

Kluwer Arbitration Blog

2023 Year in Review: MENA

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In the beginning of 2023, a [diplomat told](#) the Economist that the Middle East was tired of conflict and that de-escalation and diplomacy would be the orders of the day. While this did not hold true on the political side, it did hold true for the arbitration world. The MENA region witnessed the coming together of pro-arbitration decisions, revamped arbitration rules and the opening of arbitral centres across the region in 2023, save for a few exceptions.

In line with the saying, bad news travels at the speed of light; good news travels like molasses, this post will address the exceptional cases which were not pro-arbitration first, before going on to explore the positive outcomes that most of 2023 brought to the region.

Recent Decision from the US Courts

One of the most controversial arbitration decisions relating to the UAE arbitration landscape was a decision that was not actually issued in the UAE. A decision issued by the [US courts of the Louisiana Eastern District](#) decided an arbitration clause referring to the now abolished DIFC-LCIA arbitral institution was unenforceable. As commented on in a [previous post](#), this decision was the first international decision after the enactment of [Decree No. 34 of 2021](#) which abolished the Emirates Maritime Arbitration Centre and the DIFC Arbitration Institution, the administering body of the DIFC-LCIA Arbitration Centre, and hence the DIFC-LCIA, while assigning all their obligations, rights, and resources to the Dubai International Arbitration Centre (“**DIAC**”).

The US courts considered that the dissolution of the DIFC-LCIA meant that neither the concerned court nor the Dubai government could “rewrite the agreement of the parties and order the [arbitration] proceeding to be held“ in a different forum from what the parties agreed to.

UAE Decisions

In contravention of the [separability principle](#), the Dubai Court of Cassation (“**CoC**“) held in [Court of Cassation Case No. 585 of 2023 \(Commercial\)](#), that an arbitration clause within an invalid contract renders the arbitration clause as invalid as any other term in the contract. This view, departed from previous CoC decisions which upheld the separability principle. It has been considered that while the dispute in question, may not be arbitrable because its subject matter is

related to public policy, there were no reasons to question the validity of the arbitration clause within the agreement itself.

Another decision from the **ADGM Courts** shed light on the developing jurisprudential relationship between the UAE national courts. In this case, the contract in question provided for the arbitration to be “conducted in Abu Dhabi City (U.A.E.) in accordance with the Rules of International Chamber of Commerce (ICC Rules)”, and to be “governed and construed in accordance with the laws of the Emirate of Abu Dhabi and the federal laws of the U.A.E”.

The award creditor in this case sought to set aside the award in the onshore Abu Dhabi courts, which ultimately found that the ADGM Court had the exclusive jurisdiction to hear such an application.

The Abu Dhabi CoC’s decision was made on the basis that the parties’ choice of the ICC rules for their arbitration inherently made the application in question subject to the ADGM Arbitration Regulations 2015, by reason of the establishment of the ICC office in the ADGM, which therefore became the “place of arbitration” considering its location.

Only after the joint agreement of the parties to the ADGM Court’s Jurisdiction, the ADGM Court decided that the UAE Federal Arbitration Law was the law governing the arbitral process and the resulting award.

The reliance of the Abu Dhabi CoC on the location of the ICC Office to determine which court has the jurisdiction of oversight, and regarding it as the seat of arbitration was viewed with concern since i) the location of arbitral institutions was never considered in deciding the jurisdiction of the national courts which have oversight, and ii) coincidentally, the ICC office had opened in the ADGM while the parties had already started the arbitration, and so the intention of the parties at the time of agreement could not have intended for this outcome.

This decision has therefore deemed it necessary to exclude or include the relevant law and jurisdiction in an ICC arbitration clause, to avoid the parties being at risk of losing the assistance of the supervisory courts in the UAE.

Pro Arbitration Decisions from the Region

The region has also witnessed the coming together of pro-arbitration decisions.

On 24 October 2023, the General Assembly of the Dubai CoC (“**General Assembly**”) issued a decision in [Case No. 10/2023](#) which confirmed that parties can no longer rely on the non-payment of an advance on costs to evade arbitration proceedings.

This reflects a change in the usual position by the Dubai courts which consistently held that an arbitration clause may be considered non-existent or incapable of performance in case the advance on the costs has not been paid and allowing the parties to then resort to the national court despite the existence of an arbitration agreement.

While the application of this decision to non-DIAC arbitrations is yet to be confirmed, it is worth noting that before this decision, that Dubai CoC had started taking a different approach to the

previous position by considering the progress of the parties in the arbitration proceedings, good faith and the principle that a party cannot benefit from its own wrongdoing to dismiss the argument that the non-payment of the advance amounted to a waiver of arbitration.

