

# UNITED ARAB EMIRATES (UAE)

CHAPTER PREPARED BY

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## JURISDICTION INDICATIVE TRAFFIC LIGHTS

- |  |   |
|--|---|
| 1. Law                                       | ● |
| a. Framework                                 | ● |
| b. Adherence to international treaties       | ● |
| c. Limited court intervention                | ● |
| d. Arbitrator immunity from civil liability  | ● |
| 2. Judiciary                                 | ● |
| 3. Legal expertise                           | ● |
| 4. Rights of representation                  | ● |
| 5. Accessibility and safety                  | ● |
| 6. Ethics                                    | ● |
| Evolution of above compared to previous year | + |
| 7. Tech friendliness                         | ● |
| 8. Compatibility with the Delos Rules        | ● |

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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 any and all responsibility.

## 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**”), with each having their own legislative framework 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 (“**UAE Arbitration Law**”) governs arbitrations in the United Arab Emirates. The law, which came into effect on 15 June 2018, repealed Articles 203-218 of Federal Law No 11 of 1992 Concerning the Issuance of the Civil Procedures Code (as amended), commonly referred to as the Civil Procedures Code (“**CPC**”), which previously governed arbitrations seated in the UAE. Several provisions of the UAE Arbitration Law can be traced to the UNCITRAL Model Law. The UAE 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 UAE Arbitration Law.

This chapter incorporates the provisions of the recently-enacted UAE Arbitration Law (“**Part 1**”) and also includes developments on DIFC and ADGM arbitrations (“**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 and amended on 23 December 2020.

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? (if mixed or other, specify)	Onshore UAE is a civil law environment. The DIFC and ADGM are common law jurisdictions.
Confidentiality of arbitrations?	As regards onshore arbitration, the UAE Arbitration Law provides that arbitration hearings and arbitral awards are confidential, unless otherwise agreed by the parties (see Arts. 33 and 48 of the UAE Arbitration Law). However, the UAE Arbitration Law permits the publication of judicial orders dealing with arbitral awards (see Art. 48 of the UAE Arbitration Law).  As for offshore arbitration: the ADGM Arbitration Regulations (Art. 45) 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 a legal duty or to protect or pursue a legal right; and 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) counsel?	There is no requirement, whether onshore or offshore, to retain counsel. Parties can either retain outside counsel (local or foreign) or be self-represented.

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 and/or remotely?	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 the location of meetings and/or hearings while taking into consideration the circumstances of the claim and the parties' convenience (Art. 28 of the UAE Arbitration Law; Art. 27 of the DIFC Arbitration Law; Art. 43 of the ADGM Arbitration Regulations).
Availability of interest as a remedy?	<p>Onshore, the parties can recover interest as a remedy subject to certain limitations provided by the applicable laws in the UAE.</p> <p>Offshore, the DIFC Arbitration Law does not expressly address the arbitral tribunal's power to award interest. In the ADGM, subject to any contrary agreement by the parties, the arbitral 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. 52 of the ADGM Arbitration Regulations).</p>
Ability to claim for reasonable costs incurred for the arbitration?	<p>In onshore arbitration, an arbitral tribunal can assess the costs of the arbitration, unless the parties agree otherwise (Art. 46 of the UAE 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 their 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 (Art. 46 of the UAE Arbitration Law). In such an exercise, the Court will be guided by considerations of the arbitral tribunal's efforts, the nature of the dispute, and the arbitrators' experience. Unless expressly mentioned in the arbitration agreement or otherwise agreed, counsel's fees cannot be recovered by the parties.</p> <p>In offshore arbitration, the DIFC Arbitration Law (Art. 38(5)) and the ADGM Arbitration Regulations (Art. 55(6)) 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.</p>
Restrictions regarding contingency fee arrangements and/or third-party funding?	Onshore, UAE law does not expressly prohibit or allow third-party funding. However, contingency fee arrangements are prohibited in the UAE (see Art. 31 of the UAE Federal Law No. 3 of 1991 Regarding the Regulation of the Legal Profession; and Art. 7(c) of the Draft Charter for the Conduct of Advocates and Legal Consultants in the Emirate of Dubai).

	<p>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). In addition, the ADGM Arbitration Regulations regulate third party funding in arbitration proceedings. While they do not restrict third party funding, the ADGM Arbitration Regulations do provide that a party must notify the parties and the arbitral tribunal in writing of the existence of any third party funding agreement and the identity of the third party funder (Art 37 of the ADGM Arbitration Regulations).</p> <p>Practice Direction No. 2 of 2017 on Third Party Funding in the DIFC Courts (the “<b>Direction</b>”) 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/or enforce an arbitral award resulting from an arbitration in which one of the parties benefited from third-party funding.</p>
<p>Party to the New York Convention?</p>	<p>The UAE is a signatory of the New York Convention (see Federal Decree No. 43 of 2006). The UAE’s accession to the New York Convention was effected on 21 August 2006, and 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 the ADGM are also bound by the New York Convention by virtue of the fact that they are part of the UAE.</p>
<p>Party to the ICSID Convention?</p>	<p>The UAE signed and ratified ICSID Convention on 23 December 1981, which entered into force for the UAE on 22 January 1982.</p>
<p>Compatibility with the Delos Rules?</p>	<p>We have not identified any provision in the Delos Rules that would in principle conflict with the UAE Arbitration Law, ADGM Arbitration Regulations or the DIFC Arbitration Law.</p>
<p>Default time-limitation period for civil actions (including contractual)?</p>	<p>UAE Federal Law No. 5 of 1985 regarding civil transactions (“<b>UAE Civil Code</b>”) contains general rules relating to limitation periods in the UAE. Generally, a claim is time-barred after 15 years, unless a specific provision states otherwise. Subject to the exceptions, the limitation period for contractual disputes is 15 years (Art. 473 of the UAE Civil Code). Additionally, UAE Federal Law No. 18 of 1993 regarding commercial procedures (“<b>UAE Commercial</b></p>

	<p><b>Transactions Law</b>") contains specific provisions dealing with limitation periods for commercial contracts subject thereto. The limitation period is 10 years for commercial contracts that are subject to the UAE Commercial Transactions Law (Art. 95 of the UAE Commercial Transactions Law).</p>
<p>Other key points to note?</p>	<p>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 Art. 4(1) of the UAE Arbitration Law). The UAE Courts adopt a formalistic approach and often scrutinize, in much detail, the authority granted to the parties agreeing to arbitration. The UAE Arbitration Law reaffirms the requirement that the signatory to an arbitration agreement must possess the requisite authority. In more recent cases, the Dubai Court of Cassation has adopted a less stringent approach in determining this question, yet it remains to be seen whether this relaxed approach will constitute a <i>jurisprudence constante</i>. Nevertheless, it remains prudent, for an arbitral tribunal to request proof of authority of the signatory of the arbitration agreement, notably in circumstances where the arbitration agreement is reconfirmed in writing (e.g. terms of reference) or varied at the outset of the proceedings.</p> <p>Historically, the UAE Courts set aside awards because one or more witnesses did not swear the oath set out under UAE law before giving evidence. For that reason, it would be prudent for the arbitral tribunal, absent an agreement to the contrary by the parties, to continue to administer the oath of the witnesses and experts (see Art. 33(7) of the UAE Arbitration Law).</p> <p>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.</p> <p>Under the old regime, as per Art. 257 of Federal Law No. 3 of 1987 (the "<b>UAE Penal Code</b>"), an arbitrator could be exposed to criminal liability for issuing a decision "<i>in contravention of the requirements of the duty of neutrality and integrity</i>". However, this is no longer the case. On 23 September 2018, Federal Decree Law No. 24 of 2018 amended Art. 257 of 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".</p>
<p>World Bank, Enforcing Contracts: <i>Doing Business</i> score for 2020, if available?</p>	<p>75.9</p>
<p>World Justice Project, Rule of Law Index: <i>Civil Justice</i> score for 2020, if available?</p>	<p>0.68</p>

## ARBITRATION 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 Arbitration Law (which replaced Articles 203 to 218 of CPC), 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 Financial Free Zones, and has notably established the **DIFC** and the **ADGM**. Both are both bound by the 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 a Judicial Authority. Dubai Law No. 12 of 2004, as amended by Law No. 6 of 2011, established a Court of First Instance and a Court of Appeal in the DIFC (the "**DIFC Judicial Authority Law**"). The DIFC Court Law was enacted by DIFC Law No. 10 of 2004, with Article 19 and 24 setting out the Court's 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 (as amended by Abu Dhabi Law No. 12 of 2020) sets out the governance, legislative and regulatory framework and activities to be carried out in the ADGM. The ADGM is the first jurisdiction in the Middle East to directly apply English common law. The 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 the ADGM. In addition, a wide-ranging set of English statutes on civil matters are also applicable in the ADGM. In 2017, the International Court of Arbitration of the International Chamber of Commerce ("**ICC**") established the ICC Middle East and North Africa representative office in the ADGM ("**ICC MENA Representative Office**"). In December 2020, the ADGM and the ICC jointly announced the opening of a case management office for the ICC Court Secretariat in the ADGM. Accordingly, the ICC MENA Representative Office will be integrated into the ICC Court Secretariat's new case management structure and will seek to primarily administer Middle Eastern-related ICC arbitrations.

