

Kluwer Arbitration Blog

UAE's Arbitration Law Transformation Through Federal Decree Law No.15 of 2023: Innovations, Ethical Compliance for Arbitrators, and Enhanced Procedural Roles for Arbitral Institutions

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On 15 September 2023, the United Arab Emirates (“UAE”) reformed the legal framework governing arbitration. Under the recently issued [Federal Law No. \(15\) of 2023](#) (“Amendment Law”), specific amendments have been introduced to key articles of the [Federal Arbitration Law No. \(6\) of 2018](#) (“UAE Arbitration Law”), a legislation comprising of 61 articles which stands as the cornerstone of arbitration regulations within the UAE. The amendments have already been commented on in a previous post [here](#).

The Amendment Law revises Articles 10, 23, 28, and 33 of the UAE Arbitration Law. In addition, the Amendment Law also introduces Article 10bis which modernises and refines the UAE’s arbitration landscape by incorporating specific compliance requirements for certain arbitrators and their respective arbitration institutions. Notably, these changes introduce an innovative element by granting arbitral tribunals significant discretion in selecting the format of proceedings. They now have the flexibility to choose between traditional oral hearings or for the proceedings to be conducted on an “documents-only” basis for the presentation of evidence without oral arguments. These amendments introduced under the Amendment Law also now allow the appointment of arbitrators who are members of arbitration institutions’ supervisory and regulatory bodies, broadening the selection criteria for arbitrators. Further, the updated provisions of the Amendment Law legitimises virtual and online arbitration proceedings. This recognition underscores the evolution and adaptability of arbitration in the digital age, making it more accessible and convenient for the parties involved.

This post examines these pivotal amendments and assesses the implications they carry for arbitration practices in the UAE. It explores the Amendment Law in further detail by dissecting Articles 10, 10bis, 23, 28, and 33.

Article 10: Requirements to be Met by the Arbitrator

Article 10 of the Amendment Law largely retains the essence of the former Article 10 of the UAE Arbitration Law. However, a notable enhancement is the explicit prohibition against arbitrators having any direct relationship with the parties involved in the arbitration case, as a safeguard to their impartiality and independence.

Anticipating additional caselaw on the definition of a “direct relationship” is both of interest and a potential necessity, as the amended provision introduces ambiguity surrounding this specific definition. What constitutes a “direct relationship” remains unclear, leaving room for various interpretations and potential disputes. As the Amendment Law does not clearly specify whether it exclusively prohibits direct relationships, it also introduces uncertainty about the potential inclusion and scope of “indirect relationships” in its restrictions, begging the question of what key points of vigilance should practitioners bear in mind.

Future caselaw should aim to elucidate this term, defining the extent and nature of relationships that may compromise impartiality and independence. For example, establishing the threshold for prejudice, setting standards for the recusal of arbitrators, outlining mandatory disclosure requirements, and building a body of precedent will be crucial to providing a comprehensive framework for the qualification of an arbitrator. This approach will ensure consistent application, promote fair arbitration practices, and reduce potential challenges.

While it is prudent and most advisable to await judicial and professional interpretation based on caselaw for a more comprehensive understanding, practitioners can still consider and consult the [2014 IBA Guidelines on Conflicts of Interest in International Arbitration](#) as a soft reference. These guidelines provide specific scenarios illustrating both direct and indirect relationships.

The disqualification criteria for arbitrators due to felony or misdemeanor convictions involving moral turpitude or dishonesty, even if rehabilitated, remains consistent with the previous regime under the UAE Arbitration Law.

Article 10bis: Requirements to be Met by an Arbitrator from the Competent Arbitration Institution’s Supervisory or Controlling Bodies

The UAE has introduced a completely novel provision in Article 10bis of the Amendment Law, which was absent in the 2018 UAE Arbitration Law regime. This provision permits the appointment of an arbitrator who serves on the boards of arbitration institution bodies subject to fulfilling a comprehensive set of specific conditions set out below:

- a) The institution’s regulations must allow such appointments.
- b) The institution must have a governance system ensuring impartiality, preventing conflicts of interest, and regulating appointments.
- c) The appointed arbitrator cannot be a sole arbitrator or chair of the arbitral tribunal.
- d) The parties must acknowledge in writing their awareness of the arbitrator’s institutional role without objections.
- e) A mechanism for reporting arbitrator violations must be in place.
- f) The arbitrator can be a member in a maximum of five cases per year.
- g) The arbitrator must submit a letter of undertaking, pledging to avoid conflicts of interest and comply with arbitral institution requirements.
- h) Any other conditions or requirements as determined by the arbitral institution.

This is a step in the right direction because it now requires all the local UAE and foreign arbitration institutions that contain UAE as the seat of the arbitration, to have a governance process and ethical code of conduct for arbitrators, encouraging reporting on unethical behaviour of arbitrators from the arbitrators’ side.

Failure to comply with Article 10bis’s aforementioned conditions carry significant consequences.

Specifically, it leads to the annulment of the arbitral award rendered in the arbitration. Additionally, the affected parties are granted the right to seek civil damages. This legal recourse extends to pursuing claims against both the responsible arbitration institution and the arbitrator that is found to have violated the conditions of Article 10bis.

Such provisions not only emphasise the importance of adhering to the specified conditions but also provide a pathway for potential judicial review and remedies should any violations occur, including the arbitral institution not complying with the Article 10bis. Consequently, arbitral institutions must exercise diligence to ensure full compliance with these requirements to avoid potential condemnation by the UAE courts and elsewhere.

