



# Arbitration

in 47 jurisdictions worldwide

Contributing editors: Gerhard Wegen and Stephan Wilske

# 2009



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## Arbitration 2009

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# United Arab Emirates

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## Laws and Institutions

### 1 International multilateral conventions

Is your country a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to arbitration is your country a party to?

The New York Convention was ratified by the UAE on 13 June 2006 pursuant to Decree No. 43 of 2006 and came into force on 19 November 2006. As with most countries that are party to the New York Convention, the UAE made a reservation that it would only apply the Convention to recognise and enforce awards that are made in a territory of another contracting state. Otherwise, no declarations or notifications were made under articles I, X and XI of the Convention.

The UAE is also a party to the Riyadh Convention on Judicial Cooperation between States of the Arab League (1983), the Arab League Convention on Commercial Arbitration (1987), the GCC Convention for the Execution of Judgments, Delegations and Judicial Notifications, as well as being a signatory to the Washington Convention on the Settlement of the Investment Disputes between States and Nationals of Other States (1965).

### 2 International bilateral agreements

Do bilateral agreements relating to arbitration exist with other countries?

The UAE is a party to several bilateral agreements, the scope of which would be now largely superseded by the operation of the New York Convention. However, there are two agreements that are still relevant:

- the Agreement on Legal and Judicial Cooperation 1972 with Somalia; and
- the Treaty on Mutual Legal assistance in Criminal Matters, Extradition of Offenders, Cooperation in Civil, Commercial and Personal Matters, Service of Judicial and Extra-Judicial Documents, Obtaining Evidence, Commissions and the Recognition and Enforcement of Foreign Judgments and Arbitral Awards with Sudan, which was ratified by the UAE in 2005.

These agreements are relevant because Somalia and Sudan have yet to ratify the New York Convention.

### 3 Domestic arbitration law

What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?

The primary source of law relating to arbitration proceedings in the UAE is contained in articles 203 to 218 of Federal Law No 11 of 1992, known as the Civil Procedure Code (CPC). The provisions relating to enforcement of foreign arbitration awards are contained in articles 235 to 237 of the CPC and are applicable provided that:

- the UAE courts do not have jurisdiction over the dispute and the arbitral tribunal that issued the award does have such jurisdiction;
- the parties have appeared in the arbitral proceedings (ie, it is not sufficient that the award was issued *ex parte* even if it can be shown that the absent party was duly notified but still failed to appear);
- no further judicial appeal or challenge is possible in the country where the award was issued; and
- the foreign award is not in conflict with any order previously issued in the UAE and does not contradict the public order or morals of the UAE.

However, the most significant obstacle to enforcement has traditionally been article 235(1) of the CPC, which requires reciprocity of enforcement between the respective countries. In other words, foreign awards could only be enforced in the UAE on the same conditions as applied in the foreign country for enforcement of UAE arbitral awards. In practice, this meant that, unless the foreign country had entered into a bilateral agreement with the UAE, or was a party to a common multilateral convention with the UAE, the relevant provisions of CPC would be of no assistance and the enforcement would be denied. The UAE's accession to the New York Convention has therefore significantly broadened the range of countries from which arbitral awards could be enforced in the UAE.

The other main source of law is the new 2008 Dubai International Financial Centre (DIFC) Arbitration Law, which was enacted by His Highness Sheikh Mohammed bin Rashid Al Maktoum, Vice-President and Prime Minister of the UAE and Ruler of Dubai on 1 September 2008. A copy of this law (as well as all other enacted and proposed DIFC laws) can be obtained at [www.difc.ae/laws\\_regulations/laws/enacted\\_laws.html](http://www.difc.ae/laws_regulations/laws/enacted_laws.html).

The new law, which is to be known as DIFC Law No. 1 of 2008, replaces and repeals the DIFC's previous arbitration law of 2004. Whereas the previous law restricted the availability of DIFC as an arbitral forum to disputes involving DIFC registered entities, or to contacts with a connection to the DIFC, the new law makes DIFC arbitration available to anyone who decides to adopt it.