<p>Date of arbitration law?</p>	<p>The UAE Arbitration Law was published in the Federal Official Gazette No. 630 of 15 May 2018 and came into effect on 16 June 2018. Cabinet Decision No. (57) of 2018 ("<b>CPC Executive Regulations</b>") regarding the Executive Regulations of the UAE Civil Procedure Law, which amended certain provisions of the UAE Civil Procedure Law, came into force on 16 February 2019 (as amended by Cabinet Resolution No. (33) of 2020 which came into force on 1 May 2020).</p> <p>Arbitration in the DIFC is governed by the DIFC Arbitration Law, as amended. Arbitration in ADGM is governed by the ADGM Arbitration Regulations of 2015 ("<b>ADGM Arbitration</b></p>
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	<p><b>Regulations"</b>), which were enacted on 17 December 2015 and amended on 23 December 2020.</p>
<p>UNCITRAL Model Law? If so, any key changes thereto? 2006 version?</p>	<p>The UAE Arbitration Law, the DIFC Arbitration Law and the ADGM Arbitration Regulations are all based on the UNCITRAL Model Law. This has been recognised in the United Nations' General Assembly Report dated 1 April 2020. Many provisions of the UAE Arbitration Law, the DIFC Arbitration Law and the ADGM Arbitration Regulations can be traced back to the UNCITRAL Model Law.</p> <p>Key changes from the UNCITRAL Model Law:</p> <p><u>In the UAE Arbitration Law</u></p> <p>The signatory must be authorised to enter into the arbitration agreement, otherwise the arbitration agreement is considered null and void (see Art. 4 of the UAE Arbitration Law). No such requirement exists under the UNCITRAL Model Law.</p> <p>Arbitral proceedings are deemed to have commenced from the date following the formation of the arbitral tribunal, unless otherwise agreed by the parties (Art. 27 of the UAE 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 (Art. 21 of the UNCITRAL Model Law).</p> <p>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) (Art. 28 of the UAE Arbitration Law). The UNCITRAL Model Law does not provide for arbitration hearings through modern means of technology.</p> <p>Express protection of the confidentiality of arbitration hearings and arbitral awards, unless otherwise expressly agreed by the parties (Arts. 33 and 48 of the UAE Arbitration Law). The UNCITRAL Model Law does not expressly contain confidentiality provisions.</p> <p>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 (Art. 22 of the UAE Arbitration Law). The UNCITRAL Model Arbitration Law does not provide for the joinder of third parties.</p> <p>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 (Art. 54 of the UAE Arbitration Law). However, the UNCITRAL Model Law provides for a duration of 3 months from the date of receipt of the award (Art. 34 of the UNCITRAL Model Law).</p> <p>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 Art. 36(2) of the UNCITRAL Model Law). However, while the UAE Arbitration Law empowers the courts to stay enforcement, it may not do so <i>sua</i></p>

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*sponte* but only at the request of either party (see Art. 56(1) of the UAE 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 in certain limited circumstances (Art. 45 of the ADGM Arbitration Regulations). 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 any) can join a third party to the arbitration provided that it is a party to the arbitration agreement and that it has consented in writing (Art. 39 of the ADGM Arbitration Regulations). The UNCITRAL Model Law does not contain such provisions.

*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 (Art. 59 of ADGM Arbitration Regulations). The UNCITRAL Model Law does not expressly permit such a waiver.

*Hearings:* Unless otherwise agreed by the parties, the arbitral tribunal may hold arbitration hearings through modern means of communication and technology (e.g., video conferencing) (Art. 34 of the ADGM Arbitration Regulations). The UNCITRAL Model Law does not expressly provide for the conduct of virtual arbitration hearings.

#### 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 disclosure (Art. 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 (Art. 10(2)) whereas the DIFC Arbitration Law provides that the default number of arbitrators is one (Art. 16(2)).

*Liability of arbitral tribunal and others:* The UNCITRAL Model Law does not provide for any limitation on the liability of the arbitral tribunal or others. In contrast, the DIFC Arbitration Law holds that arbitrators, employees or agents of the arbitrators, arbitral institution, appointing authority are 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 (Art. 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

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	<p>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 (Art. 42(3) of the DIFC Arbitration Law).</p>
<p>Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?</p>	<p>The UAE does not have specialised courts or judges that decide on arbitration matters. However, Art. 1 of the UAE Arbitration Law designates the Court of Appeal at the seat (<i>i.e.</i>, the local or federal Court of Appeal, as the case may be) to provide supervision and assistance to onshore arbitrations.</p> <p>Art. 13 of the ADGM Arbitration Regulations designates the ADGM Court of First Instance to deal with arbitration matters, whereas Arts. 10 and 11 of the DIFC Arbitration Law designate the DIFC Court of First Instance to deal with arbitration matters.</p>
<p>Availability of <i>ex parte</i> pre-arbitration interim measures?</p>	<p>The parties can apply for precautionary attachment orders on an <i>ex-parte</i> basis as a pre-arbitration interim measure. Furthermore, <i>ex-parte</i> arbitration interim measures are available in both onshore and offshore jurisdictions and can include: a freezing injunction to prevent the dissipation of assets or requests for the preservation of evidence.</p>
<p>Courts' attitude towards the competence-competence principle?</p>	<p>In onshore arbitrations, the arbitral tribunal has the power 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 arbitral tribunal rules on its jurisdiction as a preliminary matter, request the competent Court to review and make its own determination on the matter within 15 days of notification of the arbitral tribunal's decision. The competent Court 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 a party's request (see Art. 19 of the UAE Arbitration Law).</p> <p>Similarly, arbitral tribunals in offshore arbitrations have discretion to rule on their own jurisdiction, whether as a preliminary question or in a partial or final arbitral award on the merits (Art. 23 of the DIFC Arbitration Law; Art. 25 of the ADGM Arbitration Regulations). The ADGM Arbitration Regulations further provide that any such ruling may be challenged by any available 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 objections if the objecting party can justify the delay.</p>
<p>May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?</p>	<p>In onshore UAE, the arbitral tribunal may decide on its jurisdiction in a preliminary decision or in the final arbitral award issued on the subject matter of the dispute (Art. 19 of the UAE Arbitration Law).</p> <p>Art. 26(3) of the ADGM Arbitration Regulations and Art. 23(3) of the DIFC Arbitration Law provide that the arbitral tribunal may rule on</p>

	<p>its jurisdiction either as a preliminary question or in an award on the merits.</p> <p>The UAE Arbitration Law, ADGM Arbitration Regulations, and DIFC Arbitration Law expressly require an award to state the reasons upon which it is based, unless the parties have agreed otherwise or the law applicable to the arbitral proceedings does not require reasons to be given (Art. 41(4) of the UAE Arbitration Law, Art. 38 (2) of the DIFC Arbitration Law and Art. 55(2) of the ADGM Arbitration Regulations). However, the UAE Arbitration Law, ADGM Arbitration Regulations, and DIFC Arbitration Law do not expressly include a provision regarding the timing with respect to the issuance of such reasoning with respect to a ruling on jurisdiction (or other issues), but it may be assumed that the reasons ought to be given in the arbitral tribunal's ruling on jurisdiction or other issues, in line with the general requirement for awards, unless the parties have agreed otherwise or the law applicable to the arbitral proceedings provides otherwise.</p>
<p>Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?</p>	<p>The UAE Arbitration Law provides grounds for annulment of awards beyond those based on the criteria for the recognition and enforcement of awards under the New York Convention.</p> <p>In addition to grounds similar to those under Art. V of the New York Convention, a party may seek the annulment of an award under the UAE Arbitration Law 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 arbitral tribunal failed to apply the law applicable to the merits of the dispute, or (3) the arbitration procedures are invalid and their invalidity affected the award (see Art. 53 of the UAE Arbitration Law).</p> <p>The DIFC Arbitration Law and the ADGM Arbitration Regulations do not provide grounds for the annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention (Art. 41 of the DIFC Arbitration Law; Art. 58 of the ADGM Arbitration Regulations).</p>
<p>Do annulment proceedings typically suspend enforcement proceedings?</p>	<p>In onshore UAE, an action to set aside an arbitral award does not automatically stay its enforcement (Art. 56 of the UAE Arbitration Law).</p> <p>Under the ADGM Arbitration Regulations and the DIFC Arbitration Law, if an application for the setting aside or suspension of an award has been made to the court of the state or jurisdiction in which, or under the law of which, that award was made, the ADGM Court or DIFC Court, may, respectively, if they consider it proper, adjourn their decision (Art. 62(2) of the ADGM Arbitration Regulations and Art. 44(2) of the DIFC Arbitration Law).</p>
<p>Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?</p>	<p>This issue has not been addressed by UAE Courts to date pursuant to the new regime established by the UAE Arbitration Law, and it does not yet appear to have been tested in the ADGM.</p> <p>Art. 44(1)(a)(v) of the DIFC Arbitration Law states that the DIFC Courts may refuse to recognise or enforce an arbitral award,</p>

