any such ruling may be challenged by any available arbitral process of appeal or review that the parties have agreed to. The DIFC Arbitration Law and the ADGM Arbitration Regulations require objections to the jurisdiction of the arbitral tribunal to be raised promptly, but allow late objection if the party raising the objection can prove the delay to be justified.</td>
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<tr>
<td><strong>Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?</strong></td>
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<td>In onshore arbitration, the Arbitration Law provides grounds for the annulment of awards that are additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention. Under the Arbitration Law, a party may seek to have an award annulled on similar grounds as Article V of the New York Convention, and also in the case where: (1) a party failed to submit its defence due to a breach from the arbitral tribunal, or due to any other reason outside its control, (2) the substantive law applicable to the dispute was not applied in the award, or (3) the arbitration procedures are invalid and their invalidity affect the award (see Article 53 of the Arbitration Law). As for offshore arbitration, the DIFC (Article 41 of the DIFC Arbitration Law) and ADGM (Article 53 of the ADGM Arbitration Regulation) both track the grounds for annulment set forth in the UNCITRAL Model Law. They do not provide grounds for the</td>
</tr>
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| 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 pursuant to the new regime established by the Arbitration Law, and it does not yet appear to have been tested in the ADGM.

Article 44(1)(a)(v) of the DIFC Arbitration Law states that the DIFC Courts may refuse to recognise or enforce an arbitral award, irrespective of the state or jurisdiction in which it was made, if the award debtor furnishes proof to the DIFC Courts that the award has not yet become binding on the parties or has been set aside or suspended by a Court of the State or jurisdiction in which, or under the law of which, that award was made. This would allow the Court, in its discretion, to refuse to recognise and/or enforce a foreign award. As far as we are aware, the DIFC Courts have not been confronted with the circumstances where a foreign-seated arbitral award has been recognised and enforced in the DIFC, while it was annulled at the seat of arbitration. |
| Other key points to note? | ☐ |
JURISDICTION DETAILED ANALYSIS: (1) ONSHORE ARBITRATION

1. Legal Framework

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

As indicated above, many provisions of the Arbitration Law can be traced to the UNICTRAL Model Law.

1.1.1 If yes, what key modifications if any have been made to it?

The Arbitration Law contains several provisions that deviate from the UNICTRAL Model Law, including:

(i) The Arbitration Law provides that the signatory must be authorised in order to enter into the arbitration agreement, otherwise the arbitration agreement is considered null and void (see Article 4 of the Arbitration Law). No such requirement exists under the UNICTRAL Model Law;

(ii) The Arbitration Law provides that arbitral proceedings are deemed to have commenced from the date following the formation of the arbitral tribunal, unless otherwise agreed by the parties (see Article 27 of the Arbitration Law). However, the UNICTRAL Model Law provides that the arbitral proceedings are deemed to have commenced on the date on which the request for arbitration is received by the respondent (see Article 21 of the UNICTRAL Model Law);

(iii) The Arbitration Law provides that, unless otherwise agreed by the parties, the arbitral tribunal may hold the arbitration hearings through modern means of communication and technology (e.g., video conferencing) (see Article 28 of the Arbitration Law). The UNICTRAL Model Law does not provide for arbitration hearings through modern means of technology;

(iv) The Arbitration Law expressly protects the confidentiality of arbitration hearings and arbitral awards, unless otherwise expressly agreed by the parties (see Articles 33 and 48 of the Arbitration Law). The UNICTRAL Model Law does not expressly provide confidentiality provisions;

(v) The Arbitration Law allows the arbitral tribunal to join a third party to the arbitral proceedings, provided that the third party is a party to the underlying arbitration agreement and upon the request of a party or the third party itself (see Article 22 of the Arbitration Law). The UNICTRAL Model Arbitration Law does not provide for the joinder of a third party;

(vi) The Arbitration Law states that a party seeking to set aside the arbitral award must submit the request within 30 days from the date of the notification of the award (see Article 54 of the UAE Arbitration Law). However, the UNICTRAL Model Law provides for a duration of 3 months from the date of receipt of the award (see Article 34 of the UNICTRAL Model Law);

(vii) The Arbitration Law provides that arbitral awards should be confidential and may not be published in whole or in part without the written consent of the parties (Article 48 of the Arbitration Law). The UNCITRAL Model Law does not contain provisions on confidentiality; and

(viii) Where a party submits an application to annul or set aside the award, the UNCITRAL Model Law empowers the court to stay enforcement even if the parties have not requested it (see Article 36.2 of the UNCITRAL Model Law). However, while Arbitration Law empowers the court to stay enforcement, it may not do so sua sponte but only at the request of either party (see Article 56.1 of the UAE Arbitration Law).

1.2 When was the arbitration law last revised?

The Arbitration Law recently came into force on 15 June 2018 and has not been amended since. It is important to note that on 9 December 2018, the Cabinet Decision was issued, which came into force on 16 February 2019, regarding the recognition and enforcement of foreign awards. This Decision repeals Articles 235-238 of the CPC and lays out a new framework for the enforcement of foreign awards. Significantly, the Cabinet Decision mandates that applications for the enforcement of foreign awards must be brought directly before an execution judge and that orders for the enforcement of foreign awards by such judge
must be issued within a maximum of three days (Article 85(2)). The Cabinet Decision also provides such orders will be enforceable with immediate effect (Article 78).

In a decision dated 15 January 2019 the Federal Court of Cassation has also clarified that the concept of double-exequatur or the requirement for obtaining recognition of an award at the seat of the arbitration is not a pre-requisite for applying for its enforcement in another jurisdiction does not apply in the UAE, as it is a signatory of the New York Convention.

2. **Arbitration Agreement**

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

Generally, and subject to the parties’ agreement, the law of the seat of arbitration governs the arbitration agreement in the UAE.