The new law covers all stages of the arbitral process from the arbitration agreement to the recognition and enforcement of arbitral

awards, which also take place at the DIFC-LCIA Arbitration Centre situated within the DIFC.

#### 4 Domestic arbitration and UNCITRAL

Is your domestic arbitration law based on the UNCITRAL Model Law?  
What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?

No, the material provisions of the CPC are not based on the UNCITRAL Model Law; in fact, there are numerous differences between the two. For example, under the CPC it is not sufficient for the arbitration agreement to be merely evidenced in writing, as the agreement to arbitrate must be contained in a document that is signed by both parties. The UAE courts have, on occasion, interpreted this rule to mean that the page on which the arbitration clause is located must also be signed by both parties.

In contrast to the above, the DIFC Arbitration Law of 2008 is based on the UNCITRAL Model Law, and so is the draft Federal Arbitration Law that has already been consulted upon, and is now finalised by the UAE Ministry of Economy in cooperation with the Ministry of Justice.

#### 5 Mandatory provisions

What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?

Most procedural requirements can be agreed between the parties, pursuant to article 212(1) of the CPC. For example, there is a requirement contained in article 208(1) of the CPC that the first hearing must be notified within 30 days of the tribunal accepting the appointment, and that the final award must be issued within six months thereafter (article 210(1) CPC). The time limit for issuance of the award, however, can be extended pursuant to article 210(2) of the CPC by agreement between the parties, and would be deemed to have been varied by parties that agree to be bound by the rules of arbitration that stipulate different time limits, such as the Dubai International Arbitration Centre (DIAC) Rules of Arbitration 2007. Similarly, there is a requirement contained in article 212(6) of the CPC that the arbitral award is rendered in Arabic, although parties are able to agree otherwise.

Examples of the key provisions that cannot be derogated from (because, for example, they relate to issues of public policy, natural justice, and procedural fairness) are as follows:

- the right of both parties to present their case – article 212(1) CPC;
- all witness testimony having to be taken under oath – article 211 CPC (which also carries a sanction of perjury);
- the number of arbitrators having to be odd – article 206(2) CPC; and
- the standard of independence and impartiality being the same standard applied to judges – article 207(4) CPC.

The above list is non-exhaustive and would include public policy considerations even if not expressly contained in the Civil Procedure Code.

#### 6 Substantive law

Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

Parties are generally able to agree upon the law that would apply to the dispute. However, where the issues in dispute concern matters that are subject to the mandatory UAE laws (such as a contractor's

decennial liability for the stability and safety of buildings located within the UAE), the parties may not avoid such liability by electing the laws of another jurisdiction. Therefore, if an arbitration award is obtained that contradicts UAE's mandatory law, it is unlikely to be enforced by the UAE courts.

In the absence of an agreement regarding the substantive law applicable to the dispute, the tribunal should apply the UAE law.

#### 7 Arbitral institutions

What are the most prominent arbitral institutions in your country?

The most prominent arbitration centre in the UAE is the Dubai International Arbitration Centre (DIAC) which operates under the auspices of the Dubai Chamber of Commerce and Industry (DCCI). The DIAC has its own arbitration rules, the most recent being the DIAC Arbitration Rules 2007, and is located at:

##### Dubai Chamber of Commerce and Industry (DCCI)

14th Floor, Baniyas Road,  
PO Box 1457,  
Deira, Dubai, UAE  
Tel: +971 4 2028 343  
Fax: +971 4 2028 668  
www.diac.ae

Parties located in Abu Dhabi would commonly select the Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC), which forms part of the Abu Dhabi Chamber of Commerce (ADCC), as the governing authority. The arbitration procedure would be governed by rules known as the ADCCAC Procedural Regulations, and the centre is located at:

##### Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC)

PO Box 662  
Cornish Road  
Abu Dhabi, UAE  
Tel: +971 2 317599  
Fax: +971 2 2311410  
www.adcci.gov.ae

Furthermore, a new arbitration centre has recently been established at the Dubai International Financial Centre (DIFC) in association with the London Court of International Arbitration (LCIA). The DIFC/LCIA Arbitration Centre has adopted arbitration rules that are based on the LCIA Arbitration rules. The address of DIFC/LCIA arbitration centre is:

##### Dubai International Financial Centre

The Gate Precinct  
Building 4  
PO Box 211724  
Dubai, UAE  
Tel: +971 4 427 3333  
Fax: +971 4 4273330  
www.difc.ae

Finally, disputes relating to infrastructure projects in Dubai are frequently resolved pursuant to the Arbitration Rules of the Dubai Municipality and the Road Transport Authority.

