

Title Role of UAE Courts in International Commercial Arbitration

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UNIVERSITY OF BEDFORDSHIRE

Dissertation Title

"Role of UAE Courts in International Commercial Arbitration"

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Research Questions

1. What role the UAE Courts playing towards the effectiveness of international commercial arbitration?
2. Are the UAE arbitration laws supportive to the International Commercial arbitration?
3. What is the future of International commercial arbitration and arbitration centres in UAE?

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Research methodology

This is mainly a desk based work. In this work, I have mostly relied upon the secondary source of data which includes analysing the civil procedure code and federal law of UAE with special focus on the newly proposed Federal Arbitration Law and the Arbitration Act 1996. I will also use International statutes relevant to my research topic including the New York Convention 1958. My research also is based upon several articles in periodical journals and text books. The case laws have been vital in this work and supported the practical and procedural perspective aspects of my work. In the UAE, the popular arbitration law firms have their own journals most of them are online; which has been helpful to my work.

As a matter of principle, this was a qualitative research however; I travelled to the UAE and attended a conference on International Commercial Arbitration on 25th April 2013 organized by Faculty of Law – Saint Joseph University Dubai in Dubai International Academic City (DIAC) Dubai. In addition, I have conducted interviews with the arbitration lawyers practicing in the UAE which enabled me to understand some practical aspects of arbitration practice and the court's role in the arbitral proceeding.

Abstract

Concept of arbitration has been prevalent, historically, in the Middle East since the early days of Islam. The arbitral process has been problematic in the UAE however, it has not been until recently that the UAE has recognized the importance of arbitration as a powerful dispute resolution alternative and revised its legislation to accommodate the proceedings of domestic and international arbitration.

In the past, foreign investors have been reluctant to select the UAE seat for their arbitration proceedings. There has been a perception that, as a general rule, the practice of international commercial arbitration in the Middle East is still in its infancy. The UAE is now demonstrating to the international community that it has the necessary infrastructure and laws in place to successfully count itself as one of the key arbitration players, alongside London, Paris and Hong Kong. This has been the result of the UAE updating their laws, reforming dispute resolution practice and procedures and through the establishment of key regional arbitration centres.

The UAE's accession to the New York Convention was also seen as a significant step in demonstrating the UAE's commitment to foreign investors and the international community. Under Federal Decree No. 43 of 2006, the UAE managed to accede to the New York Convention. The UAE's accession is considered as a mile stone towards provision for a more straightforward arbitral process and enforcement of foreign arbitral awards in other Convention states.

As a recent development, the UAE has evidenced the joint venture between the Dubai International Financial Centre ('the DIFC') and the London Court of International Arbitration ('the LCIA'), in February 2009, to create the DIFC–LCIA Arbitration Centre ('the DIFC–LCIA'). The DIFC–LCIA operates alongside the longer-established Dubai International Arbitration Centre ('the DIAC'). Both offer their own procedural rules and regulations for the amicable settlement of disputes through arbitration.

The Courts role is vital in an arbitral proceeding in any jurisdiction. Although arbitration is believed as a court-free, independent forum for dispute resolution; the court plays fundamental role to ensure that the arbitral proceeding is taking place in a moderate and independent decorum. The UAE Court's role towards the International commercial arbitration has been very

problematic and the courts historically used to intervene in the arbitral proceeding over tiny issues. The new UAE arbitration laws has changed the situation and curtailed the courts powers to interfere the arbitral proceeding. At present, the arbitration in the UAE is more independent and straightforward. The proposed UAE arbitration law has much more similarities with the Model Law UNCITRAL and meets the International standards. A lot of work still has to be done in order to make the arbitration more independent, straightforward and friendly in the UAE. The Court's role is vital and is required to be more supportive then it is at present in the arbitral process.

Chapter 1: Introduction:

Popular for its oil production, mega shopping malls, tourism, hoteling and high rise buildings, UAE has a unique economical back ground of fishing and pearl diving as main sources of revenue for thousands years. The United Arab Emirate is a federation of seven states; namely, Dubai, Abu Dhabi, Ajman, Fujairah, Sharjah, Ras al Khaimah and Umm al Quwain. UAE is a Civil Law country run by a set of statutory codes. The UAE law is very much influenced by the Egyptian legal system. Historically, the parties in any dispute in the UAE preferred to go to the courts to resolve their disputes. This is because the general assumption was that the arbitration is expensive and time consuming and also it was believed to be very difficult to enforce an arbitral award. However, by the passage of time, as the UAE continued to attract foreign investors, constructors and business community, the arbitration has increasingly become popular instrument of dispute resolution[1].