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

The Arbitration Law recognises the severability of the arbitration agreement. Arbitration clauses are considered separate from the main contract. The invalidity, termination or cancelation of the contract does not affect the arbitration agreement contained therein (unless the matter relates to the incapacity of either party). In addition, a party's claim to the invalidity, termination or cancelation of the contract will not result in a stay of the arbitration proceedings (see Article 6 of the Arbitration Law).

2.3 Formal requirements for the validity and/or enforceability of the arbitration agreement?

The Arbitration Law provides the following formal requirements for an enforceable arbitration agreement:

(i) The arbitration agreement must be in writing and concluded by an authorised signatory (see Article 4.1 of the Arbitration Law). The UAE Arbitration Law provides that a representative of a juridical person must have specific authority to enter into an arbitration agreement. In the case of a limited-liability company, the general manager is usually the authorised signatory. In the case of other corporate forms, a specific power of attorney or company authority may be required to confirm that the signatory is duly authorised. Under UAE law, a party must verify that the other party's signatory has the necessary power to enter into an arbitration agreement. The UAE courts tend to be conservative; while arbitration agreements can be incorporated by reference, it is generally advisable that the arbitration clause is explicitly signed by the authorised parties;

(ii) Matters on which conciliation is not permissible cannot be resolved through arbitration (see Article 4.2 of the Arbitration Law);

(iii) The arbitration agreement may be recorded in a separate agreement, within the contract or incorporated by reference. The arbitration agreement may also be executed after the dispute arises, subject to the arbitration agreement specifying all matters that will be covered by arbitration (see Article 5 of the Arbitration Law);

(iv) The arbitration agreement must be evidenced in writing. The Arbitration Law provides that this requirement may be fulfilled by an exchange of correspondence (including emails), by reference to an arbitration clause contained in another document and by oral agreement, if made during a court proceeding and recorded in a judgment. (Article 7 of the Arbitration Law);

(v) 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).
2.4 Application of arbitration agreements to non-signatory parties

The UAE Arbitration Law permits joining a third party to arbitral proceedings, upon request of either party or the third party him/herself, provided that the third party is a party to the underlying arbitration agreement (see Article 22 of the Arbitration Law).

2.5 Are there restrictions to arbitrability?

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

Article 4.2 of the Arbitration Law states that arbitration may not be conducted for matters for which conciliation is not possible. 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 in Case No. 14/2012 (220) issued on 16 September 2012, that seemed to interpret public policy extremely widely so as to include most real estate disputes and disputes concerning the circulation of wealth. However, recent judgments such as in Abu Dhabi Court of Cassation Case No. 55 of 2014 have clarified that such disputes are indeed arbitrable, save for issues concerning registration of ownership of real estate property, which remains reserved to the jurisdiction of the State's courts and as such may not be arbitrable.

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, the Arbitration Law provides that the competent court, before which an action was commenced regarding a dispute in respect of which an arbitration agreement exists, will dismiss the action (unless the arbitration agreement was void and unenforceable). In order for the competent court to do so, the respondent must object to the litigation on the first hearing before submitting any request or plea on merits (see Article 8.1 of the Arbitration Law). Any such action brought before a court shall not preclude the commencement or continuance of arbitration proceedings or the issuance of an arbitral award (see Article 8.2 of the Arbitration Law).

3.1.1 If the place of the arbitration is inside of the jurisdiction?

Yes.

3.1.2 If the place of the arbitration is outside of the jurisdiction?

Yes.
3.2 How do courts treat injunctions by arbitrators enjoining parties to stay litigation proceedings?

This issue does not appear to have been tested 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 tested 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 (i.e., local/foreign lawyers/non-lawyers) 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?

The courts are strict in relation to this issue. The Arbitration Law expressly requires the arbitrators to disclose in writing any circumstances that are likely to give rise to justifiable doubts as to their impartiality or independence. Arbitrators must disclose such information at the time of their appointment or at the time they becomes aware of such circumstances (see Article 11 of the Arbitration Law). Arbitrators that fail to disclose these circumstances may face a challenge (see Article 14 of the Arbitration Law).

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

The Arbitration Law provides that a party may request the local or federal Court of Appeal to assist in appointing an arbitrator where a dispute arises and the Authorized Party does not appoint an arbitrator in accordance with the procedures specified in the parties’ agreement or, in the absence of an agreement, the Law. The Court’s decision in this regard is subject to no appeal (see Article 11.5 of the Arbitration Law). A party may also request the local or federal Court of Appeal, upon payment of an applicable fee, to obtain a roster of arbitrators from an arbitration institution in the UAE, for the purpose of appointing and constituting the arbitral tribunal (see Article 11.8 of the Arbitration Law).

4.4 Do courts have the power to issue interim measures in connection with arbitrations? If so, are they willing to consider ex parte requests?

Article 18 of the Arbitration Law provides that the local or federal Court of Appeal may, upon the request of either party or the arbitral tribunal, issue interim or precautionary measures (without resulting in a stay on the arbitration proceedings). (see Articles 18 and 36 of the Arbitration Law).

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

The parties can apply for precautionary attachment orders on an ex

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

Yes, the Arbitration Law regulates the conduct of the arbitration proceedings. For example, the Arbitration Law:

(i) Regulates the appointment and challenge of arbitrators;
(ii) Regulates the joinder of third parties into the arbitration proceedings;
(iii) Outlines the conditions of the notifications sent to parties and the arbitral tribunal;
(iv) Regulates the conduct of the hearings and the witness and expert evidence (including the appointment of experts and the examination of testimonies);
(v) Regulates the time limit for an arbitrator to produce an arbitral award and the requirements of issuing the award; and
(vi) Regulates the arbitrators’ authority to issue interim and precautionary measures.

The Arbitration Law allows the parties to agree on the procedures to be adopted by the arbitral tribunal in the arbitration proceedings, including their right to decide that such procedures shall be subject to the rules applicable in any arbitral organization or entity in the UAE or abroad (Article 23.1 of the Arbitration Law). If there is no agreement, the arbitral tribunal may, subject to the provisions of Arbitration Law, determine the procedures it deems appropriate and in a manner consistent with the fundamental principles of litigation and international conventions to which the UAE is a party (Article 23.2 of the Arbitration Law).