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**Arbitration agreement**


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**8 Arbitrability**

Are there any types of disputes that are not arbitrable?

Yes. The first type are labour disputes, as these are subject to a specified procedure that requires referral of the dispute to the appropriate department of the Ministry of Labour and Social Affairs following which, if unresolved, the dispute would then be referred to the UAE courts. Pursuant to part IX of Federal Law No. 8 of 1980 (as amended), known as the Labour Law, collective labour disputes are subject to the jurisdiction of the Supreme Arbitration Board constituted within the ambit of the Ministry of Labour and Social Affairs.

The second type are commercial agency disputes, which include distributorship disputes. Such disputes are not arbitrable, pursuant to article 6 of Federal Law No 18 of 1981 (as amended), known as the Commercial Agency Law, that states that resolution shall be achieved through the UAE courts and that 'no effect shall be given to any agreement to the contrary'.

While disputes relating to insurance policies are arbitrable, the arbitration clause must feature in an agreement separate from the general conditions.

Article 1028 of Law No. 2 of 1987 ('the Civil Code') provides as follows: '(1) Any of the following provisions appearing in a policy of insurance shall be void: [...] (d) an arbitration clause unless contained in a special agreement separate from the general printed conditions in the policy of insurance [...]'.

This is because insurance policies are considered to be unilateral documents underwritten by an insurer, whereas agreements to arbitrate must be bilateral in nature.

**9 Requirements**

What formal and other requirements exist for an arbitration agreement?

Article 203(2) of the CPC stipulates that the arbitration agreement must be evidenced in writing. However, as mentioned in question 4, the UAE courts have, on occasion, interpreted this to mean that the relevant page containing the arbitration agreement must also be signed.

Furthermore, under article 58 of the CPC, the party signing the arbitration agreement must have a specific authority to do so. If the arbitration agreement is to be signed by a representative of the party, its power to do so would need to be evidenced by a notarised power of attorney. It is also advisable that the contracting party, rather than the representative, signs the arbitration agreement to safeguard against the possibility of the power of attorney failing to contain a specific power to sign binding arbitration agreements.

**10 Enforceability**

In what circumstances is an arbitration agreement no longer enforceable?

An arbitration agreement is deemed to be unenforceable if one of the parties refers the dispute to court proceedings without taking the arbitration clause into consideration, and the other party raises no objection at the initial hearing. In such circumstances the case may be examined and the arbitration clause will be deemed null and void (article 203(5) CPC).

**11 Third parties**

In which instances can third parties or non-signatories be bound by an arbitration agreement?

None; third parties cannot be bound by an arbitration agreement under UAE law.

**12 Groups of companies**

Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the 'group of companies' doctrine?

No, arbitration agreements are only binding upon the parties that entered into it, therefore no group companies would be affected.

**13 Multiparty arbitration agreements**

What are the requirements for a valid multiparty arbitration agreement?

The UAE arbitration law does not provide for multiparty arbitration. However, the DIAC Arbitration Rules 2007, which are the most commonly agreed upon procedural rules to govern arbitration within the UAE, do provide for such arbitrations in article 11. In such circumstances the parties would need to agree on the joint nomination of the arbitrators, failing which the appointment would be made by the DIAC.

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**Constitution of arbitral tribunal**


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**14 Appointment of arbitrators**

Are there any restrictions as to who may act as an arbitrator?

Under article 206(1) of the CPC the following categories of persons are restricted from acting as arbitrators: minors, persons placed under guardianship, convicts deprived of their civil rights, and undercharged bankrupts.

Judges are not prevented from being appointed as arbitrators, however, under article 115 of the CPC, a person who has been nominated as an arbitrator by one of the parties may not act as judge in the future where the dispute involves the same party.