	<p>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 recognised and/or enforced a foreign-seated arbitral award despite it being annulled at the seat of arbitration.</p>
<p>If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?</p>	<p>The UAE Arbitration Law and the ADGM Arbitration Regulations specifically acknowledge in multiple instances that <i>"modern means of communication and electronic technology"</i> may be used in arbitration proceedings. In onshore UAE, unless otherwise agreed by the parties, the arbitral tribunal may hold the hearings and/or meetings in person or through the means of modern electronic communication (see Art. 28 of the UAE Arbitration Law). In the ADGM, Art. 43 of the ADGM Arbitration Regulations provides that the arbitral tribunal shall decide whether to hold oral hearings and whether the hearing is to be conducted in person, by video conference, telephone or other means of technology.</p> <p>According to Art. 53 of the UAE Arbitration Law, recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, if he or she provides proof that <i>"a party to the Arbitration fails to present its case because it was not given proper notice of the appointment of an Arbitrator or of the arbitral proceedings or because the Arbitral Tribunal breached due process or for any other reason beyond his control"</i>. A party could seek to argue that denying it a physical hearing should be regarded as a breach of its right to present its case. However, such an argument may unlikely succeed unless the parties have specifically and clearly agreed to a physical hearing. A party would have to argue that the denial of a physical hearing rose to a level of a breach of due process. This would be difficult to meet because of the provisions on the use of modern means of communication (see Art. 28 of the UAE Arbitration Law).</p> <p>The situation is similar in the ADGM. Art. 62 of the ADGM Arbitration Regulations provides that recognition and enforcement of an award may be refused by the ADGM Court if the party making an application furnishes proof that <i>"the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case"</i>. However, unlike the position in onshore UAE, there is no mention to the breach of due process. A party could seek to argue that denying it a physical hearing should be regarded as a breach of its right to present its case. However, as explained above, such an argument may unlikely succeed unless the parties have specifically and clearly agreed to a physical hearing.</p> <p>Unlike the position set out under the UAE Arbitration Law and the ADGM Arbitration Regulations, the DIFC Arbitration Law does not contain express provisions on the use of <i>"modern means of</i></p>

	<p><i>communication and electronic technology</i>". However, Art. 31(1) of the DIFC Arbitration Law does provide that "[s]ubject to any contrary agreement by the parties, the Arbitral Tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials".</p> <p>Despite the absence of any express provisions in the DIFC Arbitration Law, a party could seek to argue that denying it a physical hearing should be regarded as a breach of its right to present its case. It could rely on Art. 41 of the DIFC Arbitration Law, which provides that an award may be set aside by the DIFC Court if the party making the application furnishes proof that <i>"the party making the application was ... unable to present his case"</i>. However, as seen above, such an argument is unlikely to succeed unless the parties have specifically and clearly agreed to a physical hearing.</p>
<p>Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?</p>	<p>Generally, UAE governmental bodies may not enter into an arbitration agreement without prior approval from the Cabinet of Ministers (such contracts are typically reviewed by the Ministry of Justice, Islamic Affairs and Awqaf in coordination with the Ministry of Finance and Industry).</p> <p>Under UAE law, both domestic and foreign states are not immune from civil proceedings and arbitration proceedings. However, some emirates do require formal notice to be served to the Legal Affairs Department before proceedings are brought against the government. Additionally, Art. 247 of the CPC provides a general prohibition on the seizure of <i>"[p]ublic property owned by the state or any of the Emirates"</i> for the purposes of enforcement.</p>
<p>Is the validity of blockchain-based evidence recognised?</p>	<p>It is arguable that blockchain-based evidence is valid in onshore-seated arbitrations, provided such evidence does not conflict with the mandatory requirements under the UAE Arbitration Law and any other applicable rules on the taking of evidence.</p> <p>The use of block-chain technology is not addressed in the ADGM Arbitration Regulations or the DIFC Arbitration Law. It is arguable that block-chain-based evidence is valid in ADGM-seated and DIFC-seated arbitrations, provided such evidence does not conflict with the mandatory requirements under the ADGM Arbitration Regulations or the DIFC Arbitration Law and any other applicable rules on the taking of evidence.</p>
<p>Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?</p>	<p>The UAE Arbitration Law, ADGM Arbitration Regulations and DIFC Arbitration Law do not expressly address the use of blockchain technology.</p> <p>However, an arbitration agreement recorded on a blockchain technology may be deemed valid as the requirement that an arbitration agreement be in writing is met by an electronic communication, provided it does not conflict with any mandatory applicable provisions (Art. 7 of the UAE Arbitration Law, Art. 12 of the DIFC Arbitration Law and Art. 14 of the ADGM Arbitration Regulations).</p>

<p>Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?</p>	<p>In principle, to the extent that either the blockchain arbitration agreement or the award are considered original electronic documents, the UAE Courts will recognise the electronic documents as originals for the purposes of recognition and enforcement.</p> <p>In ADGM-seated arbitrations, provided that a blockchain arbitration agreement or award does not conflict with the mandatory requirements under the ADGM Arbitration Regulations and any other applicable rules on the taking of evidence, then arguably, they ought to be considered as originals.</p> <p>For the purposes of recognition or enforcement of any arbitration agreement and award within the DIFC, the requirement is to provide an original arbitration agreement and award or a certified copy thereof. Therefore, provided that a blockchain arbitration agreement or award does not conflict with the mandatory requirements under the DIFC Arbitration Law and any other applicable rules on the taking of evidence, then arguably, they ought to be considered as originals.</p>
<p>Other key points to note?</p>	<p>∅</p>

## JURISDICTION DETAILED ANALYSIS: (1) ONSHORE ARBITRATION

### 1. The legal Framework of the jurisdiction

#### 1.1 Is the arbitration law based on the UNCITRAL Model Law? 1985 or 2006 version?

As indicated above, many provisions of the UAE Arbitration Law can be traced to the UNCITRAL 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 UNCITRAL Model Law, including:

- (i) The UAE 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 UAE Arbitration Law). No such requirement exists under the UNCITRAL 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 UAE 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 (see Article 21 of the UNCITRAL Model Law).
- (iii) The UAE Arbitration Law provides that, unless otherwise agreed by the parties, the arbitral tribunal may hold arbitration hearings through modern means of communication and technology (e.g., video conferencing) (see Article 28 of the UAE Arbitration Law). The UNCITRAL Model Law does not provide for arbitration hearings through modern means of technology.
- (iv) The UAE 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 UAE Arbitration Law). The UNCITRAL Model Law does not expressly provide confidentiality provisions.
- (v) The UAE 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 UAE Arbitration Law). The UNCITRAL Model Arbitration Law does not provide for the joinder of third parties.
- (vi) The UAE 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 UNCITRAL Model Law provides for a duration of 3 months from the date of receipt of the award (see Article 34 of the UNCITRAL Model Law).
- (vii) The UAE 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.
- (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 UAE 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 UAE Arbitration Law recently came into force on 16 June 2018 and has not been amended since. It is important to note that, on 9 December 2018, the CPC Executive Regulations were issued and came into force on 16 February 2019. It introduced significant changes to the recognition and enforcement regime of foreign

awards. The CPC Executive Regulations repeal Articles 235-238 of the CPC and lays out a new framework for the enforcement of foreign awards. Significantly, the CPC Executive Regulations mandate 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 CPC Executive Regulations also provide 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 of obtaining recognition of an award at the seat before seeking its enforcement in another jurisdiction) does not apply in the UAE, as it is a signatory of the New York Convention.

## **2. The arbitration agreement**

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

Generally, and unless otherwise agreed by the parties, the law of the seat of the arbitration governs the arbitration agreement in UAE seated arbitrations. In this instance, it is noted that Article 7 of the UAE Arbitration Law provides for the requirements of an arbitration agreement in UAE seated arbitrations (see Article 2 of the UAE Arbitration Law).

