

# ARBITRATION IN THE MIDDLE EAST



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## INTRODUCTION

Arbitration in the Middle East has, until recently, been problematic. Dispute resolution procedures were generally not in line with international standards, and enforcement of legal rights was unpredictable. However, the recent development of arbitration centres in countries in the Middle East has highlighted the Middle East as a potential viable option for arbitration and dispute resolution. Such regional arbitration institutions include the Cairo Regional Centre for International Commercial Arbitration (CRCICA), the Abu Dhabi Commercial Conciliation and Arbitration Centre, the Bahrain Arbitration Centre and the Dubai International Arbitration Centre (DIAC).

In 2006, the UAE adopted the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), with several other Middle Eastern States following suit. 2008 was a significant year in firmly establishing UAE and in particular Dubai as legitimate options for arbitration. In that year the UAE federal government drafted a new arbitration law. The Dubai International Financial Centre (DIFC) enacted a comprehensive and jurisdictionally inclusive new arbitration law. Additionally, the partnership between DIFC and the London Court of International Arbitration creating the DIFC – LCIA Arbitration Centre.

## SHARIA LAW

In order to fully comprehend the arbitration systems in the Middle East, it is important to acknowledge the significance of Sharia (Islamic law) in all aspects of Middle Eastern law and society. Arbitration has been practised in the Middle East since the early days of Islam, with reference made to arbitration in two of the main sources of the Sharia: the Koran and the Sunna. The adherence to Sharia law has in some cases resulted in the separation of religious and civil codes, with the result that some countries (for example, Yemen, Jordan and Kuwait) allow the parties to choose which code should be applied by the arbitrator. Those countries that have not opted to separate arbitration from Sharia law administer arbitration with strict adherence with Sharia principles. Anyone considering a country in the region as a possible arbitration location should therefore investigate carefully which type of system is applied.

## ENFORCEMENT OF FOREIGN AWARDS

Enforcement of foreign awards is becoming more straightforward as more countries adopt the New York Convention. It severely restricts the ability of a country to refuse to enforce a foreign award. One exception, however, that has been invoked by many Middle Eastern countries, most notably in Saudi Arabia, is the possibility of repudiating a foreign award that is 'contrary to the public policy' of the country in which enforcement is sought. An encouraging recent development occurred in the Dubai court of first instance, which ordered the recognition and enforcement of a London Arbitration Award under the New York Convention. The defendant had contested the proceedings, calling on the court to invalidate the award on technical grounds that are strictly applied to domestic awards under the UAE civil procedures law. The Dubai court dismissed the defendant's counterclaim for lack of jurisdiction and ruled that the civil procedures law invoked by the defendant apply only to local awards.

## MODERNISATION INITIATIVES

Due to the application of Sharia law, the occasional unpredictability of enforcement of foreign awards and the perception that the developments made are relatively recent, many foreign investors will not consider the Middle East when considering where to seat their arbitration. In an effort to attract foreign arbitration, many Middle Eastern countries have taken steps to reform and modernise their arbitration laws and practice. Measures range from the adoption of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (as undertaken by Bahrain, Iran, Jordan, Oman, Egypt and Tunisia), the adoption of western arbitration models (as in Qatar and Lebanon) and the opening of additional arbitral institutions, such as the International Arbitration and Conciliation Centre in Qatar and the DIFC-LCIA Arbitration Centre in Dubai, which supplement well-established centres such as CRCICA and DIAC. Most recently, Bahrain partnered with the American Arbitration Association to launch the Bahrain Chamber of Dispute Resolution (BCDR-AAA). The new legislation guarantees that disputes heard at the BCDR-AAA will not be subject to challenge in Bahrain, provided the parties agree to be bound by the outcome.

## DUBAI CASE STUDY

Possibly one of the most interesting case studies relating to the development of a viable arbitration system relates to Dubai. The Dubai International Financial Centre (DIFC) was established following the 2004 amendment to the UAE Constitution allowing for the creation of a financial free zone. By government decree, DIFC is exempt from UAE civil and commercial laws and regulations. A new DIFC Arbitration Law enacted in 2008 is based on the familiar UNCITRAL Model Law. The 2008 law creates a legislative platform for comprehensive dispute resolution and is applicable equally to civil and commercial arbitration, both international or domestic. This is an extension of the 2004 DIFC law, which applied only to disputes and transactions having some connection with the DIFC. Broadening the scope of the DIFC by eliminating jurisdictional restrictions, coupled with the internationally recognised model, has made the prospect of Dubai-based arbitration more attractive to both foreign and Middle Eastern businesses.

## COMMENTARY

Recent regional developments have had the effect of increasing Middle Eastern presence in the global arbitration market. When drafting arbitration clauses, local advice should be sought to ensure clarity and enforceability.