

THE UAE INTRODUCES CHANGES TO THE ARBITRATION LAW

In September, the UAE issued a new law which amends some of the provisions of Federal Law No. 6 of 2018 (the "**Arbitration Law**"). The amendment law, Federal Law No. (15) of 2023 (the "**Amendment Law**"), is effective as of the day following its publication in the Official Gazette. The Amendment Law will repeal and replace Articles 10, 23, 28 and 33 of the Arbitration Law as well as incorporate an additional Article 10.

In this briefing, we identify the key changes introduced by the Amendment Law and briefly consider their likely practical implications.

VIRTUAL PROCEEDINGS

The Amendment Law states that parties to an arbitration may elect for arbitration proceedings to be held virtually. The prior Arbitration Law did provide for parties to elect to hold proceedings by "modern electronic means of communication" where deemed appropriate. However, the Amendment Law goes a step further by imposing a requirement on arbitral institutions (the relevant institution being the "**Competent Arbitration Institution**") to provide the technology necessary to carry out the arbitration proceedings in accordance with the required standards in the UAE.

Practical Impact. This change reflects common practice in dispute resolution – especially following the Covid-19 pandemic. There is a growing appetite for virtual hearings, which can help to reduce time and costs in proceedings. Moreover, the requirement for arbitration institutions to provide parties with the technologies needed for their virtual arbitrations is likely to be a welcome addition and should help to streamline the processes required to organise proceedings.

CONFIDENTIALITY

The Amendment Law provides that arbitration proceedings (including hearings) shall be confidential, unless otherwise agreed by the parties. This is an extension of the scope of Article 33, which originally applied only to hearings.

Practical Impact. The rules of a number of globally renowned arbitration institutions typically include a requirement that the details of arbitration

Key takeaways

- Greater impetus for the use of virtual hearings, including the requirement for arbitration institutions to provide the necessary technology for virtual proceedings.
- Express requirement for arbitration proceedings to be kept confidential, unless otherwise agreed by parties.
- Introduces an exception to the prohibition on arbitrators being selected from the controlling body of the arbitration institution administering proceedings.
- Tighter provisions on arbitrators having a direct relationship with parties to an arbitration which could affect their impartiality.

proceedings are to be kept confidential. The new provision in the Amendment Law therefore reflects this practice and appears to acknowledge a common driver for parties' choice of resolving disputes by way of arbitration (namely, to benefit from the higher level of confidentiality, as compared to litigation which typically takes place in a public forum).

ARBITRATORS

In its original form, the Arbitration Law prohibited those who were on the board of trustees or administrative bodies of a Competent Arbitration Institution from being nominated as arbitrators in proceedings that are administered by that institution. The Amendment Law extends this prohibition to members of the executive management of the Competent Arbitration Institution. However, the Amendment Law also introduces a new Article 10 bis which provides an exception to these prohibitions, where certain conditions (including the following) are met:

- the regulations of the Competent Arbitration Institution do not prohibit the appointment of the arbitrator;
- the Competent Arbitration Institution has governance regulations in force which: (i) regulate the work of the relevant arbitrator and ensure the segregation of the arbitrator's duties as well as their impartiality, and (ii) regulate the mechanism of appointment, dismissal and withdrawal of the arbitration (where required);
- the nominated arbitrator is not the only arbitrator or president of the arbitral tribunal overseeing the relevant case;
- the parties to the proceedings have provided their written consent to the appointment of the arbitrator, including a declaration of their knowledge of the arbitrator's connection to the Competent Arbitration Institution;
- the arbitrator refrains from being involved in the arbitration institutions internal decision-making processes, and provides a written undertaking confirming the same; and
- the arbitrator does not handle more than five (5) arbitration cases in any year.

The Amendment Law also creates an additional prohibition against arbitrators having any direct relationship with any of the parties to an arbitration which could affect their impartiality or independence.

Practical Impact. Parties will have access to a wider range of arbitrators who may have the required experience and expertise to hear their disputes. Although there are provisions in place intended to prevent potential conflicts of interest, the ability to select arbitrators from an arbitration institution's controlling body may still lead to challenges regarding arbitrator impartiality and/or increase the likelihood of challenges to relevant awards.

CONCLUSION

Although it remains to be seen how the Amendment Law will work in practice, it appears to be a further step in the right direction, consolidating and extending the flexible approach taken in the Arbitration Law. The Amendment Law should help to bring the arbitration regime in the UAE further in line with international best practice.

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