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

The Arbitration Law provides that arbitration hearings and arbitral awards are confidential, unless otherwise agreed by the parties (see Articles 33 and 48 of the Arbitration Law). However, the Arbitration Law permits the publication of judicial orders that include the arbitration award. The confidentiality of the arbitration proceedings cannot be preserved once elements of these proceedings have been submitted to adjudication 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?

The Arbitration Law provides that the length of the proceedings shall be determined by the parties themselves. If the parties fail to arrive at an agreement on a specific time limit or the method of its determination, then, the Arbitration Law requires that the award be issued within six months from the date of the first hearing. The Arbitral Tribunal may extend the time for up to six additional months, unless the Parties agree to a longer extension (Article 42(1) of the Arbitration Law).

The Arbitration Law further provides that the tribunal or either Party may, if no arbitral award is issued within this time period, request the court to issue a decision extending the time period for issuing the arbitral award or terminating the arbitral proceedings, as necessary. The tribunal may extend such period under such conditions as it shall deem appropriate and its decision in this regard shall be final, unless otherwise agreed by the Parties (Article 42(2) of the Arbitration Law).

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

Yes, the parties may agree on the place where hearings and/or meetings may be held. In the absence of an agreement by the parties, the arbitral tribunal will decide on a place based on the circumstances of the arbitration and convenience to the parties. Unless otherwise agreed by the parties, the arbitral tribunal may hold the hearings and/or meetings in a physical place or through the means of modern electronic communication (see Article 28 of the Arbitration Law).

4.5.4 Does it allow for arbitrators to issue interim measures? In the affirmative, under what conditions?

Yes, unless agreed otherwise by the parties, the arbitral tribunal has the authority to issue interim measures upon the request of either party or on its own discretion. The arbitral tribunal may issue an order to:

(i) Preserve evidence that is material to the arbitration;
(ii) Take specific measures to safeguard goods that form part of the subject matter of the arbitration;
(iii) Preserve assets pending the issuance of the award;
(iv) Return the party to his/her original position prior to the arbitration; or 
(v) Prevent immediate or imminent harm to the arbitration proceeding. The arbitral tribunal may oblige the party requesting the interim or precautionary measures to provide a security for costs or to bear all damages arising out of the execution of such measures (see Article 21 of the Arbitration Law).

The arbitral tribunal may order interim measures, unless the parties have previously agreed otherwise, and subject to the applicable laws of the UAE.

4.5.5 Does it regulate the arbitrators’ right to admit/exclude evidence? For example, are there any restrictions to the presentation of testimony by a party employee?

The arbitral tribunal has the discretion to determine the applicable rules of evidence, the relevance of the evidence, and the extent to which the evidence is accepted (see Article 33.8 of the Arbitration Law).

4.5.6 Does it make it mandatory to hold a hearing?

The arbitral tribunal may decide whether or not to hold a hearing, unless otherwise agreed by the parties (see Article 33.1 of the Arbitration Law). However, the Arbitration Law states that hearings of witnesses and experts must be conducted in accordance with the laws of the UAE, unless otherwise agreed by the parties (see Article 33.7 of the Arbitration Law). The UAE Federal Law No. 10 of 1992 on the Issuance of the Evidence Act for Civil and Commercial Transactions provides that witnesses are required to testify under oath. Therefore, and unless otherwise agreed by the parties, 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(es) swear an oath as to the truth of their statement(s).

4.5.7 Does it prescribe principles governing the awarding of interest?

The Arbitration Law does not prescribe principles governing the awarding of interest. The UAE Federal Commercial Transactions Law No. 18 of 1993 provides that the interest is calculated on the basis of the agreed rate until full settlement, where the contract stipulates the rate of interest and the debtor delays payment. The interest must be paid at the end of the year (if the debt is for one year or more) or on the maturity date of the debt (if the debt period is less than one year), unless otherwise required by the commercial or banking practice. Awards of interest in the UAE generally vary from one Emirate to the other and are generally between 9% and 12%. They are granted on a single/simple interest basis.

This does not mean that arbitral tribunal is prohibited from awarding compound interest to the parties. However, the UAE Courts may, in some cases, refuse the enforcement of an award of compound interest at the enforcement stage. In the past, there have been contradicting judgments between the UAE Federal Courts and the Dubai courts in regards to compound interest. On the one hand, the UAE Federal Supreme Court held that compound interest is not acceptable and regards such interest as null and void (Federal Supreme Court case 130/19). On the other hand, the Dubai Court of Cassation allowed compound interest as long as it was calculated at the agreed rates or prevailing market rate. The Dubai Court of Cassation stated that interest is calculated as compound interest in respect of the period prior to closing a current account and as simple interest thereafter (see, for example, Dubai Court of Cassation, judgment No. 46/1992).

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

The UAE Arbitration Law provides that the arbitral tribunal can assess the costs of the arbitration, unless the parties agree otherwise (see Article 46 of the Arbitration Law). The arbitral tribunal may make an award in respect of the whole or part thereof. In doing so, the tribunal is not limited to issuing an order to pay costs only 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 Arbitration Law does not provide for the immunity of arbitrators. However, the Arbitration Law provides that arbitrators are treated as judges and, as such, are generally immune from liability unless they have engaged in a criminal wrongdoing. The arbitrators may also be subject to civil liability if it is proved that they committed a gross and manifest error in line with the general rules of tort liability. However, it is difficult to evidence such error in the UAE.

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

At present, experts, translators and investigators are exposed to criminal liability in respect of knowingly making a false statement. An arbitrator could be held criminally liable if he/she was held guilty of corruption pursuant to the standard applied to public servants.

