

Amendments to the UAE Advocacy Law: Run into the Sand?

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At the dawn of the New Year, foreign arbitration specialists will welcome some reassurance to the effect that the amendments made to the UAE Advocacy Law, also known as Federal Law No. (23) of 1991 on the Regulation of the Legal Profession, in November 2017 (see Ministerial Resolution No. (972) of 2017 on the Executive Regulations of the Federal Law No. (23) of 1991 on the Regulation of the Legal Profession and its Amendments, in short “MR 972/2017”) do not affect their right to represent clients in arbitrations seated in the Emirate of Dubai. This, no doubt, provides some relief given the importance of Dubai as a seat of arbitration and the keen interest taken by foreign and expat practitioners in advising and representing clients in arbitrations seated there. That said, the representation of clients in arbitrations seated in other Emirates might be affected by the amendments in question. To avoid procedural complications in individual references going forward, it is worthwhile taking a closer look at the positions on legal representation taken by the various Emirati laws and to what extent these might be impacted by the UAE Advocacy Law as amended.

By way of background, Art. 2 of MR 972/2017 provides that only lawyers who are registered on the Roll of Practicing Lawyers in the UAE are permitted to plead before arbitration tribunals. A power of attorney for authorisation to represent may only be issued to any such registered lawyers. The Roll distinguishes between “practicing lawyers admitted before courts of first instance and courts of appeal” and those “admitted before the Federal Supreme Court” (see Art. 4, MR 972/2017). Finally, arbitration tribunals are prohibited from accepting representation for and on behalf of a party by non-registered lawyers (see Art. 2, MR 972/2017: “[...] arbitration tribunals [...] may not accept a person to act as a lawyer on behalf of another person unless his name is registered in the Roll of Practicing Lawyers.”). Only governmental bodies appear to be excluded from these new rules (see Art. 3, MR 972/2017) except where they hire outside counsel (see Art. 48, MR 972/2017). The net effect of these provisions is that non-local (non-UAE) lawyers are not allowed to represent any parties in UAE-seated arbitrations nor to plead before UAE-seated tribunals. Violations will be sanctioned with a range of disciplinary penalties, including suspension from practice (see Art. 38, MR 972/2017).

No need to say that taken literally, these amendments have for a consequence that non-UAE lawyers (i.e. all expat and international arbitration specialists offering their services in the UAE) are no longer allowed to represent clients and appear before arbitration tribunals in domestic arbitrations (although it would seem that they are still allowed to sit as arbitrators in such cases, no provisions being made to the contrary in the UAE Advocacy Law as amended). Not only does MR 972/2017 fail to provide for a transition regime that would allow pending arbitrations with non-qualifying counsel to complete on previously acceptable terms, but it also sends a strong arbitration-hostile signal to international arbitration lawyers practising on the ground.

For the avoidance of doubt, it is arguable that free zone arbitration seated in the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM) are excluded as the UAE free zones have their own regime of registration of practising lawyers. A solution may therefore be to re-seat pending local arbitrations and move them to a free zone. Irrespective of any temporary solutions that may be on offer, the fact remains that these new advocacy rules throw a spanner into the wheel of arbitration in the UAE.

It is further arguable that these new rules do not bite in the Emirates of Dubai, Abu Dhabi and Ras Al Khaimah given that these do not form part of the federal judicial structure and that instead, each has their own, stand-alone judiciary (with its own rules on the licensing and registration of lawyers): By way of example, all lawyers practising in Dubai (including the DIFC) must register – without discrimination (i.e. whether foreign or local) – with the Dubai Legal Affairs Department (DLAD) (see Dubai Executive Council Decision No. 22/2011 on the Legal Profession and Legal Consultancy in the Emirate of Dubai of 26 June 2011). In this context, it is also instructive to note that the Arbitration Rules of the Dubai International Arbitration Centre (DIAC) allow arbitrating parties free choice of counsel, again irrespective of their national origin – i.e. whether local or international (see Art. 7, DIAC Rules). Importantly, the DIAC Rules have been adopted by Ruler’s decree and therefore have the status of a law (thus producing legal rights and obligations in their own right). It has more recently been confirmed in this context that the amendments introduced by MR 972/2017 do not apply to lawyers – whether domestic or foreign – practising arbitration in Dubai. Pursuant to a circular of Dr. Louay Mohamed Balhol, General Manager of the DLAD, addressed to the local legal profession:

“We inform you that the ‘Resolution of Dubai’s Executive Council No. 22/2011 regarding penalties and fines related to the practice of the legal profession and legal consultancy in the Emirate of Dubai’, which confirms in its Article 2 the competence given to the Legal Affairs Department by virtue of its establishing Law No. 32 of 2008 in the organisation of the legal profession and legal consultation in the Emirate of Dubai, allows legal consultants who are licensed with the Legal Affairs Department to appear and represent clients before arbitration tribunals and administrative bodies in the Emirate of Dubai. [...] As regards visiting lawyers, there are no restrictions as to their right to appear and represent their clients before arbitration tribunals in the Emirate of Dubai.”

Equally, the situation in Ras Al Khaimah (RAK) likely remains unaffected: The relevant RAK laws contain no specific restrictions on representation in arbitration (see RAK Law No. 3 of 2012 Concerning Legal Profession). Finally, Abu Dhabi also does not place any limitations on the representation of parties in arbitration through foreign counsel (see Executive Council Chairman Resolution No. 30 of 2006 Concerning Organizing the Licensing of Legal Consulting Activities in Emirate of Abu Dhabi). Like the DIAC Rules, the Arbitration Rules of the Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC) leave the appointment of counsel to the full discretion of the arbitrating parties (see Art. 3, 2014 ADCCAC Procedural Regulations of Arbitration).

In any event, rumour has it that the impact of the amendments was unintended and that the courts will not implement the new rules on their strict terms. In addition, the local professional forces that are have reportedly raised these concerns with the UAE legislature and are hopeful that necessary revisions will shortly be afoot to rectify what are amendments with severe consequences on the international perception of the UAE as an arbitration-friendly seat. In the interim, challenges of international counsel might impede smooth arbitration proceedings in a number of Emirates: This will, in particular, be the case in Fujairah, Umalquain and Ajman, each of which is entirely dependent for the licensing and registration of lawyers practising there on the UAE federal structure, the legal profession in those three Emirates being governed by the UAE Advocacy Law as amended. That said, few foreign practitioners are active as advising counsel in those Emirates, so that the amendments of the UAE Advocacy law will likely have only limited effect in practice.

In this sense, the recent amendments to the UAE Advocacy Law have not entirely run into the sand and do produce some, albeit limited, impact on arbitration in the UAE. It is to be hoped that these amendments will be reversed without further ado in the early course of the New Year in order to avoid any more incisive inroads into the reputation of the UAE as a regionally leading seat of arbitration.