

Evolution of arbitration in Dubai

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The legal system in the United Arab Emirates (UAE) – a federation of seven emirates formed in 1971 – is still at a nascent stage and arbitration has only recently become a popular mechanism for dispute resolution. In order to fully appreciate the significance of the recent developments in arbitration in the UAE it is important to have a historical perspective.

Early challenges

Prior to the adoption of the Civil Procedure Code (UAE Code) in the UAE in 1992, the judges and lawyers in the courts in Dubai, regularly applied procedures and even laws from their own home countries.

The UAE Code included the first statutory recognition of arbitration and included a chapter on arbitration. This chapter, among other things, provided a section which stated that the parties to a contract may stipulate that any dispute between them shall be referred to arbitration. It also stated that, if parties had agreed to refer a dispute to arbitration, no suit may be filed before the courts.

Although the chapter on arbitration contains provisions regarding the appointment and disqualification of arbitrators, and the ability of the UAE courts to intervene in various aspects of arbitration, the remaining provisions render it far from user-friendly.

For instance, the code confusingly also states that even when there is an arbitration agreement, if one of the parties files a suit in the UAE courts and the other party fails to object to it in the first hearing, the arbitration clause or the arbitration agreement between the parties shall be deemed cancelled or terminated and the suit shall be entertained by the UAE courts.

Another such provision of the UAE

Code is the requirement that, in order to be enforceable, an arbitral award must be filed with and approved by the local court. This provision has been damaging to the cause of arbitration in the UAE as the courts have, until recently, repeatedly and almost invariably been willing to reopen arbitral awards and have effectively adjudicated on the disputes afresh. This is tantamount to litigating each dispute twice.

The provisions of the UAE Code are also onerous with respect to international arbitration. According to the UAE Code, a foreign judgment or arbitral award is only enforceable in the UAE if it has been rendered in a country that has a reciprocal arrangement with the UAE to recognize judgments or awards. This test is rarely satisfied as the number of countries with which the UAE had entered into reciprocal agreements is fairly small, being limited to several of its neighbouring Arab states and more recently India and France. As a result, it was effectively impossible to enforce foreign awards in the UAE.

A new direction

Quite recently, arbitration has been given a new impetus in Dubai with the establishment of the following:

- The Dubai International Arbitration Centre (DIAC) in 2004, which replaced the Conciliation and Commercial Arbitration Centre of the Dubai Chamber of Commerce and Industry. The DIAC was designed to attract international arbitrations and has been a success so far;

- The Dubai International Financial Centre/London Court of International Arbitration Centre (DIFC/LCIA) in 2008. The DIFC/LCIA, which is based at the Dubai International Financial Centre, has its own body of laws (based on the laws of more advanced jurisdictions)

and has an independent judicial authority to hear disputes. The centre's rules are very closely modelled on the existing LCIA rules and parties not based in the DIFC are allowed to resolve their disputes through reference to the centre; and

- The Islamic Centre for Reconciliation and Commercial Arbitration, which is a dispute resolution forum for the Islamic finance industry, based in Dubai. The centre settles commercial and financial disputes between commercial or financial institutions, and between those entities and third parties that have agreed to settle their disputes under shariah law.

Catching up

However, by far the most important development in the context of international arbitration was the much awaited adoption by the UAE in 2006 of the New York Convention.

These new measures represent and are an attempt to remedy the inconsistencies associated with arbitration in the UAE. In addition, these measures also embody a commitment to establish Dubai as a serious venue for resolving international commercial disputes and are seen as a welcome move by most entrepreneurs.

The success or failure of these moves will however ultimately depend upon the legislative framework, and the manner in which the courts deal with applications for enforcement and other matters.

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