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The Growing Need For Reciprocity Between India and UAE

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Indian Prime Minister, Narendra Modi, visited the United Arab Emirates (“UAE”) and Qatar last week as part of a state visit to the Middle East. This visit led to the signing of the India-UAE bilateral investment treaty between Indian Prime Minister Modi and the UAE’s president, Mohamed Bin Zayed on 13 February 2024. [Along with the India-UAE bilateral investment treaty, the two leaders witnessed the signing of eight agreements](#) between India and the UAE including the Comprehensive Economic Partnership Agreement (“CEPA”), the Intergovernmental Framework Agreement on the India-Middle East-Europe Economic Corridor and various Memorandum of Understandings to link the payment facilities for seamless cross-border transactions between the two countries.

Shadowing this momentous signing, the inaugural India-MENA Arbitration Summit was held on 17 and 18 February 2024 in Hyderabad (“**Summit**”). Organised by one of the newest arbitral institutions in India, the [International Arbitration and Mediation Centre](#), Hyderabad (“**IAMC**”), the Summit gathered monumental figures from the arbitration space including [Justice Hima Kohli](#) of the Supreme Court of India, as the Chief Guest and [Justice Alok Aradhe](#), Chief Justice for the State of Telangana, as the Guest of Honour. Bringing together global experts in international arbitration in a single platform, the Summit witnessed the attendance of arbitral institutions from the UAE such as the [Dubai International Arbitration Centre](#) (“**DIAC**”), represented by its Executive Director Jehad Kazim, the [Abu Dhabi Global Market](#) (“**ADGM**”) Courts, represented by its Registrar and CEO Linda Fitz-Alan, the newest arbitral centre to open in the UAE, the [Abu Dhabi International Arbitration Centre or arbitrateAD](#), represented by its counsel [Arno Janssens](#). Other prominent arbitration lawyers and arbitrators that participated in this Summit included [Justice L Nageswara Rao](#), (39 Essex), [Justice RV Raveendran](#), (Arbitrator and former judge of the Supreme Court of India), [Paul Tan](#) (Gibson Dunn), [Vivek Kapoor](#) (39 Essex) and those from the Middle East, Dr [Mahmood Hussain](#) (M&CO Legal), [Khushboo Shahdadpuri](#) (Al Tamimi & Company), [Fatima Balfaqeeh](#) (Balfaqeeh Advocates and Legal Consultants), [Arun Visweswaran](#) (Addleshaw Goddard), [Aarti Thadani](#) (Norton Rose Fulbright LLP), [Hari Krishna](#) (Nimble Legal), [Dilip Massand](#) (Phoenix Advisor) amongst others.

In this post, we surmise the areas of strategies and synergies between India and the UAE stemming from the discussions that took place in the Summit.

Highlights of the Summit

In her keynote address, Justice Kohli addressed the development of the arbitral space through the growing number of arbitral institutions in India, the UAE as well as the wider MENA region. More significantly, Justice Kohli touched upon the notion of a “*specialized arbitration bar*” particularly in India which, according to her, would serve to “*promote a cultural shift in the legal community, positioning arbitration as a niche field of expertise*”. Justice Kohli also praised India’s pro-arbitration stance by the judiciary across India courts by highlighting historic and recent decisions. Indeed, a specialised arbitration bar is vital to promote India as an arbitration hub.

In her inaugural address, Kazim highlighted the growth of India and the UAE’s strong trade relations that has grown from a modest USD 180 million in the 1970s to an impressive USD 85 billion in 2022. She also added that the recent implementation of the CEPA would be instrumental in enhancing this figure to USD 100 billion by 2030. The UAE government has also pledged to invest USD 75 billion in India’s infrastructure development sector and to partner with India in the renewable energy sector, making the UAE the fourth largest investor in India.

Justice Raveendran highlighted the unwarranted and excessive interference by courts in arbitrations. He noted that while Indian law provides a time frame for the disposal of arbitrations in India i.e., six months for pleadings and twelve months for determination of the matter, when the award is challenged before the courts, there is no similar time limit to decide the challenge.

In his address, Justice Rao, raised an important consideration: while investments and business activities are increasing focusing on the UAE, he queried as to why the resolution of their disputes are not similarly following suit and continue to be done through mechanisms in the West.

Justice Aradhe, the Chief Justice of Telangana called into attention the duty of courts to ensure the sanctity of arbitration process and ensure that awards are rigorously enforced.