### **2.2 In the absence of an express designation of a 'seat' in the arbitration agreement, how do the courts deal with references therein to a 'venue' or 'place' of arbitration?**

Article 28 of the UAE Arbitration Law provides that, unless the parties agree otherwise, "the place of arbitration" shall be determined by the Arbitral Tribunal. Thus, the determination of the 'place' of arbitration is expressly reserved to the Arbitral Tribunal in the absence of an agreement – whether explicit or implicit, through, *inter alia*, the agreement to conduct the arbitration proceedings under the auspices of institutional rules – by the parties as to the designated seat. *A contrario* reading of this provision would entail that the courts do not have an express statutory power to determine the 'place' of arbitration. It is to be noted that the absence of an express agreement on the 'place' of the arbitration does not invalidate the arbitration agreement. The Federal Supreme Court has confirmed that there is no irregularity in parties not specifying a seat of arbitration in the arbitration agreement (see, for example, Federal Supreme Court, Appeal 449 of the Judicial Year 21).

In the absence of an express designation of a 'seat', we believe that an Arbitral Tribunal in an 'onshore' UAE arbitration would likely regard a reference to 'place' or 'venue' as synonymous with 'seat' of arbitration if the circumstances of the case, including the convenience of the parties, would support such a determination (see, Article 28 of the UAE Arbitration Law). This is because parties do not usually specify in their arbitration agreement the hearing location, which would depend on (amongst other things) the domiciles of the Tribunal, counsel and witnesses, which the parties would not have known when drafting the arbitration agreement. Thus, a reference to 'venue' or 'place' is likely to be construed as referring to the seat of arbitration (see, for example, Gary B. Born, *International Commercial Arbitration* (Third Edition, Kluwer Law International 2021, Chapter 14) pp. 2227 and 2228).

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

The UAE Arbitration Law recognises the severability of the arbitration agreement; hence, arbitration clauses are considered independent from the main contract. The invalidity, termination or cancellation of the main contract does not affect the arbitration agreement contained therein (unless the matter relates to the incapacity of either party, inarbitrability of the subject matter of the arbitration agreement or by and large, violates UAE's public policy). In addition, a party's claim to the invalidity, termination or cancellation of the contract will not result in a stay of the arbitration proceedings (see Article 6 of the UAE Arbitration Law).

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

The UAE 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 UAE 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. For example, in the case of a public joint stock company, Article 154 of Law No. 2 of 2015 on Commercial Companies provides that unless specifically authorised, the Board of Directors may not agree to arbitration. Similarly, this position is mirrored in the case of private joint stock companies (see, for example, Dubai Court of Cassation, judgement 182 of 2018). Under UAE law, a party must verify that the other party's signatory has the necessary power to enter into an arbitration agreement.
- (ii) Matters where conciliation is not permissible cannot be resolved through arbitration (see Article 4(2) of the UAE Arbitration Law).
- (iii) The arbitration agreement may be recorded in a separate agreement, within the contract or incorporated by reference. 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. 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 UAE Arbitration Law).
- (iv) The arbitration agreement must be evidenced in writing. The UAE 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 UAE 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).

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

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 UAE Arbitration Law).

## 2.6 Are there restrictions to arbitrability?

### 2.6.1 Do these restrictions relate to specific domains (such as anti-trust, employment law etc.)?

Article 4(2) of the UAE 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 (the "**UAE Commercial Agency Law**")) and all labour disputes (see *e.g.* Federal Law No. 8 of 1980 (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 the approach of the Dubai Courts in 2012 (Dubai Court of Cassation judgment in Case No. 14/2012 issued on 16 September 2012), that seemed to interpret public policy widely so as to include most real estate disputes. However, recent judgments have clarified that such disputes are indeed arbitrable, save for issues concerning registration of ownership of real estate property, which remain reserved to the jurisdiction of the State's Courts and as such may not be arbitrable (see *e.g.* Abu Dhabi Court of Cassation Case No. 55/2014).

### **2.6.2 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 incapacity 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). Additionally, there are certain restrictions at the Emirate level. For example, in Dubai, Article 120 of Dubai Law No. 12 of 2020 Concerning Contracts and Warehouse Management in Dubai provides that *"parties to the contract may agree to resort to Arbitration. In which case, nothing may be stipulated in the contract to indicate that the arbitration shall be held outside the Emirate or that any dispute in respect of the contract be subject to any rules or legislation other than the legislation and rules applicable in the Emirate. Each provision that goes against the provisions of this Paragraph shall be null and void and unenforceable, where the public interest so requires."*

## **3. Intervention of domestic courts**

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

Yes, regardless of whether the place of the arbitration is inside or outside of the jurisdiction. The UAE 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 court's jurisdiction before submitting any request or plea on merits (see Article 8(1) of the UAE 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 UAE Arbitration Law).

### **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 tested yet in the onshore courts.

### **3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to the anti-suit injunctions/anti-arbitration injunctions or orders, but not only)**

As a general proposition, and under limited circumstances, the UAE Courts can intervene in arbitrations seated outside of the UAE. Article 22 of the CPC provides that *"[t]he courts shall have jurisdiction to determine preliminary issues and interlocutory applications in the original action within their jurisdiction and shall also have jurisdiction to determine any application connected with such action which the proper course of justice requires that it be heard with it, and they shall likewise have jurisdiction to make orders for expedited and conservatory procedures to be carried out in the State notwithstanding that they do not have jurisdiction in the original action."* This provision enables UAE courts to provide interim measures in aid of foreign seated arbitrations.

## **4. The conduct of the proceedings**

### **4.1 Can parties retain foreign 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 be of a gravity such as to justify this outcome?**

The UAE 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 become aware of such circumstances (see Article 11 of the UAE Arbitration Law). Failure to disclose these circumstances may give rise to a challenge (see Article 14 of the UAE Arbitration Law). The UAE Courts assess the justifiable doubts standard on a case by case basis. In Abu Dhabi Court of Cassation, Case No. 1174 of 2011, the Court of Cassation, relying on Article 114 of the CPC found the fact that the arbitrator sitting on the tribunal had previously worked for or was associated with the law firm of the lawyer acting for the Appellant did not in itself constitute grounds for disqualification.

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

The UAE Arbitration Law provides that a party may request the competent Court to assist in appointing an arbitrator where a dispute arises and a party does not appoint an arbitrator in accordance with the parties' agreement or, in the absence of an agreement, the UAE Arbitration Law. The court's decision in this regard is not subject to appeal (see Article 11(5) of the UAE Arbitration Law). A party may also request the competent Court to obtain a roster of arbitrators from an arbitration institution in the UAE, for the purposes of appointing and constituting the arbitral tribunal (see Article 11(8) of the UAE 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 UAE Arbitration Law provides that the competent Court 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 UAE Arbitration Law).

The parties can apply for precautionary attachment orders on an *ex parte* basis.

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

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

- (i) regulates the appointment and challenge of arbitrators;
- (ii) regulates the joinder of third parties to 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 UAE 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 UAE Arbitration Law). If there is no agreement, the arbitral tribunal may, subject to the provisions of UAE 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 UAE Arbitration Law).

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

The UAE Arbitration Law provides that arbitration hearings and arbitral awards are confidential, unless otherwise agreed by the parties (see Articles 33 and 48 of the UAE Arbitration Law). However, the UAE Arbitration Law permits the publication of judicial orders relating to arbitration awards. Information submitted to the local courts are in the public domain and therefore do not remain confidential (*e.g.*, proceedings for the ratification and execution of arbitral awards).

#### **4.5.2 Does it regulate the length of arbitration proceedings?**

The UAE 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, the award must 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 (see Article 42(1) of the UAE Arbitration Law).

The UAE Arbitration Law further provides that the arbitral 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 arbitral tribunal may extend such period under such conditions as it deems appropriate and its decision in this regard shall be final, unless otherwise agreed by the parties (see Article 42(2) of the UAE Arbitration Law).

#### **4.5.3 Does it regulate the place where hearings and/or meetings may be held, and can hearings and/or meetings be held remotely, even if a party objects?**

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 select a place based on the circumstances of the arbitration and the parties' convenience. Unless otherwise agreed by the parties, the arbitral tribunal may hold the hearings and/or meetings in person or through the means of modern electronic communication (see Article 28 of the UAE 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 their original position prior to the arbitration; or
- (v) prevent immediate or imminent harm to the arbitration proceedings. 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 UAE 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 UAE Arbitration Law). Further, Article 33(7) of the UAE Arbitration Law provides that, unless otherwise agreed by the parties, the hearing of witnesses, including experts shall be conducted pursuant to the laws of the UAE. In this regard, it is worth noting, the provision of Article 115, which provides that "[e]very testimony that includes drawing an advantage to the witness or repelling a detriment away from him, shall be disregarded". This may allow leeway for arguments against the presentation of witness testimony by persons affiliated with one of the parties (such as a party employee), although the applicability of this rule in the context of arbitration is questionable.