Under the old regime, an arbitrator could be exposed to criminal liability for issuing a decision “in contravention of the requirements of the duty of neutrality and integrity”. However, this is no longer the case. On 23 September 2018, Federal Decree Law No. 24 of 2018 amended Article 257 of Federal Law No. 3 of 1987 (as amended), known as the UAE Penal Code, by excluding arbitrators from being subject to criminal prosecution as a result of a breach of their duty of “neutrality and integrity”.

5. Award

5.1 Can parties waive the requirement for an award to provide reasons?

Parties can waive the requirement of a reasoned award by an agreement to that effect (Article 41(4) of the Arbitration Law.

5.2 Can parties waive the right to seek annulment of the award? If, yes under which conditions?

The Arbitration Law acknowledges that parties can waive their right to seek annulment prior to the issuance of the arbitral award. However, it renders this ineffective by providing that a party may bring an action to set aside an award even after waiving its right to do so (Article 54.5 of the UAE Arbitration Law).

5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

There are no atypical mandatory requirements for the rendering of a valid award rendered at a seat in the UAE.

The UAE Arbitration Law provides that an award must be in writing, and has to be signed by the majority of the members of the arbitral tribunal. Dissenting opinions, if any, have to be stated in the body of the award. In absence of a signature by an arbitrator, the arbitral tribunal must include the reason for such omission. The arbitral tribunal must include information about the parties (ie, names and addresses) and the arbitrators (ie, names, nationalities and addresses), a copy of the arbitration agreement, a summary of the claims, statements, documents, and the operative part of the award, and the date and place where the award was issued. The award must state the date on which it was rendered as well as the seat of the arbitration (Article 41 of the UAE Arbitration Law).

5.4 Is it possible to appeal an award (as opposed to seeking its annulment)? If yes, what are the grounds for appeal?

No.
5.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

The Arbitration Law distinguishes between local and foreign arbitral awards. A party seeking to enforce a local arbitral award must submit a request for the recognition and enforcement of the award to the relevant Court of Appeal accompanied by:

(i) The original award or a certified true copy thereof;
(ii) A copy of the arbitration agreement;
(iii) A certified Arabic translation of the arbitral award from an accredited body if the award was rendered in a foreign language; and
(iv) A copy of the transcript of filing the judgment with the court (Article 55.1 of the UAE Arbitration Law).

The chief justice of the court, or a delegate appointed by him, shall recognise and enforce the arbitral award within a period of sixty (60) days from the day of the request, unless it finds one or more reasons to annul the arbitral award under Article 53.1 of the UAE Arbitration Law (Article 55.2 of the UAE Arbitration Law).

A party seeking to enforce a foreign arbitral award must submit a request for the recognition and enforcement of the award to the Execution Judge of the UAE court. The Execution Judge will issue an order for enforcement within three days from the day of the request, provided that:

(i) The UAE courts do not have exclusive jurisdiction over the dispute, and that the foreign court (which recognised the award) had jurisdiction in accordance to its applicable laws;
(ii) The arbitral award was issued and duly certified in accordance with the law of the foreign state;
(iii) The parties were properly represented in the dispute;
(iv) The arbitral award has acquired the legal effect of res judicata;
(v) The arbitral award does not conflict with a judgment or an order previously issued by the UAE court; and
(vi) The arbitral award does not violate public order or morality of the UAE (Articles 85 and 86 of the Cabinet Decision).

The order of the Execution Judge is enforceable with immediate effect because it is to be considered as an ‘Order on Petition’, which is immediately enforceable by operation of law (Article 78 of the Cabinet Decision). While the Cabinet Decision provides for the procedural rules for the enforcement of foreign arbitral awards, the substantive conditions of enforcement of foreign arbitral awards will still continue to be governed by the New York Convention, which supersedes the Cabinet Decision (Article 88 of the Cabinet Decision).

5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

An action to set aside an arbitral award does not stay its enforcement (Article 56 of the UAE Arbitration Law).

5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

This issue has not been addressed by the courts to date pursuant to the new regime provided for by the Arbitration Law.

5.8 Are foreign awards readily enforceable in practice?
The Arbitration Law lacks express provisions on the enforcement of foreign arbitral awards. However, the Cabinet Decision was enacted on 9 December 2018. The Cabinet Decision came into force on 16 February 2019 and clarified that the enforcement regime of foreign arbitral awards does not fall within the ambit of the Arbitration Law. Articles 85, 86 and 88 of the Cabinet Decision replaced Articles 235, 236 and 238 of the UAE Civil Procedures Law. In effect, the enforcement applications under the new procedure are directly made to an Execution Judge in the Execution Court instead of the previous regime, which provided for the filing of a court case before the competent Court of First Instance. The Execution Judge rules on the application within three days, but the decision can be appealed. Further, before granting enforcement, the Execution Judge must be satisfied with the following:

(i) The UAE courts did not have exclusive jurisdiction over the dispute in respect of which the award was granted;
(ii) The award was issued in accordance with the law of the country where it was rendered, and the award is duly attested;
(iii) The parties were summoned to appear and were duly represented before the court or tribunal;
(iv) The award is final and binding under the law of the place where it was issued;
(v) The award does not conflict with judgment or award previously issued by a court in the UAE, and contains nothing in breach of the public morals or order in the UAE; and
(vi) The Execution Judge must also be satisfied that the award was rendered in respect of a matter that is arbitrable under UAE law, and is enforceable in the country where it was rendered. The new procedure does not derogate from the UAE's international obligations under the New York Convention.

6. **Funding arrangements**

6.1 Are there restrictions to the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction?

The UAE law does not expressly 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 in the UAE.

7. Is there likely to be any significant reform of the arbitration law in the near future?

The Arbitration Law of 2018 and the new enforcement procedure are in conformance with international standards. No significant reforms are expected in the near future.
JURISDICTION DETAILED ANALYSIS: (2) OFFSHORE ARBITRATION

1. The legal framework of the jurisdiction

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

The DIFC Arbitration Law and ADGM Arbitration Regulations are largely based on the UNCITRAL Model Law.