The two-day Summit consisted of four sessions on the first day addressing technical aspects in arbitration and three sessions dealing with the arbitration environment between MENA and India. The discussions addressed the jurisdictional diversity in the UAE, and the growing diversity in the DIFC, ADGM and the arbitral institutions in the country. Discussions also revolved around the challenges and opportunities under the [India-UAE bilateral investment treaty](#) of 2013.

Enforcement of UAE Seated Arbitral Awards in India

One of the issues that was highlighted in the Summit was the enforcement of arbitral awards in India where the seat of arbitration is the UAE. Part II of the [Indian Arbitration and Conciliation Act 1996](#) (“**Arbitration Act**”), deals with enforcement of awards under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“**New York Convention**”). Foreign seated awards can be executed in India, if it is an award seated in a New York Convention signatory state, on fulfilling two conditions as per Section 44 of the Arbitration Act:

“(a) in pursuance of an agreement in writing for arbitration to which the Convention set forth in the First Schedule applies, and

(b) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made may, by notification in the Official Gazette, declare to be territories to which the said Convention applies.”

Incidentally, the UAE does not feature in the list of territories that have been notified by the Indian government for the purposes of Section 44 of the Arbitration Act. Therefore, at present, UAE seated awards cannot be enforced in India directly.

The way around this technicality is by virtue of the [Notification](#) of 17 January 2020 (“**Notification**”) issued by the government of India declaring the UAE as a reciprocating territory for the purposes of Section 44A of [Code of Civil procedure](#) (“**CPC**”). Pursuant to Section 44A of the CPC, decrees passed by certain courts in the UAE can be enforced in India. Therefore, awards seated in the UAE have to be ratified and converted into decrees (i.e., judgments) in the UAE courts before being enforced in India under the CPC. For example, a party with a DIFC seated award could apply to the DIFC courts to ratify the award and thereby convert the award into a DIFC court judgment to be enforced in India as a decree under the Notification and Section 44A of the CPC.

The potential challenge due to Section 44 of the Arbitration Act is one of the reasons why Indian parties are not choosing the UAE as their seat of arbitration. The substantial investments flowing between India and UAE, makes it imperative for a robust arbitration framework. It also makes it compelling to streamline the dispute resolution landscape, in order to build cooperation in the judicial and legal spheres which includes recognition and enforcement of awards passed by both countries. This is *aforiorti* in light of [India having emerged having as the key contributor of foreign direct investments into Dubai](#), along with the many Indian entrepreneurs who are setting up businesses and investments in the UAE.

Incidentally, Article XXV of the [Agreement between India and the UAE on Juridical and Judicial Cooperation in Civil and Commercial matters for the Service of Summons, Judicial Documents, Commissions, Execution of Judgements and Arbitral Awards](#) (“**Agreement**”), stipulates that “*arbitral awards given in the territory of either Party shall be recognised and enforced in the other Party*” subject to fulfilment of certain conditions such as, the award being based on a written agreement of the parties and the award being made on matters arbitrable according to the law of the state. Further, the party requesting the recognition and enforcement of an award is to produce a copy of the award accompanied by a certificate of the competent judicial authority in the requesting state to the effect that the award is executable along with a certified copy of the arbitration agreement between the disputing parties.

The Way Forward

The Summit was an essential starting point to increase awareness and promote regional collaboration between India and the MENA region. Such initiatives are expected to act as a catalyst in promoting the resolution of cross-border commercial disputes and contributing to a harmonious and robust arbitration ecosystem.

The discussions showcase the need for India to declare the UAE as a reciprocating territory for the recognition and enforcement of UAE seated awards in India. This is in line with the commitment to facilitate cross-border investments. Such a move would build investor confidence and set the ground for sustained economic collaboration between India and the UAE.



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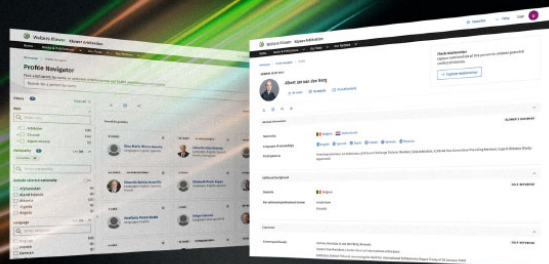
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