At present the UAE has become a financial and entrepreneur hub for the world; especially for the Middle East. As mentioned above, being a famous dispute resolution mechanism, arbitration is rapidly emerging in Middle East, especially in UAE. In addition, because of the large scale involvement of investors and business corporations in the UAE, especially from the western world, cultural and legal differences are arisen[2]. This strengthened a need for out of court dispute resolution approach among the disputed parties. Global financial crisis and credit crunch is another reason which has slowed down the world economy resulting increase in commercial disputes. This also has given the arbitration a new role towards the commercial dispute resolution[3].

There is no separate law for arbitration in the UAE. The UAE Civil procedure code 1992, Federal law no. (11) Of 1992 provides the laws for arbitration. Its Articles 203 – 218 deal with Arbitration, Articles 235 – 238 deal with Execution of Foreign judgments and Articles 239 – 243

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[1] J. kwan and E. Teale "Arbitration in the United Arab Emirates: the traps, the tricks and tips for the unwary", In International Arbitration Law review 2006

[2] Habib Al Mulla & Co, 'UAE' (September 2012) (accessed via Westlaw on 11th February 2013)

[3] J. kwan and E. Teale "Arbitration in the United Arab Emirates: the traps, the tricks and tips for the unwary", In International Arbitration Law review 2006

deal with Execution procedures. It mainly focuses at domestic arbitration and allows the Court to interfere any arbitral process in the UAE. This also undermines the arbitrator's power and their substantive jurisdiction. The Courts are given power to dismiss any arbitrator, issue and anti arbitration injunction, and hear the minor procedural issues. Under the civil procedure code, the courts are also given powers to correct, enforce, approve or set aside an award. UAE is contacting state of New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 since 2006 which clearly reflects a shift in UAE arbitration culture. The UAE has also proposed an arbitration law in February 2012 which is still under consultation. Its draft reflects it being modeled on the UNCITRAL Model Law and it is in both English and Arabic languages[4].

In this new world of opportunities, as the UAE has become a prominent national and international commercial arbitration hub. The UAE needed a variety of out class arbitration centres to attract the local and international arbitration. The world class arbitration centres have been established recently in UAE which magically attracted the business communities involved in commercial disputes. Dubai International Arbitration Centre is a leading arbitration centre in UAE which was established in 1994. It runs under its own incorporated rules, namely DIAC arbitration rules 2007. The Dubai International Financial Centre is another significant development which was established in 2004 as a financial free zone in order to bridge the western and eastern world together in the financial globe. It has established an arbitration centre in partnership with London Court of International Arbitration (LCIA) which is run under DIFC-LCIA Rules 2008. There are some other centres as well which include The Abu Dhabi Conciliation and Arbitration Centre (ADCCAC), The Sharjah International Commercial Arbitration Centre and Ras Al-Khaimah Commercial and Arbitration Centre[5].

The role of the court has become of a significant important in the presence of such a huge variety of arbitration centers. The court can play supportive, supervisory or cohesive role when dealing

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[4] Nigel Duffield, ' International arbitration in the UAE –Dubai, a two-seater city (Clayton Utz Insights October 2012), >http://www.claytonutz.com/publications/edition/11_october_2012/20121011/international_arbitration_in_the_uae-dubai_a_two-seater_city.page> accessed 19 February 2013

[5] Habib Al Mulla & Co, 'UAE' (September 2012) (accessed via Westlaw on 11th February 2013)

with an arbitration matter. Historically the UAE courts proved themselves as non cooperative to the arbitration process. The courts have shown their anti arbitration attitude by granting the anti arbitration injunctions where a valid and legitimate arbitration proceedings were in progress. On several occasions it showed its anger by setting aside a valid arbitration award on very minor grounds. Presently, by the gradual amendments in the arbitration rules and ratification of 1958 New York Convention in 2006, the UAE has curtailed the courts unnecessary interference in arbitral proceedings. Now, only the Court of Appeal has jurisdiction to entertain a case on arbitration[6].