In this case, “elsewhere” could indeed refer to foreign courts responsible for recognising and enforcing the award, and their examination may also consider whether the arbitration adhered to UAE law. Thus, arbitral institutions must exercise meticulous care in meeting these conditions, not only to avoid potential challenges in the UAE courts but also to safeguard the enforceability of the award in foreign jurisdictions. This diligence is critical in ensuring the award’s international recognition and efficacy beyond the UAE’s borders.

While Article 10bis authorises practitioners, serving as board members in arbitration institutions, to act as arbitrator, the multiple eligibility criteria together with the potential broadened basis for annulment following the award and, specifically, the precedents on possible damages against the arbitration institutions themselves, make it unlikely to see the Article 10bis exception being largely used, at least for now.

Article 23: Determination of the Applicable Proceedings

Alongside the new possibility for arbitrators serving on arbitration institutions’ boards to be appointed, Article 23 has also undergone minor textual revisions while upholding its fundamental principle.

The parties retain the freedom to agree on arbitration procedures, including the incorporation of rules from both domestic and foreign arbitration institutions. In the absence of such agreements, the arbitral tribunal holds the authority to independently establish procedures, in compliance with UAE law, including the “basic principles in litigation and international agreements to which the State is a party” as expressly mentioned in the Amendment Law.

Article 28: Place and Proceedings of Arbitration

Article 28 of the Amendment Law now explicitly recognises and establishes the option of virtual hearings as a fully valid choice for arbitration proceedings.

It grants parties the authority to decide whether the arbitration should occur in a physical location or should take place virtually, through modern technological means. In situations where the parties cannot reach a consensus regarding the arbitration’s venue, the responsibility for determining the most appropriate location now rests with the arbitral tribunal. This decision-making process considers the unique circumstances of the case and the convenience of the involved parties.

Furthermore, the Amendment Law marks a pivotal shift in the allocation of responsibilities of arbitration proceedings. Notably, it places a significant obligation on arbitral institutions. It is the arbitral institution that now bears the essential responsibility of furnishing the necessary

technologies to facilitate arbitration proceedings conducted through modern technological means, designed to align with the state's relevant standards and controls. This shift not only emphasises the arbitral institution's role in upholding the arbitration process's efficiency but also reaffirms the UAE's commitment to embracing modern technological advancements.

Article 28 of the Amendment Law also aligns the UAE with the global trend, enhancing the legitimacy and credibility of virtual arbitration processes.

Article 33: Arbitration Hearings and Proceedings

The more recent version of Article 33, amended by the Amendment Law, introduces notable changes to the arbitral tribunal's authority compared to the older regime under the UAE Arbitration Law.

Increased Arbitral Tribunal Flexibility

The revised rules empower arbitral tribunals with a heightened degree of flexibility in managing the arbitration proceedings, providing more options and discretion in several key areas:

- Choice of Oral Hearings: Unless otherwise agreed by the parties, arbitral tribunals now have the authority to decide whether to hold oral hearings for the production of evidence or oral arguments, or to proceed with the issuance of the arbitral award based solely on written documents and material evidence. This flexibility enables the tribunal to tailor the proceedings to the specific needs and preferences of the parties.
- Scheduling Hearings: The arbitral tribunal has the power to determine the date of any scheduled hearing and to set suitable dates for the efficient progression of the case.
- Party Representation: The arbitral tribunal, when necessary, may request the parties to submit documents confirming the representative's capacity in a prescribed format.
- Witness Hearings: Unless otherwise agreed by the parties, the arbitration rules specify that witness hearings, including those of experts, must conform to the applicable laws of the state. This provision respects the principle of party autonomy while accommodating variations in local practices.
- Customised Evidence Rules: In the absence of any agreement between the parties or specific legal provisions, the arbitral tribunal has the discretion to determine the relevant rules. The only constraint is that these rules must not contravene public order, potentially opening the floodgate to greater judicial review for losing parties.
- Evidence Management: Arbitral tribunals are authorised to assess the admissibility and relevance of evidence submitted during incidents or expertise.

The revised Article 33 now explicitly classifies arbitration hearings and proceedings as confidential by default, with the option for the parties to agree otherwise.

Those provisions contribute significantly to enhancing the legitimacy of arbitrations in the UAE. The discretion granted to tribunals in determining evidence rules and assessing admissibility enhances reliability, minimizing potential disputes and contributing to a more credible arbitration

framework. Additionally, the explicit classification of arbitration proceedings as confidential by default adds an extra layer of security and trust, addressing concerns related to sensitive information disclosure. It aids in minimising procedural challenges faced by international arbitrations in the UAE by granting arbitral tribunals increased flexibility and broader powers for their authority in the regulation of evidence, resulting in a more efficient and expedited arbitration process.

Concluding Comments

In conclusion, the amendments introduced by the Amendment Law represent a significant modernisation and an enhancement of the arbitration framework in the UAE. These changes reflect a commitment to aligning UAE's arbitration laws with international standards. For legal practitioners, these amendments signify a shift towards a more sophisticated and versatile arbitration landscape, allowing them to better serve their clients, which generally appreciate virtual hearings and commitment to preserving confidentiality. Ultimately, this serves to bolster both investor confidence and the UAE's business-friendly reputation.

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