#### **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 UAE Arbitration Law). However, the UAE 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 UAE Arbitration Law). The UAE Federal Law No. 10 of 1992 concerning the Law of Evidence in Civil and Commercial Transactions ("**UAE Law of Evidence**") 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 UAE Arbitration Law does not prescribe principles governing the awarding of interest. The UAE Commercial Transactions Law provides that 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. 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. Where an interest rate has not been fixed by agreement, the law provides a cap of 12% per annum. However, judicial practice varies from one Emirate to the other and generally ranges between 9% and 12% per annum. Interest is granted on a simple interest basis.

This does not mean that arbitral tribunals are prohibited from awarding compound interest. 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 regard 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 has allowed compound interest as long as it was calculated at the agreed rates or prevailing market rate, specifically in the context of banking transactions. 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?**

Unless expressly mentioned in the arbitration agreement or otherwise agreed, counsel's fees cannot be recovered by the parties. This notwithstanding, in certain circumstances, the Dubai Court of Cassation held that providing the arbitral tribunal with express authority to award 'legal costs' as part of terms of reference does not result in the arbitral tribunal having authority to award such costs (see, for example, Dubai Court of Cassation, Case No. 427 of 2018). In Dubai Court of Cassation, Case No. 990 of 2019, an award was partially annulled because the Claimant's legal representative exceeded the scope of the authorities granted to it in the power of attorney by empowering the arbitral tribunal to award legal 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 UAE 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 from civil liability?**

The UAE Arbitration Law does not provide for the immunity of arbitrators. However, the UAE Arbitration Law provides that arbitrators are treated as judges and, as such, are generally considered to be immune from civil liability (see Article 236 of Federal Decree-Law No. (24) of 2018 Amending Certain Provisions of the UAE Penal Code in conjunction with Articles 234 and 237 of the UAE Penal Code). However, 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, the standard for liability for gross and manifest error is relatively high under UAE. In the Dubai Court of Cassation, Case No. 484 of 2017, the Dubai Court of Cassation noted that in order for an arbitrator to be found liable, there needs to be a *“serious mistake tainted by deceit, fraud, collusion with the opponent or refraining from arbitrating without acceptable jurisdiction.”*

### **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”* (see Article 257 of the UAE Penal Code). However, this is no longer the case. On 23 September 2018, Federal Decree Law No. 24 of 2018 amended Article 257 of the UAE Penal Code to exclude 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 (see Article 41(4) of the UAE Arbitration Law).

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

The UAE Arbitration Law acknowledges that parties can waive their right to seek annulment prior to the issuance of the arbitral award. However, it renders this agreement ineffective by providing that a party may bring an action to set aside an award even after waiving its right to do so (see 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 a majority of the arbitral tribunal members. Dissenting opinions, if any, have to be stated in the body of the award. In the absence of an arbitrator's signature, the arbitral tribunal must include the reason for such omission. The arbitral tribunal 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 where the award was issued. The award must state the date on which it was rendered as well as the seat of the arbitration (see 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 UAE 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 minutes of deposit of the award in court (see Article 55(1) of the UAE Arbitration Law).

The Chief Justice of the relevant Court of Appeal, 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 he 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 with 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 become *res judicata*;
- (v) the arbitral award does not conflict with a judgment or an order previously issued by the UAE Courts; and
- (vi) the arbitral award does not violate the public order or morality of the UAE (see Articles 85 and 86 of the CPC Executive Regulations).

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 CPC Executive Regulations). While the CPC Executive Regulations provide 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 CPC Executive Regulations).

**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 automatically 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 UAE Courts to date pursuant to the new regime provided for by the UAE Arbitration Law.

**5.8 Are foreign awards readily enforceable in practice?**

The UAE Arbitration Law lacks express provisions on the enforcement of foreign arbitral awards. However, the CPC Executive Regulations, which came into effect on 16 February 2019, has clarified that the enforcement of foreign arbitral awards does not fall within the ambit of the UAE Arbitration Law. Articles 85, 86 and 88 of the CPC Executive Regulations replaced Articles 235, 236 and 238 of the UAE Civil Procedures Law. Under the new procedure, enforcement applications are directly made to an Execution Judge, replacing the previous regime whereby the party seeking enforcement had to file a case before the competent Court of First Instance. The Execution Judge shall rule on the application within three days, but the decision can be appealed on grounds of, inarbitrability and conflict with public policy, to the competent Court of Appeal. Further, before granting enforcement, the Execution Judge must be satisfied that:

- (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 arbitral 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 order or morals of the UAE; and
- (vi) 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 laws or regulations relating to, or restrictions to, the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such laws, regulations or restrictions?**

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. Article 31 of the UAE Federal Law No. 3 of 1991 Regarding the Regulation of the Legal Profession provides that lawyers are not permitted to buy all or part of the right(s)

which are in dispute. Furthermore, Article 7(c) of the Draft Charter for the Conduct of Advocates and Legal Consultants in the Emirate of Dubai, which applies to both local advocates and foreign legal consultants, also provides that, fees must not be a share in kind of the disputed property rights.

## **7. Arbitration and technology**

### **7.1 Is the validity of blockchain-based evidence recognised?**

The UAE Government announced in April 2018 the launching of the Emirates Blockchain Strategy 2021. At a local level, the Government of the Emirate of Dubai launched in 2019 the Dubai Blockchain Strategy. Presently, there is no specific legislative or regulatory framework setting out a general legal regime of blockchain transactions. The UAE Arbitration Law does not expressly address the use of blockchain technology in onshore-seated arbitrations.

Article 33(8) of the UAE Arbitration Law affords the arbitral tribunal the “*discretion to determine the rules of evidence to be followed*”. Further, Article 33(8) permits the arbitral tribunal to specify the way in which the parties exchange evidence. Notably, Article 17(4) of the UAE Law of Evidence provides that electronic documents shall have the same probative force as that of the authentic document. Furthermore, Article 10 of the Federal Law No. 1 of 2006 concerning Electronic Transactions and Commerce (“**UAE Electronic Transactions Law**”) expressly recognises the admissibility of electronic records as evidence.

It is arguable that blockchain-based evidence is valid in onshore-seated arbitrations, provided such evidence does not conflict with the mandatory requirements under the UAE Arbitration Law and any other applicable rules on the taking of evidence (e.g. UAE Law of Evidence).

### **7.2 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?**

While the UAE Arbitration Law does not expressly address the use of blockchain technology in onshore-seated arbitrations, Article 7 of the UAE Arbitration Law provides that an arbitration agreement must be in writing, and confirms that this requirement is considered satisfied if the content of the arbitration agreement is contained in the form of an electronic message as long as it is in accordance with the applicable rules of the state (e.g., UAE Electronic Transactions Law). Article 12 of the UAE Electronic Transactions Law recognises the validity and enforceability of smart contracts which are defined as an agreement formed through the exchange of automated electronic agents, including electronic information systems programmed for such a purpose.

In the absence of a blockchain-dedicated framework in the UAE, an arbitration agreement recorded using blockchain technology would arguably be deemed valid in onshore-seated arbitrations, as recorded through electronic means, provided it does not conflict with the mandatory requirements under Articles 7 and 41 of the UAE Arbitration Law and any other mandatory applicable provisions.

With respect to the validity of arbitral awards, we note that Article 41 of the UAE Arbitration Law confirms that the arbitral tribunal may deliver an electronic copy to each party. An award recorded on a blockchain would arguably be deemed valid in onshore-seated arbitrations, provided the award does not conflict with the mandatory requirements under the UAE Arbitration Law (see Article 41 of the UAE Arbitration Law) and any other mandatory applicable provisions.

### **7.3 Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?**

In view of the responses to questions 7.1 and 7.2 above, the answer to both parts of this question ought in principle be “yes” to the extent these are considered original electronic documents. Based on our experience, UAE Courts admit electronically-signed arbitration agreements and/or awards as originals.



**7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?**

Article 41(6) of the UAE Arbitration Law establishes the general principle of the validity of an award signed through electronic means. The UAE Arbitration Law does not distinguish between the types of electronic signatures. Based on our experience, UAE Courts admit electronically-signed arbitration agreements and/or awards as originals. Accordingly, UAE Courts should consider an arbitral award electronically signed, either through inserting the image of a signature or more securely digitally signed, as an original for the purposes of recognition and enforcement, absent any agreement to the contrary by the parties.

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

No significant reforms are expected in the near future.