There are certain issues which needed to be addressed. The issue of public policy is very important which the UAE uses as a tool to set aside an arbitration award. Islamic principles are very important in this regard whereas public policy rule of New York Convention is being used to deal with the un-Islamic transactions. The recognition and enforcement of foreign arbitration awards has also been problematic in UAE as the courts set aside an award in the grounds of tiny procedural mistakes made by the arbitrators. Disputes over the property and employment are not arbitral under the UAE law. Ground to challenge an award is also an issue to be discussed in detail which has a major impact on the arbitral process. Arbitration seat is a key matter throughout any arbitral tribunal and it should be taken very carefully while dealing with an arbitral matter. In arbitration proceeding, the applicable law will be the law of the seat[7].

We will discuss all of the above mentioned issues in regard to the arbitration proceedings in the UAE. We will examine the recently proposed UAE arbitration law and its impact on the arbitration forum. We will also examine the UAE courts role in an arbitral process. We will shed light on some key arbitration centers in UAE and their impact on the market. Finally we will provide some suggestions in order to make further improvements in the arbitration culture in the United Arab Emirate.

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[6] J. kwan and E. Teale "Arbitration in the United Arab Emirates: the traps, the tricks and tips for the unwary", In International Arbitration Law review 2006

[7] Suzanne Abdullah, 'The UAE Courts Approach with respect to Upholding Arbitration Awards (Al Tamimi & Co. November 2012) >http://www.tamimi.com/en/publication/publications/section-3/november/the-uae-courts-approach-with-respect-to-upholding-arbitration-awards.html> accessed 19 February 2013

Chapter 2: Background of Arbitration in UAE

a) Development of Arbitration in UAE

Having known that United Arab Emirate is situated in the heart of Gulf, we should understand that the UAE has Arab and Islamic impact on its Law, culture, ethics and norms. A concept of informal arbitration is said to be present since ancient periods of Arab civilization. This concept was not institutionalized as such in the early period and it took time to make the institutions deal with certain legal matters. Therefore the tool of arbitration as an institution also developed gradually. The customary arbitration was normally practiced in the disputes concerning family and land matters. In addition, marginally smart amount of matters were also found to be resolved by the customary arbitration. As the arbitral institutions were not strong enough, the arbitral decision (at present known as award) was only being enforced by the custom and the community pressure.

Before the cotemporary developments in institution of arbitration, there have been two kinds of arbitration in UAE. *First* kind is Mandatory arbitration whereby an issue arises out of an agreement and is resolved through arbitration in a committee and not by a court. This committee is officially formed by a relevant department of Government. *Second* kind is known as consensual arbitration which is in lieu of the agreement for arbitration between the parties. In mandatory arbitration a court may grant anti suit injunction whereas in consensual arbitration, it depends upon the parties and if a party lodges an anti arbitration suit in the court and the other party does not raise any objection, the arbitration agreement will be deemed as non-existent. Once the arbitrators have granted an award, it is submitted to the court and the party is called by the court. The court hears the case, examines the merits of the award and ratifies the award for the enforcement. It clearly reflects the dominance of courts in the arbitration process. However, it is a silent step towards the autonomous status of arbitration institution in UAE which we find in the following chapters.

Although the UAE has developed the institution international arbitration gradually, it took notable prompt steps towards its introduction and appreciation following the discoveries of petroleum and other mineral resources in the fifties. The UAE established its Dubai Chamber of Commerce and Industry in 1965 which played an important role in emergence of international

arbitration in the UAE. The Chamber established a special committee namely, 'Committee for Conciliation and arbitration' which was the first formal forum for arbitration in UAE. At that time, either the parties by mutual agreement lodged an application in the court or the court ordered the Committee to appoint an arbitrator and commencement of arbitral proceeding. Alternatively, the parties nominated their agreed arbitrators in the court and the court would pass order for the commencement of arbitration to the Committee. The seat of arbitration was compulsory to be UAE alternatively, the award was considered as foreign.

