

Kluwer Arbitration Blog

The Amendment to the UAE's 2018 Arbitration Law: More Than Meets the Eye?

Sally Kotb (Habib Al Mulla & Partners) and Karen Seif (Sorbonne University Abu Dhabi) · Saturday, October 14th, 2023

On 29 September 2023, the United Arab Emirates (“UAE”)’s [recently published Federal Law No. 15 of 2023](#) (“Amendment Law”) entered into force, effectively amending [Federal Law No. 6 of 2018 On Arbitration](#) (“2018 Arbitration Law”) that was adopted a mere five years earlier.

The 2018 Arbitration Law was itself a long-awaited and significant rehaul of legal principles, which confirmed a number of nuances that had been adopted by the courts and was welcomed for aligning the UAE with international standards. At the same time, the 2018 Arbitration Law also left certain issues unresolved, which justified further amendments.

To what extent does the Amendment Law improve the 2018 Arbitration Law? This post explores the newly unveiled benefits to the 2018 Arbitration Law that have been enabled by the Amendment Law.

1. Clear Endorsement of New Technologies in the Conduct of Arbitration Proceedings

The Amendment Law expressly recognises that the place of arbitration can be either in-person or virtual (Article 28(1)). In addition, and to emphasise the new Article 28(1), the Amendment Law abrogated Article 33(3) of the 2018 Arbitration Law which provided that hearings may be held through modern means of communication, without the parties being physically present.

In tandem with the express recognition that hearings may validly be conducted virtually, the Amendment Law shifts the responsibility onto arbitration institutions to ensure the availability of necessary technical infrastructure to support the realisation of the parties’ choice of virtual hearings (Article 28(3)). The exact scope of the obligation of the arbitration institutions remains to be seen, but at a minimum, this would include a secure, stable and strong internet connection, projector screens, microphones and speakers.

While this amendment was perhaps not strictly necessary – given that the original text emphasised the party’s freedom to determine the place of arbitration and that freedom of choice would extend to virtual hearings as well – it is clearly demonstrative of the legislator’s intention to support and embrace new technologies in the conduct of proceedings. This legislative intent should be closely kept in mind in the still-being-created future of the metaverse and like, which are likely to give rise to new legal issues.

2. Risk of Violating the UAE Public Policy Through the Application of Foreign Evidentiary Rules

The Amendment Law upholds the tribunal's discretion in determining the applicable evidentiary rules (Article 33) and reaffirms the tribunal's vested power to offer a standard procedural modification to the hearings in the form of "document only" cases which serves to increase time and cost efficacy (Article 33(2)).

In addition, the Amendment Law introduces a new provision, according to which, in the absence of party agreement and the application of any evidentiary rules in the applicable law, the tribunal has the discretion to determine the applicable evidentiary rules, provided that these rules do not conflict with public policy (Article 33(7)).

While a plain reading of Article 33(7) appears to index the laws of evidence to the *lex contractus*, it is unclear what evidentiary law would apply in case of conflict with the *lex arbitri*.

In addition, the Amendment Law explicitly provides that the rules of evidence should not conflict with public policy. This gives rise to the question of which public policy is applicable. Given that this provision has its origin in federal law, it would appear that the reference is to federal (i.e., UAE) public policy, particularly in the absence of any contrary provision that may indicate a reference to local public policy within each emirate.

While the UAE jurisprudence establishes that rules of evidence are not considered to be matters of public policy, nonetheless, there are instances where the application of a foreign evidentiary rule would result in a situation that is contrary to the UAE's public policy. For example, foreign law may provide that illegally obtained evidence is admissible in civil proceedings. However, the admission of such evidence would constitute a violation of the UAE's public policy.

The express affirmation in the Amendment Law that the application of non-UAE evidentiary laws may conflict with the UAE's public policy is an important signal to enforcement courts in the UAE to carefully consider awards where non-UAE evidentiary laws are applied. As such, this provision must be approached with caution by parties and their legal counsel to ensure the validity of the final award.

In addition, to facilitate the enforcement of awards in the UAE and to minimise the risk of nullification, tribunals would be wise to continue administering the oath-taking procedures for witnesses and signing each page of the award in arbitrations subject to the 2018 Arbitration Law.

3. Pandora's Box for Arbitrator Conflicts

Article 10 of the Amendment Law reaffirms and upholds the international norm on conflicts of interest (enshrined in the [IBA Guidelines on Conflicts of Interest in International Arbitration](#)), according to which, any direct relationship between an arbitrator and one of the parties may give rise to doubts about the arbitrator's impartiality, independence or integrity (Article 10(1)(c)).