**9. Compatibility of the Delos Rules with local arbitration law**

We have not identified any provision in the Delos Rules that would conflict with the UAE Arbitration Law.

**10. Further reading**

- Agreeing to Institutional Arbitration? Key Takeaways from Dubai Court of Cassation judgment in Commercial Cassation No. 1042/017 (hearing of 8 April 2018) - Al Tamimi & Company
- Best Use of Modern Technology in Arbitration - Al Tamimi & Company
- Data Protection Considerations in UAE Related Arbitrations - Al Tamimi & Company
- Dubai Court Clarifies the Competent Authority to Rule on Interim and Conservatory Measures - Al Tamimi & Company
- Challenges and Recusal of Arbitrators under the UAE Arbitration Law - Al Tamimi & Company
- Commentary on the UAE Arbitration Law - Al Tamimi & Company
- Recent UAE Federal Supreme Court Judgment on Ambiguity of Arbitration Clauses – Lexology
- The Dubai Court of Cassation Rules on the Effect of the Failure to Administer an Oath in Arbitral Proceedings - Al Tamimi & Company
- UAE Law Gets Approval at Last - Global Arbitration Review
- UNCITRAL Confirms UAE Arbitration Laws As Model Law-Based - Al Tamimi & Company

## 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? 1985 or 2006 version?

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 that:

- (i) 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 (see Article 45 of the ADGM Arbitration Regulations).
- (ii) Unless the parties agree otherwise, 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 on the request of a party, provided that the third party is a party to the arbitration agreement and has consented to joinder in writing (see Article 39 of the ADGM Arbitration Regulations).
- (iii) 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 (see Article 59 of ADGM Arbitration Regulations).

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

- (i) All information relating to the arbitral proceedings must be kept confidential, unless otherwise agreed by the parties or where the DIFC Court orders disclosure (see Article 14 of the DIFC Arbitration Law).
- (ii) In the event that the parties have not agreed on the number of arbitrators, the arbitral tribunal shall be composed of a sole arbitrator (see Article 16(2) of the DIFC Arbitration Law).
- (iii) Arbitrators, employees and agents of arbitrators, arbitral institutions and appointing authorities are 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 (see Article 22 of the DIFC Arbitration Law).
- (iv) 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 (see Article 42(3) of the DIFC Arbitration Law).

#### 1.2 When was the arbitration law last revised?

The DIFC Arbitration Law was last amended in December 2013, Whereas the ADGM Arbitration Regulations were last amended in December 2020.

## 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. For example, in *Dhir v. Waterfront Property Investment Ltd and Linarus FZE* [2009] DIFC CFI 011 (8 July 2009) (at [92]) the court emphasised that if the parties sought the application of the DIFC Arbitration Law, then they should expressly select the DIFC as the seat of arbitration.

We are not aware of any instance where this issue has been tested in the ADGM.

### 2.2 In the absence of an express designation of a 'seat' in the arbitration agreement, how do the courts deal with references therein to a 'venue' or 'place' of arbitration?

In the ADGM, Article 35.3 of the ADGM Arbitration Regulations confirms that, unless the parties have otherwise agreed, the seat of arbitration shall be determined by (a) any arbitral or other institution or person vested by the parties with powers in that regard or (b) the Arbitral Tribunal. Thus, the determination of the 'seat' of arbitration is expressly reserved to the Arbitral Tribunal or the relevant institution or person vested with such a power by the parties. *A contrario* reading of the latter provision would entail that the courts do not have an express statutory power to determine the 'seat' of arbitration.

It is our view that an Arbitral Tribunal or the relevant designated institution or person, subject to the factual matrix of the case, would likely regard a reference to 'place' or 'venue' as synonymous with 'seat' of arbitration. This is because parties do not usually specify in their arbitration agreement the hearing location, which would depend on (amongst other things) the domiciles of the Arbitral Tribunal, counsel and witnesses, which the parties would not have known when drafting the arbitration agreement. Thus, a reference to 'venue' or 'place' is likely to be construed as referring to the seat of arbitration (see, for example, Gary B. Born, *International Commercial Arbitration* (Third Edition, Kluwer Law International 2021, Chapter 14) pp. 2227 and 2228).

In the absence of an express designation of a 'seat' and where the competent authority determined that 'seat' and 'place' were not synonymous with 'venue', then the applicable statutory criteria, i.e., the circumstances of the case, including the convenience of the parties, in accordance with Article 35.3 of the ADGM Arbitration Regulations, ought to be considered in view of determining the seat.

In the DIFC, there is no equivalent provision to Article 35.3 of the ADGM Arbitration Regulations. Instead, Article 27.1 of the DIFC Arbitration Law confirms that, unless the parties have agreed otherwise, the seat of the arbitration shall be the DIFC where the dispute is governed by DIFC law. While there is no express provision under the DIFC Arbitration Law, it is to be concluded from Article 26.2 and Article 27.2 of the DIFC Arbitration Law that the determination of the seat of arbitration would be undertaken by the Arbitral Tribunal. Furthermore, it can be concluded from Article 27.2 of the DIFC Arbitration Law that a distinction is made between the 'seat' and the 'venue' of an arbitration.

### 2.3 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 (see Article 15 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 (see Article 23(1) of the DIFC Arbitration Law).

## 2.4 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:

- (i) An arbitration agreement shall be in writing. This requirement is satisfied if the content of the arbitration agreement is recorded in any written form by one or more of the parties to it or by a third party with the authority of the parties to the agreement (whether in hardcopy or by electronic communications). An arbitration agreement is also considered to be in writing if it is contained in an exchange of statements of claim and defence in which the existence of an arbitration agreement is alleged by one party and not denied by the other. An arbitration agreement, which is in writing but has not been signed (whether in hardcopy or electronically), may be made binding orally or by conduct (see Articles 14(2), 14(3) and 14(4) of the ADGM Arbitration Regulations).
- (ii) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement (see Article 14(1) of the ADGM Arbitration Regulations).
- (iii) The party to the arbitration agreement is not, under the law applicable to it, under some incapacity (see Article 58(1)(a) of the ADGM Arbitration Regulations).
- (iv) The arbitration agreement must not cover matters on which settlement is not permissible (Article 58(1)(b) of the ADGM Arbitration Regulations).

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

- (i) 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 (see Article 12 of the DIFC Arbitration Law).
- (ii) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement (see Article 12(1) of the DIFC Arbitration Law).
- (iii) The party to the arbitration agreement is not, under the law applicable to it, under some incapacity (see Article 44(1)(a)(i) of the DIFC Arbitration Law).
- (iv) The arbitration agreement must not be conducted on matters that are not capable of settlement by arbitration under the laws of the DIFC (see Article 44(1)(b)(vi) of the DIFC Arbitration Law).

## 2.5 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 permit joining a third party to arbitral proceedings, at the request of either party or the third party itself, provided that the third party is a party to the underlying arbitration agreement and has consented to the joinder in writing (see Article 39 of the ADGM Arbitration Regulations). The DIFC Arbitration Law is silent on this aspect.

## 2.6 Are there restrictions to arbitrability? In the affirmative:

### 2.6.1 Do these restrictions relate to specific domains (such as anti-trust, employment 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. Matters that are not capable of settlement include those related to public policy, criminal matters and family law matters. The public policy of the UAE, as applied and forming part of the DIFC legal infrastructure is not necessarily coextensive with the public

policy of the UAE as applied onshore or in other free zones. To the extent not excluded by statute (see, for example, Article 12(2) of the DIFC Arbitration Law), any question of arbitrability based on public policy will generally be ascertained by the common law approach and principles.

### **2.6.2 Do these restrictions relate to specific persons (i.e. state entities, consumers etc.)?**

In general, 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 to an arbitration agreement, against whom legal proceedings in the ADGM Court are brought, may apply to the ADGM Court to stay proceedings regarding a dispute in respect of which an arbitration agreement exists (see Article 16(1) of the ADGM Arbitration Regulations). The ADGM Court will usually grant a stay, regardless of whether the place of arbitration is inside or outside of the jurisdiction, unless it is satisfied that the arbitration agreement is null and void, inoperative, or incapable of being performed (see Article 16(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 (see Article 16(4) of the ADGM Arbitration Regulations). The foregoing applies to arbitrations seated in the ADGM, and where no seat has been designated or determined (see Article 16(6) 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 (see Article 13(1) of the DIFC Arbitration Law). The DIFC Court will dismiss or stay the court proceedings unless it finds that the Arbitration Agreement is null and void, inoperative or incapable of being performed (see 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 (see Article 13(2) of the DIFC Arbitration Law).