1.1.1 If yes, what key Modifications if any have been made to it?

The ADGM Arbitration Regulations includes modifications and enhancements to the UNCITRAL Model Law, including:

- The ADGM Arbitration Regulations provide that the award and any information relating to the arbitral proceedings are confidential and may not be disclosed to a third party, save for certain limited circumstances (Article 40 of the ADGM Arbitration Regulations). The UNCITRAL Model Law does not contain provisions on confidentiality.
- The ADGM Arbitration Regulations provide that the ADGM Court of First Instance or the arbitral institution administering the arbitration (if there is one) can join a third party to the arbitration even if that third party is not a party to the arbitration agreement and other parties do not consent (Article 36.1 of the ADGM Arbitration Regulations). The UNCITRAL Model Law does not contain provisions on third-party joinder.
- The ADGM Arbitration Regulations provide that the parties may, by an express statement in the arbitration agreement or by a subsequent written agreement, fully waive the right to bring an action for setting aside, or to limit it to certain grounds (Article 54 of ADGM Arbitration Regulations). The UNCITRAL Model Law does not expressly permit such a waiver.

The DIFC Arbitration Law also includes modifications and enhancements to the UNCITRAL Model Law, including:

- DIFC law provides that all information relating to the arbitral proceedings must be kept confidential, unless otherwise agreed by the parties or where the DIFC court orders the disclosure (Article 14 of the DIFC Arbitration Law). The UNCITRAL Model Law does not contain provisions on confidentiality.
- In the event that the parties have not agreed on the number of arbitrators, the UNCITRAL Model Law provides the default number of arbitrators to be three (Article 10(2)) whereas the DIFC Arbitration Law provides for the default number of arbitrators to be one (Article 16(2)).
- The UNCITRAL Model Law does not provide for any limitation of liability of arbitral tribunal and others. The DIFC Arbitration Law holds the arbitrators, employee or agent of the arbitrators, arbitral institution, appointing authority not liable to any person for any act of omission in connection with an arbitration, unless they are shown to have caused damage by conscious and deliberate wrongdoing (Article 22 of the DIFC Arbitration Law).
- An enhanced provision in the DIFC Arbitration Law is the provision relating to the recognition and enforcement of awards. The DIFC Arbitration Law requires the original award, or an original arbitration agreement to be duly certified if it is a copy that is certified in accordance with the laws of the jurisdiction in the place of arbitration or elsewhere (Article 42(3) of the DIFC Arbitration Law).

1.1.2 If no, what form does the arbitration law take?

Not applicable.
1.2 When was the arbitration law last revised?

Arbitration in the DIFC is governed by the DIFC Law No.1 of 2008 (DIFC Arbitration Law) which was enacted on September 2008 and amended in December 2013. Arbitration in ADGM is governed by the ADGM Arbitration Regulations of 2015 (ADGM Arbitration Regulations) which was enacted on 17 December 2015. The latter has not been revised or amended as at the date of writing.

2. The arbitration agreement

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

Generally, and subject to the parties' agreement, the law of the seat of the arbitration governs the arbitration agreement.

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

The ADGM Arbitration Regulations recognise the separability of the arbitration agreement. Arbitration clauses are considered separate from the main contract. The invalidity, ineffectiveness or non-existence of the contract does not affect the arbitration agreement contained therein (Article 14 of the ADGM Arbitration Regulations). In the DIFC, arbitration clauses are also considered separate from the main contract and may survive termination or invalidation of the main contract (Article 23(1) of the DIFC Arbitration Law).

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

The ADGM Arbitration Regulations provide the following formal requirements for an enforceable arbitration agreement:

- An arbitration agreement shall be in writing. It can result from an exchange of written communications or be contained in a document to which reference is made in the main agreement (Article 13.2 of the ADGM Arbitration Regulations).
- An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement (Article 13.1 of the ADGM Arbitration Regulations).
- The party to the arbitration agreement is not, under the law applicable to it, under some incapacity (Article 57.1(a) of the ADGM Arbitration Regulations).
- The arbitration agreement must not be conducted on matters on which settlement is not permissible (Article 57.1(b) of the ADGM Arbitration Regulations).

The DIFC Arbitration Law provides the following formal requirements for an enforceable arbitration agreement:

- The arbitration agreement shall be in writing. It can result from an electronic communication or from an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other or be contained in a document to which reference is made in the main agreement (Article 12 of the DIFC Arbitration Law).
- An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement (Article 12.1 of the DIFC Arbitration Law).
- The party to the arbitration agreement is not, under the law applicable to it, under some incapacity (Article 44(1)(a)(i) of the DIFC Arbitration Law).
- The arbitration agreement must not be conducted on matters are not capable of settlement by Arbitration under the laws of the DIFC (Article 44(1)(b)(vi) of the DIFC Arbitration Law).
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?

The ADGM Arbitration Regulations permits joining a third party to arbitral proceedings, by the request of either party or the third party him/herself, provided that the third party is a party to the underlying arbitration agreement (see Article 36 of the ADGM Arbitration Regulations). The DIFC Arbitration Law is silent on this aspect.

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.)?

The ADGM Arbitration Regulations and DIFC Arbitration Law provide that the subject matter of the dispute must be capable of settlement by arbitration pursuant to the law. 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. Recent judgments in both Dubai and Abu Dhabi have found that issues concerning registration of ownership of real estate property are not arbitrable, and remain reserved to the jurisdiction of the State’s courts and as such may not be arbitrable.

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). These restrictions also apply to ADGM and DIFC arbitration proceedings.

3. Intervention of domestic courts

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

The ADGM Arbitration Regulations provide that a party may apply to the ADGM court to stay proceedings regarding a dispute in respect of which an arbitration agreement exists (Article 15.1 of the ADGM Arbitration Regulations). The ADGM court will usually grant a stay, unless it is satisfied that the arbitration agreement is null and void, inoperative, or incapable of being performed (Article 15.2 of the ADGM Arbitration Regulations). The parties may commence or continue the arbitral proceedings, and the arbitral tribunal may issue an arbitral award, while the issue is pending before the ADGM court (Article 15.4 of the ADGM Arbitration Regulations).