**15 Appointment of arbitrators**

Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?

Failing the parties' agreement upon the appointment of the tribunal, the appointment would be effected in accordance with the procedural rules to which the parties are bound (eg, DIAC Arbitration Rules 2007). In the unlikely event that this is not specified, the tribunal would be appointed by the court upon the application of one of the parties in accordance with article 204(1) of the CPC.

The court's appointment cannot be challenged (article 204(2) of the CPC).

**16 Challenge and replacement of arbitrators**

On what grounds and how can an arbitrator be challenged and replaced?

The grounds for challenging an appointment of an arbitrator award are the same as the grounds for challenging judges (Article 207(4) CPC).

Article 114 of the CPC contains grounds which, if applicable, would disqualify a judge from passing a judgment even if the parties

do not object. These are when the judge or arbitrator is:

- a relative or an in-law to the fourth degree of one of the parties;
- involved in the private business of one of the parties; or
- a legal representative for one of the parties, even if on an unrelated matter and prior to becoming a judge.

The judge may be also disqualified in appropriate circumstances under article 115 of the CPC, if there has been an employment relationship between the litigant and the judge, or if the judge has accepted a gift from the litigant. The standard that would need to be satisfied to evidence bias would be in the form of ‘circumstances likely’ as opposed to the ‘real danger’ test applied in common law jurisdictions.

Additionally, the arbitrator can be also replaced by an order of the competent court if the arbitrator intentionally neglects to act in accordance with the arbitration agreement under article 207 of the CPC.

#### 17 Relationship between parties and arbitrators

What is the relationship between parties and arbitrators?

The relationship between parties and arbitrators will largely be covered by the terms of the contract governing the appointment, and the procedural rules to which they are bound. The CPC does, however, contain some important provisions regarding the appointment, such as the potential requirement for the arbitrator to pay compensation in the event of failing to carry out the job without due cause after having agreed to arbitrate (article 207(2) of the CPC).

So far as remuneration is concerned, article 218 of the CPC provides that assessment of the arbitrators’ fees and the costs of the arbitration shall be left to them, and that they may charge them to the losing party. However, at the request of one of the opposing parties, the court may adjust this assessment to accord with the effort made and the nature of the dispute.

It is expected that party-appointed arbitrators will be neutral. If one party has reason to believe otherwise, this may be raised during the ratification process before the court when considering issues of validity.

### Jurisdiction

#### 18 Court proceedings despite arbitration agreement

What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?

As briefly mentioned in question 10, should court proceedings be initiated despite a valid arbitration agreement, it is encumbrant upon the defendant to draw this fact to the attention of the court at the first hearing. If the defendant fails to do this, the arbitration agreement would be considered to be null and void and the parties would be free to proceed by way of litigation before the competent UAE courts (article 203(5) of the CPC).

#### 19 Jurisdiction of arbitral tribunal

What is the procedure for disputes over jurisdiction of the arbitral tribunal once arbitral proceedings have been initiated and what time limits exist for jurisdictional objections?

If a matter is submitted to the tribunal that is beyond its jurisdiction, article 209(2) of the CPC provides that it must cease its functions until a final judgment is issued by the competent court in this regard. The referral to the competent court can be made by the tribunal itself or at the request of one of the parties.

If the tribunal accepts jurisdiction, the issue of the tribunal’s juris-

diction can be reopened at the ratification stage before the courts, even if the parties did not raise any objections regarding the jurisdiction at the time the arbitral proceedings were commenced. If the jurisdiction challenge is accepted by the court, the award is likely to be nullified pursuant to article 16(1) of the CPC.

### Arbitral proceedings

#### 20 Place and language of arbitration

Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings?

The place of arbitration for UAE arbitrations would have to be within UAE, with the exact location to be determined by the tribunal (in the event that the parties are unable to agree).

There is no default mechanism for the language of the arbitral proceedings under the CPC. However, the final award must be issued in Arabic pursuant to article 212(6) of the CPC, unless the parties agree otherwise.

#### 21 Commencement of arbitration

How are arbitral proceedings initiated?