### **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 circumstances, it is likely that the DIFC Courts would respect the arbitrators' request and order a stay of 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 injunctions/ anti-arbitration injunctions or orders, 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 it would be more appropriate for the curial court to assume that role. However, there may be a basis for the DIFC Courts to make orders relating to foreign-seated arbitrations. Article 15 of the DIFC Arbitration Law provides that “[i]t 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 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 DIFC 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 foreign counsel or be self-represented?**

Parties can retain outside counsel (*i.e.*, local/foreign lawyers/non-lawyers) or be self-represented in either DIFC or ADGM seated arbitrations.

### **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 be of a gravity such as to justify this outcome?**

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 their impartiality or independence. The arbitrator must disclose such information at the time of their appointment or at the time they become aware of such circumstances (see Article 20.1 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 20.2 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 ADGM Arbitration 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 presiding arbitrator (see Article 19 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? If so, are they willing to consider *ex parte* requests?**

Article 28 of the ADGM Arbitration Regulations provides that a party may apply to the arbitral tribunal to grant interim measures provided that such a request is made on notice to the other parties in the proceedings. Interim measures sought may relate to (a) maintaining or restoring the status quo pending determination of the dispute, (b) taking action that would prevent, or refrain from taking action that is likely to cause current or imminent harm or prejudice to any party or to the arbitral process itself, (c) provide means of preserving assets out of which a subsequent award may be satisfied, or (d) preserve evidence that

may be relevant and material to the resolution of the dispute (Articles 28(1) and 28(2) of the ADGM Arbitration Regulations). In addition, the existence of an arbitration agreement does not preclude a party from applying to the ADGM Court of First Instance, before or during arbitral proceedings, for interim measures including in relation to the taking of evidence or provisional or conservatory measures (Article 31(1) of the ADGM Arbitration Regulations). The ADGM Court of First Instance has the power to grant interim measures even if (a) the seat of the arbitration is outside the ADGM or no seat has been designated or determined, or (b) the interim measure is sought against a non-party to the arbitration agreement (Article 31(3) of the ADGM Arbitration Regulations). The ADGM Arbitration Regulations confirm that the ADGM Court of First Instance can act only if, or to the extent that, the arbitral tribunal, arbitral institution (if any), or the court of competent jurisdiction has no power or is unable for the time being to act effectively (Article 31(6) 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).

The ADGM Arbitration Regulations require a party, who is applying to the arbitral tribunal for an interim measure, to notify all parties in the arbitration (see Articles 28 and 30 of the ADGM Arbitration Regulations). However, parties can apply for a pre-arbitration interim measure from the ADGM Court of First Instance on an ex-parte basis (see Article 31 of the ADGM Arbitration Regulations). Article 15 of the DIFC Arbitration Law permits a party to apply to the DIFC Court of First Instance 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 45(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 arbitral 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 (see Article 45(2) of the ADGM Arbitration Regulations). The ADGM Arbitration Regulations define "Confidential Information" as any information relating to (i) the arbitral proceedings under the arbitration agreement; or (ii) an award made in those arbitral proceedings.

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 (see 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, and can hearings and/or meetings be held remotely, even if a party objects?**

Yes, the parties may agree on the place where hearings and/or meetings may be held.

In the DIFC, 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 modern means of electronic communication (see Article 27 of the DIFC Arbitration Law).

In the ADGM, the parties may agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings. The parties are free to agree to adopt, in whole or part, the ADGM Arbitration Centre Arbitration Guidelines, regardless of the seat or the applicable rules of procedure. Absent an agreement by the parties, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate. The arbitral tribunal shall consider the use of technology in conducting hearings, in whole or in part, by video conference, telephone or other communication technology (see Article 34 of the ADGM Arbitration Regulations).

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

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 28 of the ADGM Arbitration Regulations). Recent practice in the DIFC Courts has also shown a tendency of the DIFC Courts to enforce arbitral tribunal-ordered interim measures.

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

- (i) 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
- (ii) 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 28 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? For example, are there any restrictions to the presentation of testimony by a party employee?**

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 34 of the ADGM Arbitration Regulations).

#### **4.5.6 Does it make it mandatory to hold a hearing?**

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

In the ADGM, the arbitral tribunal may decide (a) whether to hold oral hearings for the presentation of evidence or for oral argument, (b) whether the hearing is to be conducted, in whole or in part, in person, by video conference, telephone or other communication technology, or (c) whether the proceedings shall be conducted on the basis of documents and other materials. Unless the parties have agreed that no hearing shall be held, the arbitral tribunal shall hold a hearing (whether in person, by video conference, or by any other means of communication technology) at an appropriate stage of the proceedings, after consulting the parties (see Article 43 of the ADGM Arbitration Regulations).



#### 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 arbitral tribunal as regards the award of interest (see Article 52(1) of the ADGM Arbitration Regulations). Subject to any contrary agreement by the parties, the arbitral 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 52(2) of the ADGM Arbitration Regulations). Unless otherwise agreed by the parties, and subject to any contrary provision of any applicable law, the arbitral tribunal's powers to award interest shall include awarding the parties simple or compound interest (see Article 52(3) of the ADGM Arbitration Regulations).

The DIFC Arbitration Law does not set out principles governing the award of interest. Where the DIFC Arbitration Law governs the conduct of the arbitration, and subject to any contrary agreement by the parties, the arbitral tribunal may seek to apply the same rate of interest applied in the DIFC Courts in commercial matters (see, Article 17(2) of the DIFC Law No. 7 of 2005 (*i.e.*, DIFC Law of Damages and Remedies), Article 118(2) of the DIFC Law No. 6 of 2004 (*i.e.*, DIFC Contracts Law) and DIFC Practice Direction 4 of 2017 - Interest on Judgements).

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

Article 38(5) of the DIFC Arbitration Law and Article 55(6) of the ADGM Arbitration Regulations provide that the arbitral tribunal may fix the costs of the arbitration in the award. They also enable the arbitral tribunal to apportion the legal costs of the successful party as part of its arbitration costs to such extent that the arbitral tribunal determines that the amount of such costs, or a part of them, is reasonable.

In the ADGM, the award of legal costs is not limited to the successful party. In fixing the costs of the arbitration, the arbitral tribunal may direct to whom, by whom, and in what manner, the whole or any part of the costs shall be paid (section 55(7) of the Regulations). Section 44(4) also confirms that "*[t]he arbitral tribunal is in all cases entitled to consider the conduct of the parties and the Party Representatives when making any decision allocating the costs of the arbitration between the parties.*"

In the DIFC, the term "costs" includes "*[t]he costs for legal representation and assistance of the successful party if such costs were claimed during the Arbitration, and only to the extent that the Arbitral Tribunal determines that the amount of such costs is reasonable*" (Article 38(5)(f) of the DIFC Arbitration Law). Therefore, given the broad interpretation of what constitutes a 'successful party' *i.e.* successful in its claim or on a particular issue, the arbitral tribunal would have the discretion to render an award on costs as it sees fit, given the circumstances of the case.

### 4.6 Liability

#### 4.6.1 Do arbitrators benefit from immunity from 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 24 of the ADGM Arbitration Regulations).

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 (see Article 236 of Federal Decree-Law No. (24) of 2018 Amending Certain Provisions of the UAE Penal Code in conjunction with Articles 234 and 237 of the UAE Penal Code). Since the DIFC and ADGM deal exclusively with civil and commercial matters, any criminal matter falls exclusively within the jurisdiction of the onshore courts, therefore. This provision extends to arbitrators acting in the DIFC and ADGM.

#### **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 they were held guilty of corruption.

Previously, arbitrators were exposed to criminal liability if they issued a decision “in contravention of the requirements of the duty of neutrality and integrity” (Article 257 of the UAE Penal Code). However, Article 257 has been amended to exclude arbitrators from being subject to criminal prosecution as a result of a breach of their duty of “neutrality and integrity” (see Federal Decree Law No. 24 of 2018 amending the UAE Penal Code).

### **5. The award**

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

The requirement of a reasoned award can be waived by the parties’ agreement (see Article 38(2) of the DIFC Arbitration Law and Article 55(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 grounds. However, the ADGM Court may still refuse the recognition and enforcement of the arbitral award in the ADGM pursuant to Article 62 of the ADGM Arbitration Regulations (see Article 59 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 applying 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 arbitral tribunal and the seat of the arbitration. Both the DIFC Arbitration Law and the ADGM Arbitration Regulations provide that the arbitral tribunal must also fix the costs of the arbitration in the award (see Article 38 of the DIFC Arbitration Law and Article 55(6) of the ADGM Arbitration Regulations).

