

2018 In Review: The Middle East

Kluwer Arbitration Blog

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The year of 2018 brought a wave of important arbitration events, developments, precedents and legislative reforms in the Middle East. Join the Kluwer Arbitration Blog's (**KAB**) regional editorial team (Dalal Al Houti, Zahra Rose Khawaja, and Gloria Alvarez) as we reflect on a few of these developments and thank the authors who enabled us to provide this important and engaging coverage.

Kuwait's First ICC Arbitration Day

In November 2017, the ICC, in collaboration with Al Tamimi and Company, organised Kuwait's first ICC Arbitration Day. This development received coverage on KAB as well. The day involved discussions by prominent practitioners on the advantages and disadvantages of arbitration, recent developments in ICC arbitration and the history and continued progress of arbitration in Kuwait. The speakers specifically laid emphasis on the need for a stand-alone arbitration law that conforms to international standards. Talks are underway to host the second ICC Kuwait Arbitration Day this year.

United Arab Emirates Penal Code Reforms

Since early in 2018, we have been discussing on the KAB the long-awaited reforms to Article 257 of the UAE Penal Code, which finally were enacted in October 2018. Article 257 had been unsettling arbitrators, experts, translators and investigators in UAE-seated arbitrations for two years following amendments to the law passed in October 2016 which introduced the risk of temporary imprisonment for acting contrary to the duty of objectivity and integrity. The ambiguous wording of the law had caused widespread concern that it would discourage arbitrators and experts from accepting appointments, damage the UAE's reputation as an arbitration-friendly jurisdiction and that parties might use it tactically to delay or derail arbitral proceedings.

The revised Article 257 removed arbitrators and party-appointed experts from the list of persons implicated by the law. UAE arbitration practitioners have welcomed this change as imprisonment fears have been put to rest and confidence in the UAE's arbitration regime has been restored.

ADGM Arbitration Centre

In addition, on 17 October 2018, the new Abu Dhabi Global Market (**ADGM**, a financial free zone) Arbitration Centre opened its doors for business, offering parties state of the art hearing rooms equipped with advanced technology for hearings to take place. Whilst the ADGM does not yet have its own institution to administer arbitrations, the ICC has set up its first Middle Eastern representative office within the ADGM. However, parties may choose any institution to administer arbitrations

seated at the ADGM and make use of the centre's cutting-edge facilities.

United Arab Emirates Arbitration Law Developments

In 2018, the UAE enacted its stand-alone arbitration law, Federal Law No. 6 of 2018 on Arbitration (the **New Arbitration Law**). Previously, arbitration in the UAE was governed by articles 203-218 of Federal Law No.11 of 1992 on the Civil Procedures Law.

The key features of the New Arbitration Law are that it is largely based on the UNCITRAL Model Law on International Commercial Arbitration, it recognises the doctrine of separability and principle of competence-competence, which are all fundamental principles of international arbitration. In addition, it recognises the use of technology, continuation of arbitral proceedings in parallel upon submitting an application for interim measures or challenging an arbitrator, reducing the time-limits to 15 days and 6 months for the court to determine challenges against the tribunal and date of when the arbitral tribunal shall render its award, respectively.

Additionally, the New Arbitration Law clarifies that the parties waive their rights to arbitration should they not raise an objection before addressing any claim or defence on the merits of the dispute if the matter is referred to the courts. It also delegated more powers to the arbitral tribunal and reduced court intervention specifically in matters relating to awarding interim measures.

These changes are likely to increase the efficiency of arbitral procedures and attract parties to conduct arbitrations under the New Arbitration Law.

Enforcement of an Arbitral Award in the Kingdom of Saudi Arabia (KSA).

KSA has witnessed significant positive changes in its arbitration regime over the last few years. As noted in [this post](#), in 2017-2018, KSA recorded both the highest number of applications and the highest value of applications since 2014.

This trend has its origins in the country's updates over 2012 and 2013 to its arbitration regime. In 2012, by Royal Decree No. M/34, KSA replaced its 1983 Arbitration Law, which contained 25 articles with a modern arbitration law (**2012 Arbitration Law**) which covers the entire arbitral process in 58 articles and conforms to international standards. The 2012 Arbitration Law notably reduced court intervention and increased party autonomy.

Additionally, in 2013, an Enforcement law, by Royal Decree No. M/53 (**Enforcement Law**) came into force with the aim of providing a smoother and more efficient process of enforcing arbitral awards. Mainly, the Enforcement Law granted Enforcement Judges with powers to enforce decisions and impose sanctions when parties do not comply with the orders issued within the requested time frame. The law additionally sets out a one-month period in which the Enforcement Judges should issue the execution order.

Consequently, KSA has witnessed a continuing growth in the numbers and values of the foreign enforcement applications. As per the Ministry of Justice media reports (see [here](#) and [here](#)), the total number of applications has now exceeded 600 with a total value passing the USD 3.4 billion mark. Of these 600+ applications, more than 40% were made in 2018.

Commentary on these Regional Developments

2018 has seen positive developments across the Middle East, albeit in different ways. While Kuwait and KSA moved towards establishing reputations as pro-arbitration jurisdictions, the UAE took some significant steps towards realising its aspirations of becoming a regional hub for arbitration.

In Kuwait, the inaugural ICC day marks a growing awareness and interest in arbitration. Through the panel discussions, the strengths of the arbitration regime in Kuwait and areas that needed further development were extensively discussed. With talks reportedly underway for organising the second ICC Kuwait Arbitration Day this year, it may be concluded that the Arbitration Day has provided some momentum to the development of the arbitration regime in Kuwait.

In May 2018 alone, the Ministry of Justice in KSA reported three different instances of enforcement of foreign decisions: an American court's judgment against a Saudi company, a Chinese arbitration tribunal's award against a Saudi gold mining company and an ICC award against a private Saudi university. In each case, the judgment/award-debtor was ordered to pay within five days from the notification date of the decision by the Riyadh Enforcement Court. These decisions reflect a positive trend, which if continued, can help remedy the problematic reputation that KSA has previously built with respect to the enforcement of foreign awards.

While the UAE is by no means the first country in the region to have adopted a pro-arbitration national law (Bahrain, Egypt, Jordan, Oman and KSA have already done so), the move has been applauded by the arbitration community for finally bringing the UAE in line with international standards. This is a particular success for the country when considered against the failed attempts to update the law in 2008 and 2013. The latest amendment to [Article 257](#) is also likely to have registered on the minds of potential parties to arbitration in the region. By finally plucking this proverbial thorn in the side of the UAE's claims to being an arbitration-friendly jurisdiction, arbitrators are likely to be more comfortable with appointments in the country. Finally, the establishment of the ADGM and the region's first ICC representative office is likely to bring in more arbitration into the emirate of Abu Dhabi, and the UAE generally.

With these views in mind, we optimistically look forward to 2019 and additional promising developments in the region.