The Dubai CoC also relied on Article 54(4) of the [UAE Federal Law No. 6 of 2018](#) (“**UAE Arbitration Law**“) which maintains the enforceability of an arbitration agreement even if the arbitral award is set aside.

These DCC decisions along with the decision of the General Assembly constitute a positive step which persuades parties to uphold their arbitration agreements. Furthermore, Article 3.3 of Appendix I to DIAC Arbitration Rules 2022 provides a solution whereby a party can make substitute payments of the other party’s share with the objective of recovering these payments after the formation of the arbitral tribunal.

New Arbitration Laws

In the UAE, one of the one the most awaited changes to the arbitration legislation in 2023 was the enactment of [UAE Federal Law No. 15 of 2023](#) which certain provisions of the UAE Arbitration Law (“**Amendment**“) as commented on in previous posts [here](#) and [here](#).

This Amendment was welcomed for supporting the introduction of new technologies in arbitration proceedings and allowing a place of arbitration to be virtual, while holding arbitral institutions responsible for providing the required technical infrastructure the choice of virtual hearings. The Amendment also provided the tribunals discretion to determine applicable evidentiary rules.

On the other hand, the Amendments have been criticised for not providing sufficient clarity on a number of topics including Proof of Authority for Party Representatives and Notice Periods. They may have also complicated the process of arbitrators selection considering the extension to the conflicts provisions to include members of the Executive Management and members of a controlling or supervisory body within the arbitral institution.

Revamped Arbitration Rules and Centres

Abu Dhabi’s Latest Venture – arbitrateAD

The Abu Dhabi Chamber of Commerce and Industry announced the launch of arbitrateAD, which effective 1 February 2024, will the Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC). The introduction of the Abu Dhabi International Arbitration Centre (Arbitrate AD), replacing the Abu Dhabi Commercial Conciliation and Arbitration Centre and its rules, taking effect from 1 February 2024 directs the spotlight and anticipation to the Abu Dhabi arbitration scene in 2024 as well as commented on in previous posts [here](#) and [here](#).

Libya’s New Arbitration Law

The introduction of Law No 10 of 2023 on Commercial Arbitration, Libya’s new arbitration law, provided a comprehensive framework for commercial arbitration in Libya as commented on in a

previous post [here](#). While the introduction of a new arbitration law is welcomed, there are ambiguities within the scope of its application. However, it is understood from the Libya legal circle that subject to meeting specified conditions, the new law should apply to new arbitration proceedings initiated after its enactment. The new arbitration law also addresses the establishment and operation of new arbitration centres in Libya.

Revised Rules Issued by the Saudi Center for Commercial Arbitration (“SCCA”)

The SCCA’s enactment of new arbitral rules on 1 May 2023 (commented on [here](#)) as a revamp to its 2016 rules and the establishment of its first regional office in the DIFC, surpassed expectations. The recent revisions to the modernised and innovation arbitration rules of the SCCA give it a distinct advantage to resolve disputes fairly and efficiently, in tandem with KSA’s Vision 2030.

Revamped Rules Issued by the Cairo Regional Centre for International Commercial Arbitration (“CRCICA”)

Last updated in 2011, the CRCICA recently revamped its rules which came into force on 15 January 2024. As commented on in a previous [post](#), the CRCICA’s revamped arbitration rules are international and in line with other major arbitral institutions. These rules integrate contemporary practices and technological advancements to improve the arbitration process’ efficiency, transparency, and flexibility, in order to increase the prominent and stature of CRCICA in MENA.

Arbitration Events

Arbitration weeks and days have increased exponentially over the last few years. The MENA region has shown the same tendencies.

The annually held weeklong Dubai Arbitration Week, colloquially known as DAW, has been taking place since at least 2015. In November 2023, the latest DAW took place between 13 to 17 November 2023, featuring more than 100 different sessions on the official DAW calendar. This included panel discussions, debates, seminars, mock hearings, interview sessions, video screening and tylney-styled discussions. DAW 2023 was the biggest arbitration week to-date and the second largest event of its kind in the world which gathered speakers and participants from near and far, including those from far corners of the world such as Brazil, Australia and Nigeria.

The inaugural Riyadh International Disputes Week also recently took off in Riyadh from 3 March 2024 to 7 March 2024


Other arbitration events in the region included the 3rd ICC Kuwait Arbitration Day held in Kuwait, 12th ICC MENA Conference on International Arbitration in Dubai and the IBA Middle East Conference: Law Firms and Clients working together.

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