#### **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 the exclusive recourse against an arbitral award issued in the ADGM or the DIFC (see Article 58(3) 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 (see 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 (see 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 (see 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 (see Article 60(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 (see Article 60(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 (see Article 61(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?**

Under the ADGM Arbitration Regulations and the DIFC Arbitration Law, if an application for the setting aside or suspension of an award has been made to the court of the state or jurisdiction in which, or under the law of which, that award was made, the ADGM Court or DIFC Court respectively, may, if they considers it proper, adjourn their decision (Article 62(2) of the ADGM Arbitration Regulations and Article 44(2) of the DIFC 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 does not appear to have been tested yet in the ADGM or DIFC Courts.

#### **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(1) of the DIFC Arbitration Law is clear that: “[a]n 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 arbitrations 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 (see Section 225 of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015). Article 37 of the ADGM Arbitration Regulations obliges a party to notify the parties and arbitral tribunals in writing of the existence of any third-party funding agreement and the identity of the third-party funder.

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 need 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 funding in DIFC-seated arbitrations. Notwithstanding, it is arguable that the DIFC's friendly approach to third-party funding in litigation proceedings implies its acceptance in DIFC-seated arbitrations. Particularly, the DIFC Courts, as the supervisory courts of DIFC-seated arbitrations, 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. Arbitration and technology**

### **7.1 Is the validity of blockchain-based evidence recognised?**

The use of block-chain technology is not addressed in the ADGM Arbitration Regulations or the DIFC Arbitration Law.

Article 34 of the ADGM Arbitration Regulations permits the arbitral tribunal to use technology in order to enhance the efficient and expeditious conduct of the arbitration. While Article 34 lists specific examples of technologies, the list is not exhaustive, and references the use of "any other technology" to enhance the efficient and expeditious conduct of the arbitration.

The ADGM Arbitration Regulations further confirm that parties may submit factual or expert evidence electronically (see Articles 43(6) and 43(7) of the ADGM Arbitration Regulations).

It is arguable that block-chain-based evidence is valid in ADGM-seated arbitrations, provided such evidence does not conflict with the mandatory requirements under the ADGM Arbitration Regulations and any other applicable rules on the taking of evidence.

The DIFC Arbitration Law is silent on whether evidence may be submitted electronically. The DIFC, however, has implemented its own Electronic Transactions Law (see DIFC Law No. 2 of 2017) (the "**DIFC Electronic Transactions Law**"). Article 10 of the DIFC Electronic Transactions Law states that "[i]nformation shall not be denied legal effect, validity or enforceability solely on the ground that it is in the form of an Electronic Record". Article 14 further provides that evidence may not be excluded solely because it is in electronic form. Accordingly, in principle, blockchain-based evidence ought to be considered valid in DIFC-seated arbitrations, provided such evidence does not conflict with the mandatory requirements under the DIFC Arbitration Law and any other applicable rules on the taking of evidence.

### **7.2 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?**

The ADGM Arbitration Regulations and DIFC Arbitration Law do not explicitly address the use of blockchain technology in ADGM-seated or DIFC-seated arbitrations.

Article 14 of the ADGM Arbitration Regulations provides that an arbitration agreement must be in writing, and confirms that this requirement may be considered satisfied if the content of the arbitration agreement is recorded in any written (hardcopy or electronic) form by one or more of the parties (or, by a third party acting with the authority of the parties to the agreement) (see Articles 14(2) and 14(3) of the ADGM Arbitration Regulations).

An arbitration agreement recorded using blockchain technology is arguably valid in ADGM-seated arbitrations, provided it does not conflict with mandatory requirements pursuant to Articles 14 and 61 of the ADGM Arbitration Regulations.

Article 55 of the ADGM Arbitration Regulations confirm that the arbitral tribunal may electronically sign its award and, after the award is made, deliver an electronic copy to each party. An award recorded on a blockchain is arguably valid in ADGM-seated arbitrations, provided the award does not conflict with mandatory requirements pursuant to Articles 55 and 61 of the ADGM Arbitration Regulations.

Article 12 of the DIFC Arbitration Law provides that an arbitration agreement must be in writing and confirms at Article 12(5) that this requirement can be met through electronic communications. The definition of electronic communication is broad and includes electronic data interchange (EDI). In this regard, an arbitration agreement using blockchain technology is arguably valid in DIFC-seated arbitrations.

Similarly, Article 11 of the DIFC Electronic Transactions Law permits the use of an electronic record where any provision of a DIFC Law requires information to be written or in writing. The DIFC Arbitration Law does not mention the electronic transfer of awards; hence, Articles 10 and 11 of the DIFC Electronic Transactions Law apply. Therefore, in principle, an award recorded on a blockchain is likely valid in DIFC-seated arbitrations, provided the award does not conflict with the mandatory requirements set out in Article 38 of the DIFC Arbitration Law on the form and content of the award.

### **7.3 Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?**

In view of the responses to question 7.2 above, the answer to both parts of this question is arguably “yes” in regard to ADGM-seated arbitrations.

For the purposes of recognition or enforcement of any arbitration agreement and award within the DIFC, the requirement is to provide an original arbitration agreement and award or a certified copy thereof. Therefore, in view of the responses to question 7.2 above, the answer to both parts of this question is arguably “yes”.

### **7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?**

Article 34 of the ADGM Arbitration Regulations permits the arbitral tribunal to use electronic signatures on documents submitted, exchanged or communicated in order to enhance the efficient and expeditious conduct of the arbitration. Article 55 of the ADGM Arbitration Regulations confirms that an award signed by electronic means shall have the same legal validity and enforceability, and constitute an original award for the purposes of the recognition and enforcement of the award pursuant to Article 61, as an award with manually executed signatures of arbitral tribunal. In view of the foregoing, the answer to both parts of this question is arguably “yes”.

The DIFC Arbitration Law there makes no reference to electronic signatures. However, when read in conjunction with Article 21 of the DIFC Electronic Transactions Law, where a document is required to be signed the position is covered by Article 21 according to which electronic signatures are generally valid under DIFC Law. The DIFC Electronic Transactions Law does not make a distinction between digital and *secure* digital signatures. In view of the foregoing, the answer to both parts of this question is arguably “yes”.

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

The DIFC Arbitration Law and the ADGM Arbitration Regulations were revised in 2013 and 2020, respectively. At present there are no indications that further reforms are forthcoming in 2021.

## 9. Compatibility of the Delos Rules with local arbitration law

We have not identified any provision in the Delos Rules that would in principle conflict with the ADGM Arbitration Regulations or the DIFC Arbitration Law.

## 10. Further reading

- ADGM Arbitrations with the Use of Technology – Al Tamimi and Company
- ADGM Courts Issue First Arbitration-related Judgements – Lexology
- Arbitrating in Abu Dhabi's commercial Freezone - An Overview - Global Arbitration Review
- DIFC Courts Block Onshore Lawsuit - Global Arbitration Review
- DIFC Court Grants First Ever Anti-suit Injunction in Respect of “on-shore” Dubai Court Proceedings – Lexology
- The Enforcement of Foreign Arbitral Awards in the UAE: A Recent Judgement of the ADGM Court of First Instance – Al Tamimi and Company
- The Judicial Tribunal Confirms DIFC Courts’ Proper Jurisdiction for Challenge of Awards Under the DIFC Arbitration Law and the Role of the DIFC Courts as a Conduit – Kluwer Arbitration Blog
- The Reciprocal Enforcement of Judgements, Order and Arbitral Awards by the ADGM Courts and Abu Dhabi Judicial Department: A Recent and Important Development – Al Tamimi and Company
- Requirements, Power and Liability of Onshore and Offshore Arbitration in the United Arab Emirates – Al Tamimi and Company

## ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> with offices and a case team?	<p><a href="#">Dubai International Arbitration Centre (DIAC).</a></p> <p><a href="#">Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC).</a></p> <p><a href="#">Dubai International Financial Centre – London Court of International Arbitration Centre (DIFC-LCIA).</a></p>
Main arbitration hearing facilities for in-person hearings?	<p><a href="#">Abu Dhabi Global Market Arbitration Centre (ADGMAC).</a></p> <p><a href="#">Dispute Resolution Authority of the DIFC.</a></p> <p><a href="#">DIAC Arbitration Centre.</a></p>
Main reprographics facilities in reasonable proximity to the above main arbitration hearing facilities?	<p><a href="#">Desco Copy &amp; Print Centre (located in the DIFC).</a></p> <p><a href="#">Spectrum Digital Print Solutions DIFC.</a></p>
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	<p><a href="#">Lloyd Michaux.</a></p> <p><a href="#">TransPerfect.</a></p>
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	<p><a href="#">TransPerfect.</a></p>
Other leading arbitral bodies with offices in the jurisdiction?	<p>The MENA Representative Office of the ICC International Court of Arbitration (located in the ADGM in the Emirate of Abu Dhabi).</p>