The appointment of arbitrators will generally take place pursuant to the agreed procedural rules (eg, DIAC, DIFC, UNCITRAL). Where no such rules are agreed, the arbitral proceedings will be initiated by one party serving a notice upon the other to agree upon the tribunal. If this cannot be agreed, the appointment of the tribunal will be effected by the court, pursuant to article 204(1) of the CPC, following the request of one of the parties.

#### 22 Hearing

Is a hearing required and what rules apply?

A hearing is required, and must be notified to the parties within 30 days of the tribunal accepting its appointment (article 208(1) CPC). This is usually a procedural hearing whereby the timetable and future conduct of the arbitral proceedings are determined. The necessity for any further hearings will depend upon the circumstances of the case as ordered by the tribunal, or agreed between the parties.

#### 23 Evidence

By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

Parties are generally free to adduce whatever evidence they consider supports their case. There is no general concept of discovery and disclosure is based on the ‘whole truth unless privileged’ as it is known in common law jurisdictions. There is a mechanism, however, for making applications to the court under article 18 of the Federal Law No.10 of 1992, known as the Evidence Law, requesting the other party to disclose certain documents where, for example, they have been referred to in that party’s pleadings. However, in practice, such applications are limited in scope.

The concept of ‘without prejudice’ is, similarly, not recognised under UAE law, and therefore any correspondence genuinely aimed at amicably settling the dispute can still be adduced before the court or arbitral tribunal.

Witnesses, whether of fact or expert opinion, must be sworn in before giving evidence under article 211 of the CPC, and statements or reports that are not supported by attendance of the witness in person would be of limited value.

It is common for the parties to produce their own expert wit-

nesses, although the tribunal can also retain its own expert if it deems it appropriate.

#### 24 Court involvement

In what instances can the arbitral tribunal request assistance from a court and in what instances may courts intervene?

The tribunal can seek assistance from the court by requesting an order compelling a third party to produce certain documents that are pertinent to the issues in dispute, pursuant to article 209(2)(b) of the CPC.

The court's assistance can also be sought under article 209(2)(a) of the CPC in relation to any uncooperative witnesses. A false sworn witness testimony in arbitration proceedings carries the sanction of perjury under article 211 of the CPC and the UAE Criminal Code.

Precautionary attachment applications can be sought from the competent court in support of the arbitration proceedings for preservation of assets.

Courts can intervene in the arbitration proceedings upon the application of either party if bias of an arbitrator is suspected or if the arbitrator has neglected to perform the required duties. Matters would also be referred to the court if a fraudulent instrument is produced in the arbitration proceedings.

In all the above cases, the arbitral proceedings would be stayed pending the court's determination of the applications.

#### 25 Confidentiality

Is confidentiality ensured?

There is no stipulation within the CPC that arbitral proceedings, the material submitted, the arbitral award or the subsequent enforcement must be confidential, and therefore the parties would need to expressly agree this in the arbitration agreement. In practice, however, most arbitration proceedings are considered to be confidential.

### Interim measures

#### 26 Interim measures by the courts

What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

As indicated in question 24, the UAE courts retain jurisdiction to order summary and interim measures, pursuant to article 22 of the CPC. The court's jurisdiction to order such interim measures cannot be contracted out of (article 24 CPC).

#### 27 Interim measures by the arbitral tribunal

What interim measures may the arbitral tribunal order after it is constituted? In which instances can security for costs be ordered by an arbitral tribunal?

Arbitral tribunals are not authorised to order interim measures unless the parties have specifically agreed otherwise. That being said, even if the tribunal is generally authorised to order such interim measures, it is doubtful that this will be interpreted as extending to security for costs orders, as no such concept exists before the UAE courts.

If the parties intend for the tribunal to have a power to order security for costs, such power must be expressed clearly and unequivocally in the arbitration agreement.

### Awards

#### 28 Decisions by the arbitral tribunal

Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences if an arbitrator refuses to take part in a vote or sign the award?

Awards can be made by the majority of arbitrators and a unanimous vote is not required.