Enforcement of foreign arbitral awards is another important issue necessarily affiliated with arbitral procedure. In fact it is an integral part of the arbitration. Until 2006, the awards made in the UAE were not enforceable throughout the world except in a country with which the UAE has signed or enjoyed multilateral or bilateral Conventions or treaties. It is worth mentioning that the UAE is party to 'The Riyadh Convention on Judicial Cooperation between States of the Arab League' (1983) which was enforced in 1999. The UAE is also signatory of 'The Washington Convention on the Settlement of the Investment disputes between States and Nationals of other states' (1965). The UAE has also signed a bilateral treaty with the Morocco, namely; 'The Treaty on Judicial Cooperation in Criminal matters, Extradition of Offenders, Cooperation in Civil, Commercial and Personal Matters with Morocco (2006). The UAE has also signed treaties of 'the agreement on legal and judicial cooperation with Syria (2002), Egypt (2000) and Jordan (1999). Another important development was 'The Treaty on Judicial Cooperation, Recognition and Enforcement of Judgments in civil and commercial matters with France (1992). Therefore, the UAE awards were enforceable only in the above countries on the grounds of the above mentioned treaties, agreements and Conventions. The situation changed in 2006 when the UAE ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958[8]. After the ratification of the 1958 Convention the foreign awards can be enforced in the UAE and vice versa.

Choice of Arbitrators has been very important during entire history of arbitration in UAE. Historically, in most of the cases, the arbitrators were being appointed by the Court and the court also to decide the number of the arbitrators. The arbitrators were supposed to be limited in their

[8] Gordon Blanke & Karim Nassif, 'Arbitration in THE UAE 2011' (2011)

actions to the arbitration clause or agreement. If for any reason they need to exceed their powers, they were required to seek permission from the court. There were also strict time limitations for the arbitrators to decide the matter and issue an award.

As there was not any concept of separate arbitration law and the UAE was not following any international law such as UNCITRAL Modern Law, the only source of law was the provisions available in the Civil Procedure Code of UAE. These rules were so rigid to follow an arbitration process in a modern way. As a normal practice, the UAE 3 tier judicial system (Court of first Instance, Court of Appeal, Court of Cassation) used to nullify the award on the basis of lapse of procedure or breach of a mandatory provision of UAE Law. The courts also used to set aside a valid award on very tinny reasons.

In contrast to most of the countries in the world, in the UAE either of the parties were required to seek permission from the court prior to start arbitral proceeding. Authentication of the award through a UAE Court is required for the enforcement. Whereas in the United Kingdom there is no such requirement for the enforcement rather the recognition is required from the court of the country where the party seeks to enforce the award.[9] This is called 'trial after a trial' approach. Now a day, the more frequent practice is that the defendant submits his defense which includes procedural issues, time bars, validity of arbitration agreements, issues to be included in the arbitration agreement and the arbitrator's jurisdiction. They very rarely submit the defense over the core disputed issues[10].

Due to fast business developments and foreign investor's interest in UAE, the UAE government has shown its commitment to improve its arbitration culture. It open-heartedly considered the feedbacks given by the foreign investors in relation to the pitfalls in present arbitration mechanism[11]. The reality is that the UAE government also aims to prove the UAE as a leading centre for international commercial arbitration and a hub for international business and commercial activities and investments. Traditionally, the foreign investors and the parties in

[9] Antonios Dimitrakopoulos, *'Arbitration practice in the UAE'*, Arab Law Quarterly, Vol 16, No 4, 2001

[10] Antonios Dimitrakopoulos, *'Arbitration practice in the UAE'*, Arab Law Quarterly, Vol 16, No 4, 2001

[11] Reza Mohtashami, *'Recent Arbitration-related developments in the UAE'*, Journal of International Arbitration, Vol 25, No 5, 2008

disputes percept the UAE as an unreliable arbitration seat and that it does not have relevant laws suitable for business and arbitration proceedings. It was also thought that the UAE judges are not familiar enough with the approach towards international commercial arbitration. All of above factors played a fundamental role in order to enable the UAE government to take necessary steps and make UAE a centre for arbitration and global business and arbitration activities[12].

b) Different phases of development

The institution of arbitration has experienced several phases in the UAE. In most of the phases of its development, the arbitration and enforcement of arbitral awards has been very problematic in the UAE.

The first phase of arbitration in UAE is Islamic era in which Islamic judicial system was developed and practiced at the national scale. In that period most of disputes were resolved through an informal arbitration proceeding known as '*Al-hukumt*' or Arbitration and arbitrator was known as 'al-haakim'. The customary method was that both of the parties in dispute were to nominate an arbitrator and both of the nominated arbitrators to elect a Head arbitrator. The decision (now called award) of the arbitrators was morally binding upon the parties; however, there was no enforcing mechanism in place. This is however a fact that the moral pressure was strong enough to make the parties act upon the arbitrators decision.