The DIFC Arbitration Law also provides that a party may request the ADGM court to dismiss or stay the proceedings regarding a dispute in respect of which an arbitration agreement exists (Article 13.1 of the DIFC Arbitration Law). The DIFC Court will dismiss or stay the court proceedings action unless it finds that the Arbitration Agreement is null and void, inoperative or incapable of being performed (Article 13.1 of the DIFC Arbitration Law). The parties may commence or continue the arbitral proceedings, and the arbitral tribunal may issue an arbitral award, while the issue is pending before the DIFC Court (Article 13.2 of the DIFC Arbitration Law).

3.1.1 If the place of arbitration is inside of the jurisdiction?

Yes.
3.1.2 If the place of the arbitration is outside of the jurisdiction?

Yes.

3.2 How do courts treat injunctions by arbitrators enjoining such courts to stay litigation proceedings?

This issue does not appear to have been tested yet in the ADGM.

With respect to the DIFC, Article 24 of the DIFC Arbitration Law provides that arbitrators in DIFC-seated arbitrations have the power to order interim measures unless the parties have expressly agreed otherwise. In such a circumstance, it is likely that the DIFC Courts would respect the arbitrators’ request and order a stay in any litigation whose subject-matter overlapped with that of the arbitration, on the basis of the general policy that the parties had agreed to resolve their dispute by way of arbitration and not litigation in the DIFC Courts. We are not aware of any case law on this point.

In arbitrations seated outside the DIFC (i.e. foreign-seated arbitrations), the DIFC Courts may consider an application by a party to litigation to stay proceedings in favour of arbitral proceedings, irrespective of whether there is a request issued by the arbitral tribunal. Such an application would be made under the DIFC Courts’ general case management powers. It is advisable to challenge any litigation in the DIFC Courts in favour of arbitration at the outset of the proceedings. The existence of an agreement to resolve a dispute in an alternative forum is considered a strong argument against the DIFC Court exercising its jurisdiction.

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 tested yet in the ADGM.

With respect to the DIFC, and as a general proposition, the DIFC Courts would be unwilling to intervene in arbitrations seated elsewhere as the most appropriate court would be the curial one. However, there may be a basis for the DIFC Courts making orders relating to foreign-seated arbitrations. Article 15 of the DIFC Arbitration Law provides that “It is not incompatible with an Arbitration Agreement for a party to request, before or during arbitral proceedings, from a Court an interim measure of protection and for a Court to grant such measure.” This provision does not restrict such applications to arbitrations seated in the DIFC. However, the DIFC Courts would have to be satisfied firstly that they have jurisdiction to make any relevant order, and so the dispute must fall within one of the gateways in Article 5 of the Judicial Authority Law (for example, claims or actions where the parties agree in writing to file such claim or action with it whether before or after the dispute arises, provided that such agreement is made pursuant to specific, clear and express provisions (Article 5(2)). The respondent to the application may challenge the DIFC Courts’ jurisdiction and ask that any jurisdiction of the DIFC not be exercised. We are not aware of any case law on this point.

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 (i.e., local/foreign lawyers/non-lawyers) or be self-represented.

4.2 How strictly do courts control arbitrators’ independence and impartiality?

The courts are strict in relation to this issue. The ADGM Arbitration Regulations and DIFC Arbitration Law expressly require the arbitrator to disclose in writing any circumstances likely to give rise to justifiable doubts to his/her impartiality or independence. The arbitrator must disclose such information at the time of his/her appointment or at the time he/she becomes aware of such circumstances (see Article 19.1 of the ADGM Arbitration Regulations and Article 18.1 of the DIFC Arbitration Law). An arbitrator that fails to
disclose these circumstances may face a challenge (see Article 19.2 of the ADGM Arbitration Regulations and Article 18.2 of the DIFC Arbitration Law).

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

The AGDM Arbitrations Regulations and DIFC Arbitration Law allow the respective courts to assist in constituting the arbitral tribunal if requested to do so by a party, in circumstances where the parties have failed to agree on the appointment of a sole arbitrator or when, in case of a three-member arbitral panel, one of the parties has failed to appoint its party-appointed arbitrator or the two party-appointed arbitrators have failed to agree on the third, presiding, arbitrator (see Article 18 ADGM of the Regulations and Article 17 of the DIFC Arbitration Law).

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

Article 29 of the ADGM Arbitration Regulations provides that a party may apply to the ADGM court, before or during arbitral proceedings, for measures relating to the taking of evidence or provisional or conservatory measures (Article 29.1 of the ADGM Arbitration Regulations). The ADGM court shall act only if or to the extent that the arbitral tribunal, and any arbitral or other institution or person vested by the parties with power in that regard, has no power or is unable for the time being to act effectively (Article 29.2 of the ADGM Arbitration Regulations).

Similarly, the DIFC Arbitration Law grants the Arbitral Tribunal the power to order interim measures as it considers necessary (Article 24 of the DIFC Arbitration Law). Interim measures include orders to maintain or restore the status quo pending determination of the dispute, as a means of preserving assets, or preventive orders for action that is likely to cause, current or imminent harm or prejudice to any party or to the arbitral process itself, or orders to preserve evidence. The DIFC Courts also have the power of issuing interim measures in relation to arbitration proceedings (Article 24(3) of the DIFC Arbitration Law).

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

The parties can apply for precautionary attachment orders on an ex-parte basis as a pre-arbitration interim measure (see Article 29.1 of the ADGM Arbitration Regulations). Article 15 of the DIFC Arbitration Law permits a party to apply to the Court for interim measures, before or during arbitral proceedings.

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

Yes, the ADGM Arbitration Regulations and the DIFC Arbitration Law regulate the conduct of the arbitration.