Under article 212(5) of the CPC, an award shall be valid if signed by the majority of arbitrators. The award would, however, need to record the fact there is a dissenting opinion or that an arbitrator has refused to sign the award. The UAE courts have extended this stipulation to require that every page of the arbitral award is signed or initialled by the majority of arbitrators, failing which the courts will nullify the award.

If an arbitrator's conduct is such that it affects the proceedings or the validity of the award (without good cause), the arbitrator may be ordered by the court to indemnify the parties, pursuant to article 207(2) of the CPC.

#### 29 Form and content requirements

What form and content requirements exist for an award? Does the award have to be rendered within a certain time limit?

Unless the parties have authorised the tribunal to effect interim measures, the award must be final and relate to the entirety of the dispute.

Article 212(5) of the CPC also stipulates that the award must:

- be in writing;
- be signed by the majority of arbitrators on each page;
- provide a summary of each party's case, grounds for the award and the pronouncement of the award;
- state any dissenting opinion;
- include a copy of the arbitration agreement; and
- state the date and place of issue.

Unless the parties agree otherwise, the award should be drafted in Arabic and issued within six months from the date of the first hearing. A copy of the award must also be delivered to each party within five days of it being issued.

#### 30 Date of award

For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?

In court-administered arbitrations, the tribunal must deposit the original award with the court within 15 days from the award having been issued, and circulate copies of the award to the parties within a further five days.

For arbitrations that are not administered through the court, the time for ratification is not directly linked to the issuance of the award. However, it is linked to the date upon which the original right to arbitrate arose and would vary depending on the underlying cause of the dispute. For example, disputes arising out of insurance contracts are time barred after three years from the date the cause of action arose. Therefore, the relevant limitation period would commence from such date, although it would be suspended for the duration of the arbitration and would recommence upon issuance of the arbitral award.

**31 Types of awards**

What types of awards are possible and what types of relief may the arbitral tribunal grant?

Arbitrators may only grant full awards, which can be based upon all remedies available under UAE law. Arbitrators' rulings may not be contested in any way (article 217(1) CPC), although a judgment validating or annulling an arbitrator's ruling may be contested by the appropriate means of appeal (article 271(2) CPC).

**32 Termination of proceedings**

By what other means than an award can proceedings be terminated?

The parties may enter into a settlement at any time that would bring the arbitral proceedings to an end. An award would then be issued, confirming that a settlement has taken place and, pursuant to such settlement, the arbitral proceedings would come to an end.

**33 Cost allocation and recovery**

How are the costs of the arbitral proceedings allocated in awards?

What costs are recoverable?

As mentioned in question 17, the tribunal has the ultimate discretion over apportionment of their fees and the other costs of the arbitration, although either party may challenge the decision in this regard before the court when it comes to validating the award.

Article 133 of the CPC does allow the courts to award legal fees to the successful litigant. In practice, this discretion is not exercised by the UAE courts to any extent more than a nominal amount (usually 1,000 dirhams, approximately US\$272). Hence, it is unlikely that the UAE courts would allow, at the enforcement stage, for an arbitral tribunal to be empowered to award substantial amounts in legal fees.

**34 Interest**

May interest be awarded for principal claims and for costs and at what rate?

Yes, the arbitrator may award interest against any outstanding sums under the arbitral award. In the event that the interest rate is not specified in the contract governing the dispute, the tribunal may apply a rate that it considers to be appropriate.

**Proceedings subsequent to issuance of award****35 Interpretation and correction of awards**

Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties' initiative? What time limits apply?

Once an award has been made, the arbitral tribunal is unable correct or vary it.

The only exception to this position is where the court returns the award to the tribunal, pursuant to article 214 of the CPC, in circumstances where they have omitted to resolve all of the issues forming part of the arbitration or to clarify the ruling to make it enforceable. Where this happens, the arbitrators must clarify the court's outstanding issues within three months from the date of referral, unless the court decides otherwise.

The court has the power to correct any material errors, pursuant to article 215(1) of the CPC.

**36 Challenge of awards**

How and on what grounds can awards be challenged and set aside?

The general rule is that arbitrators' rulings may not be contested in any way (article 217(1) CPC).