At the same time, the Amendment Law reiterates the previous prohibition for an arbitrator to be a member of the board of trustees or a member of the administrative branch of the arbitration institution administering the dispute. This prohibition is also extended to include members of the Executive Management (Article 10(1)(b)), as well as members of a controlling or supervisory body within the arbitral institution (Article 10(1)(c)).

It is interesting to note that the prohibition relating to membership within the arbitral institution is not adopted by the national arbitration laws in other leading arbitration jurisdiction such as [France](#), [the United Kingdom](#) and [Switzerland](#).

Beyond the novelty, the newly adopted prohibition for members of controlling or supervisory organs within the arbitral institution and members of the board of trustees appears contradictory given that these personnel generally have no control over the arbitration proceedings. The objectives that these provisions aim to achieve and what (or whose) interests they aim to protect are therefore unclear.

Indeed, while the prohibition relating to bodies with supervisory or controlling authority over the cases registered within the arbitral institution is a necessary safeguard, the Amendment Law fails to strike the ideal balance between meaningfully protecting the parties' interests versus their autonomy to appoint arbitrators of their choice.

In that vein, the introduction of an exception for members who have supervisory or controlling roles is perplexing (see Article 10*bis*, that provides that individuals prohibited under Article 10(1)(b) may accept arbitrator appointments if eight conditions – such as not being a sole arbitrator or chairperson and the implementation of a mechanism within the arbitral institution for safe reporting of any arbitrator violations – are met). The justification for this exception is not clearly apparent, given the significant number of highly experienced arbitration practitioners and recognised arbitrators who regularly sit in UAE arbitral proceedings.

Finally, the Amendment Law provides that any violation of the conditions under Article 10*bis* (1) would result in the annulment of the award and allows the parties to seek civil damages from the arbitral institution and the arbitrator (Article 10*bis* (2)). The express provision that the arbitral institution would expose itself to civil liability in authorising one of its members to accept an arbitrator engagement will likely neutralise the impact of the exception, which may very well never be used in practice.

4. More Clarity on Proof of Authority for Party Representatives and Notice Periods

The 2018 Arbitration Law did not specify a required format for the proof of authority to be submitted to the tribunal; the Amendment Law clarifies that documentary evidence must be provided (Article 33(4)).

Counsel in UAE arbitrations are generally experienced in accommodating the potentially stringent requirements of the UAE courts with respect to the authority of legal representatives in arbitration proceedings. The concrete standard set in Article 33(4) will be helpful in guiding perhaps less experienced tribunal members in situations where a difficult party strategically tries to protect itself from enforcement in the event of a negative outcome through tactics relating to the authority of its representatives.

The Amendment Law also provides additional clarity with respect to notice periods. Like the 2018 Arbitration Law, Article 33(3) of the Amendment Law provides that the tribunal must give sufficient advance notice for hearings and abrogates the reference to the case-by-case basis for determining whether adequate notice was provided.

The confirmation of the tribunal's discretion in making the determination regarding advance notice will streamline the arbitral process by curbing any attempts by an uncooperative party to make

submissions challenging the notice provided by the tribunal.

Conclusion

At first glance, the Amendment Law appears to be an exercise in futility. This is particularly because while the Amendment Law purports to replace Articles 10, 23, 28 and 33 of the 2018 Arbitration Law, the overwhelming majority of the new text of these articles is a verbatim repetition of the original version.

In that sense, at its best, the Amendment Law confirms and further clarifies a sprinkling of elements that were already mentioned in the 2018 Arbitration Law. At its worst, it leaves much to be desired in terms of substantive and necessary reform, while simultaneously opening a Pandora's box of new issues for parties, courts and counsel to grapple with.

Beyond the technicalities, a close and careful read of the Amendment Law shows that, hidden in plain sight, there may be more than meets the eye to these amendments, as will be confirmed once the first court judgments that interpret them are published.

To make sure you do not miss out on regular updates from the Kluwer Arbitration Blog, please subscribe [here](#). To submit a proposal for a blog post, please consult our [Editorial Guidelines](#).

Profile Navigator and Relationship Indicator

Access 17,000+ data-driven profiles of arbitrators, expert witnesses, and counsels, derived from Kluwer Arbitration's comprehensive collection of international cases and awards and appointment data of leading arbitral institutions, to uncover potential conflicts of interest.

Learn how **Kluwer Arbitration** can support you.

Newly updated

Profile Navigator and Relationship Indicator Tools

Wolters Kluwer

Request your free trial now →

This entry was posted on Saturday, October 14th, 2023 at 8:11 am and is filed under [Abu Dhabi, DIFC, Dubai, United Arab Emirates](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.