4.5.1 **Does it provide for the confidentiality of arbitration proceedings?**

The ADGM Arbitration Regulations prohibit parties from publishing, disclosing or communicating any confidential information to a third party, unless otherwise agreed by the parties (Article 40.1 of the ADGM Arbitration Regulations). However, the ADGM Arbitration Regulations permit the publication, disclosure or communication of confidential information (a) if it was made to protect a legal interest, or to enforce or challenge the award, (b) if it was made to any government body, regulatory body, court or tribunal and the party is obliged by law to make the publication, disclosure or communication, (c) if it was required in order for a party to comply with its financial reporting obligations or the rules of any listing authority or securities exchange, (d) if it was made to a professional or any other adviser of any of the parties, (e) if it was made to potential lenders or investors in connection with financing arrangements, or (f) if the arbitral tribunal determines that it is otherwise in the interests of justice that the publication, disclosure or communication of information be permitted (Article 40.2 of the ADGM Arbitration Regulations).
The DIFC Arbitration Law provides that all information relating to the arbitral proceedings shall be kept confidential, unless otherwise agreed by the parties, and except where disclosure is required by an order of the DIFC Court (Article 14 of the DIFC Arbitration Law).

4.5.2 Does it regulate the length of arbitration proceedings?

No.

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

Yes, the parties may agree on the place where hearings and/or meetings may be held. Absent an agreement by the parties, the arbitral tribunal will decide on a place based on the circumstances of the arbitration and convenience to the parties. Unless otherwise agreed by the parties, the arbitral tribunal may hold the hearings and/or meetings in a physical place or through the means of modern electronic communication (see Article 27 of the DIFC Arbitration Law and Article 33 of the ADGM Arbitration Regulations).

4.5.4 Does it allow for arbitrators to issue interim measures?

Yes, the ADGM Arbitration Regulations and the DIFC Arbitration Law allow arbitrators to issue interim measures, unless the parties have agreed otherwise (see Article 24 of the DIFC Arbitration Law and Article 27 of the ADGM Arbitration Regulations).

4.5.4.1 In the affirmative, under what conditions?

The ADGM Arbitration Regulations and DIFC Arbitration Law require the party requesting an interim measure to satisfy that:

- harm which will not be adequately reparable by an award of damages is likely to result if the interim measure is not ordered and that harm will substantially outweigh the harm, if any, that is likely to result to the party opposing the interim measure if the measure is ordered; and
- there is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the Arbitral Tribunal in making any subsequent determination. (see Article 27 of the ADGM Arbitration Regulations and Article 24 of the DIFC Arbitration Law).

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

The arbitrators are empowered to determine the admissibility, relevance, materiality and weight of any evidence (see Article 26 of the DIFC Arbitration Law and Article 32 of the ADGM Arbitration Regulations).

4.5.6 Does it make it mandatory to hold a hearing?

In the ADGM and DIFC, the arbitral tribunal may decide whether or not to hold a hearing, unless otherwise agreed by the parties (see Article 39.1 of the ADGM Arbitration Regulations and Article 31 of the DIFC Arbitration Law).

4.5.7 Does it prescribe principles governing the awarding of interest?

In the ADGM, the parties are free to agree on the powers of the tribunal as regards the award of interest (see Article 47.1 of the ADGM Arbitration Regulations). Subject to any contrary agreement by the parties, the tribunal's powers as regards the awarding of interest shall be in accordance with the substantive law governing the claim for which an award of interest is sought (see Article 47.2 of the ADGM Arbitration Regulations). Unless otherwise agreed by the parties, and subject to any contrary provision of any applicable law, the tribunal's powers to award interest shall include awarding the parties simple or compound interest (see Article 47.3 of the ADGM Arbitration Regulations). The DIFC Arbitration Law does not expressly provide for the award of interest.
4.5.8 Does it prescribe principles governing the allocation of arbitration costs?

The DIFC Arbitration Law (Article 38(5)) and the ADGM Arbitration Regulations (Article 50(5)) provide that the arbitral tribunal may fix the costs of the arbitration in the award.

Both the DIFC Arbitration Law and the ADGM Arbitration Regulations enable the arbitral tribunal to include the legal costs of the successful party within the meaning of arbitration costs to such extent that the arbitral tribunal determines that the amount of such costs, or a part of them, is reasonable.

4.6 Liability

4.6.1 Do arbitrators benefit from immunity to civil liability?

The DIFC Arbitration Law and the ADGM Arbitration Regulations provide that arbitrators are not liable to any person for any act or omission in connection with an arbitration unless they are shown to have caused damage by conscious and deliberate wrongdoing (see Article 22 of the DIFC Arbitration Law and Article 23 of the ADGM Arbitration Regulations).

The UAE law provides that arbitrators are treated as judges and, as such, they are generally immune from suit unless they have engaged in a criminal wrongdoing.

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

At present, experts, translators and investigators are exposed to criminal liability in respect of knowingly making a false statement. An arbitrator could be held criminally liable if he/she was held guilty of corruption.

Under the old regime, an arbitrator could be exposed to criminal liability for issuing a decision “in contravention of the requirements of the duty of neutrality and integrity”. However, this is no longer the case. On 23 September 2018, Federal Decree Law No. 24 of 2018 amended Article 257 of Federal Law No. 3 of 1987 (as amended), known as the UAE Penal Code, by excluding arbitrators from being subject to criminal prosecution as a result of a breach of their duty of “neutrality and integrity”.

5. The award

5.1 Can parties waive the requirement for an award to provide reasons?

Parties can waive the requirement of a reasoned award by an agreement to that effect. Article 38(2) of the DIFC Arbitration Law and Article 50(2) of the ADGM Arbitration Regulations

5.2 Can parties waive the right to seek the annulment of the award? If yes, under what conditions?

The ADGM Arbitration Regulations provide that the parties may expressly waive the right to bring an action for setting aside or may limit their right to one or more recourse grounds. However, the ADGM court may still refuse the recognition and enforcement of the arbitral award in the ADGM pursuant to Article 57 of the ADGM Arbitration Regulations (Article 54 of the ADGM Arbitration Regulations). The DIFC Arbitration Law does not prescribe restrictions on the parties agreeing to exclude any right of appeal or recourse to the courts. However, such clauses have not been tested.