However, article 216 of the CPC sets out various instances whereby opposing parties may apply for an annulment. These instances are as follows:

- if the award is given without a deed of arbitration, or if it has lapsed through prescription, or if the arbitrators have exceeded the limits of the deed; or
- if the ruling has been given by arbitrators not appointed according to the law, or if given by some of them without being so empowered in the absence of others, or if given under a deed or arbitration in which the subject of the dispute is not stated, or if given by someone not competent to agree to arbitration or by an arbitrator who does not fulfil the legal requirements.

**37** How many levels of appeal are there? How long does it generally take until a challenge is decided at each level? Approximately what costs are incurred at each level? How are costs apportioned among the parties?

In total, there are three levels of appeal, the first being the Court of First Instance, followed by the Court of Appeal, and finally the Court of Cassation. All proceedings are conducted in Arabic.

Depending upon the number of validity issues in question and the extent to which they are defended, it can take in the region of 12 to 18 months before the arbitral award has been considered by all three levels of appeal.

The current court fees for each level of appeal are as follows:

- Court of First Instance: 7.5 per cent of the amount of the arbitral award subject to a maximum of 30,000 dirhams (approximately US\$8,170);
- Court of Appeal: 1.5 per cent of the amount of the arbitral award; and
- Court of Cassation: 1,520 dirhams (approximately US\$414).

**38 Recognition and enforcement**

What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?

A domestic award becomes enforceable once it is validated by the Court of First Instance. However, judgments cannot be enforced forcibly while they remain subject to appeal (although precautionary measures may nonetheless be taken pursuant to article 227 of the CPC).

So far as foreign awards are concerned, following the accession of the UAE to the New York Convention, a party may contest recognition and enforcement under article V, provided that it is able to satisfy the conditions contained therein.

**39** What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

Historically, most enforcements would have taken place in the context of the Riyadh Convention. There has also been a traditional hostility by the UAE courts towards upholding any process that has an effect of displacing the court's jurisdiction, be it arbitration or foreign litigation.

**Update and trends**

As indicated in question 3, one of the most important recent developments affecting how both domestic and foreign arbitral proceedings are handled in the UAE is the enactment of DIFC Law No. 1 of 2008. By opening up its services to non-DIFC entities, the DIFC/LCIA Arbitration Centre clearly strives for recognition as being a reputable dispute resolution forum for not only the Middle East, but the wider region.

However, what remains to be seen is to what extent, if at all,

challenges to enforcement will arise when considered in the context of Federal Law No. 8 of 2004, which states that the activities of the DIFC are to be strictly limited in both subject matter and geographical terms.

In essence, a party may seek to argue that while it is clear that the Dubai courts are not permitted to review the merits of a DIFC arbitral award, any challenges as to the jurisdiction of the DIFC court ratifying the award may nonetheless be heard.

**40 Cost of enforcement**

What costs are incurred in enforcing awards?

See question 37.

**Other****41 Judicial system influence**

What dominant features of your judicial system might exert an influence on an arbitrator from your country?

Having regard to the importance of the ratification process through the UAE courts, much emphasis will be placed upon the arbitrator's ability to make an award that is compliant for such purpose. The arbitrators must also possess a sound knowledge of the powers of the Court summarised in the responses to questions 24 and 26 above.

Aside from the above, the conduct of arbitrations within the UAE is typically far less formal than court proceedings and reflects more common law styles of practice in contrast to the court's civil law jurisdiction. That being said, there are still many similarities between the forums such as the use of experts and the swearing in of all witnesses.

**42 Regulation of activities**

What particularities exist in your jurisdiction that a foreign practitioner should be aware of?

One of the most common target areas for disputing the validity of an arbitral award is a party's power of attorney, which must cover all aspects of the arbitration proceedings from serving the notice of arbitration to representing their client before the local courts. All parties to UAE-based arbitral proceedings should also ensure that they hold a valid visa for the duration and purpose of their visit by contacting the UAE's Department of Naturalisation and Residency (DNR) prior to their visit. Contact details for the relevant DNR office can be obtained at [www.government.ae/gov/en/visitors/uae/visas.jsp](http://www.government.ae/gov/en/visitors/uae/visas.jsp).

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