5.3 What are the typical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

The DIFC Arbitration Law and ADGM Arbitration Regulations provide that an award must be in writing, and has to be signed by the majority of the members of the arbitral tribunal. The dissenting opinions, if any, have to be stated in the award. In absence of a signature by an arbitrator, the arbitral tribunal must include
the reason for such omission. The arbitral award must include information about the parties (i.e., names and addresses) and the arbitrators (i.e., names, nationalities and addresses), a copy of the arbitration agreement, a summary of the claims, statements, documents, and the operative part of the award, and the date and place the award was issued. The award must state the date on which it was rendered by the tribunal and the seat of the arbitration. Both the DIFC Arbitration Law (under Article 38) and the ADGM Arbitration Regulations (under Article 50(5)) provide that the arbitral tribunal must also fix the costs of the arbitration in the award. 

5.4 Is it possible to appeal an award (as opposed to seeking its annulment)? If yes, what are the grounds for appeal?

No. An application for setting aside is an exclusive recourse against an arbitral award (Article 41 of the ADGM Arbitration Regulations and Article 41 of the DIFC Arbitration Law).

5.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

The DIFC Arbitration law does not distinguish between local and foreign arbitral awards in respect to enforcement and recognition procedures. In the DIFC, an arbitral award (irrespective of the state or jurisdiction in which it was made) shall be recognised as binding within the DIFC and, upon application in writing to the DIFC Courts, shall be enforced subject to Articles 42, 43 and 44 of the DIFC Arbitration Law. The DIFC Courts will comply with the terms of treaties that the UAE has entered into for the mutual enforcement of judgments, orders or awards (Article 42.1 of the DIFC Arbitration Law). The party seeking to enforce an arbitral award must provide the court with (a) the original award or a duly certified copy thereof, (b) the original arbitration agreement or a duly certified copy thereof, (c) a certified English translation of the arbitral award and the arbitration agreement, if they were not in the English language (Article 42.2 of the DIFC Arbitration Law). Where, upon the application of a party for recognition of an arbitral award, the DIFC Court decides that the award shall be recognised, it shall issue an order to that effect (Article 43.1 of the DIFC Arbitration Law).

The ADGM Arbitration Regulations do not distinguish between local and foreign arbitral awards in respect to enforcement and recognition procedures. The ADGM recognition and enforcement provisions apply to (a) arbitral awards made in the ADGM, (b) New York Convention awards (i.e., an award made, in pursuance of an arbitration agreement, in the territory of a state which is a signatory to the New York Convention (other than the UAE), and (c) all other arbitral awards which are sought to be recognised and enforced in the ADGM, irrespective of the State or jurisdiction in which they are made (Article 55.1 of the ADGM Arbitration Regulations). The ADGM Court will comply with the terms of treaties that the UAE has entered into for the mutual enforcement of judgments, orders or awards (Article 55.2 of the ADGM Arbitration Regulations). The party seeking the recognition or enforcement of an award shall provide the ADGM Court the original or a duly certified copy of (a) the arbitral award, (b) the arbitration agreement pursuant to which that arbitral award was rendered, and (c) a certified English translation of the arbitral award and the arbitration agreement, if they were not in the English language (Article 56.2 of the ADGM Arbitration Regulations).

5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

There are no specific provisions to such effect in the DIFC Arbitration Law or ADGM Regulations.

5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

This issue does not appear to have been tested yet in the ADGM.
With respect to the DIFC, as far as we are aware, the DIFC Courts have not been confronted with the circumstances where a foreign-seated arbitral award has been recognised and enforced in the DIFC after it has been annulled at its seat.

5.8 Are foreign awards readily enforceable in practice?

This issue does not appear to have been tested yet in the ADGM.

With respect to the DIFC, Article 42 of the Arbitration Law is clear with regards to the enforceability of foreign arbitral awards: “(1) An arbitral award, irrespective of the State or jurisdiction in which it was made, shall be recognised as binding within the DIFC and, upon application in writing to the DIFC Court, shall be enforced subject to the provisions of this Article and of Articles 43 and 44.”

6. Funding arrangements

In 2019, the ADGM enacted Litigation Funding Rules, which apply to ADGM arbitration and ADGM litigation proceedings. The rules focus on certain fundamental issues, such as qualifying requirements for third party funders, financial and other interests in third party funders, litigation funding arrangements, and conflicts of interest (Section 225 of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015).

Practice Direction No. 2 of 2017 on Third Party Funding in the DIFC Courts permits third-party funding in the DIFC Courts. The direction sets out the requirements that needs to be observed by the funded parties when contracting and interacting with the funders concerning legal proceedings before the DIFC Courts. Particularly, the direction introduced a notice requirement where the funded party is required to notify every other party to the proceedings of the identity of the funder and the fact that a Litigation Funding Agreement has been entered into. However, neither the Practice Direction No. 2 of 2017 on Third Party Funding in the DIFC Courts or the DIFC Arbitration Law provide express provisions relating to third-party in DIFC-seated arbitrations. Notwithstanding, it is our view that the DIFC’s friendly approach to third-party funding implies that such an arrangement should not be of an issue. Particularly, the DIFC Courts, as the supervisory courts of a DIFC-seated arbitration, are unlikely to refuse to recognise and enforce an arbitral award resulting from an arbitration in which one of the parties benefited from third-party funding.

7. Is there likely to be any significant reform of the arbitration law in the near future?

The ADGM Arbitration Regulations and the DIFC Arbitration Law already conform to the Model Law and attract leading international practitioners. Any further reform in the near future is unlikely.