As mentioned earlier, the UAE experienced a turning phase in fiftieth century when oil resources were discovered in the Arab world. The discovery of oil and other mineral resources gave growth to country's economy and boosted the foreign investment in UAE. This also cautioned potential for the disputes in commercial field in future. Thoughts on the alternative methods to resolve the disputes concluded in 1965 to the establishment of Dubai Chamber of Commerce and Industry. This can be said to be the first solid step towards the establishment of modern arbitration institutions in UAE. In this phase the starting point of arbitration was the 'Committee for Conciliation and Arbitration'.

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[12] Reza Mohtashami, *'Recent Arbitration-related developments in the UAE'*, Journal of International Arbitration, Vol 25, No 5, 2008

In 1971, the United Arab Emirates came into being and has gradually developed its political and judicial structure. This was the period when the UAE started its swiftest journey towards becoming the financial hub in the world, especially in the Gulf. Discovery of Oil and other mineral resources, hoteling and construction of high-rise buildings increasingly resulted rise of commercial disputes which provided the UAE a strong reason to review its judicial system and to introduce a well-organized and worldly recognized alternative dispute resolution especially the arbitration.

At this stage, the UAE revised its Civil Procedure Code and the federal law in regard to the alternative dispute resolution. It made amendments into certain existing rules in order to introduce and facilitate the institution of arbitration in the UAE. The most relevant sources of law in relation to the arbitration were enacted articles 203 to 218 of Federal Law No. 11 of 1992 of the UAE Civil Procedure Law. Article 215 of Civil Procedure Law particularly deals with the recognition and enforcement of domestic awards whereas articles 235 to 237 of CPC deal with the recognition and enforcement of foreign awards in UAE[13].

With the establishment of Dubai International Arbitration Centre (DIAC) in 1994 and the DIFC LCIA Arbitration Centre in 2004, UAE has become hub for the International Commercial Arbitration. With these developments, the UAE courts started playing a supportive role in the arbitration proceedings. DIFC Law No. 1 was introduced in 2008 which governs the arbitration proceedings and the enforcement of awards within the DIFC. The DIAC Arbitration rules were enacted and enforced in 2007 for the arbitration in the DIAC or elsewhere. The UAE government released a Draft on Federal Arbitration Law in 2008. It is quite similar to the UNCITRAL Model Law and the UK's Arbitration Act 1996 however it is still under consideration and nothing is final as yet. In addition, the UAE law itself provides some provisions on the arbitration in UAE which states that the default language of the proceeding and award is Arabic. In order to enforce an award, an order is required by the national court.[14] It is hoped that the proposed law will help

[13] Gordon Blanke & Karim Nassif, 'Arbitration in THE UAE 2011' (2011)

[14] J. kwan and E. Teale "Arbitration in the United Arab Emirates: the traps, the tricks and tips for the unwary"

to overcome the perceptions of commercial community and the investors that the UAE is unreliable and unfriendly seat for International Commercial Arbitration.

c) Why the arbitration was developed?

As mentioned earlier, being an Arab country the concept of arbitration is present in the UAE since the ancient times. Most of the commercial, civil and criminal disputes were being dealt through the arbitration. Long ago when the political system and the institutional structure were not developed in the world, the arbitration was very informal forum at that time. The Arabs and Muslims approach can be easily understood by the fact that the litigation in a court was considered as dispute between two parties while in arbitration, a dispute was considered as a matter between two brothers. This approach clearly reflects the spirit of dispute resolution between the parties through a friendly platform, namely Arbitration.

Although, arbitration was felt necessary instrument to deal with the certain disputes from the very early years of the UAE, it was considered as very useful dispute resolution platform since the discovery of oil and resources in UAE in the fiftieth century. At this stage the commercial disputes started arising out of the Oil business and due to very rigid and unfriendly court system in UAE the Government and the commercial and business entities started thinking for some alternative dispute resolution options. This helped the arbitration to establish itself as an alternative platform to resolve the commercial disputes.

Since last decade, the UAE has started to get rid of reliance on the Oil and other mineral resources and started thinking some alternative source to generate revenue. Different ways were considered in order to attract the foreign investment in the UAE. The UAE ultimately decided to introduce world class arbitration laws and the arbitration centre in the UAE. The motive behind this strategy was two-fold; *firstly* to assure the investors that the UAE has world class dispute resolution laws enforced in the country therefore the parties will have world class arbitration services and venues available in case of any dispute. This could lead the UAE to become the Commercial Centre for the region; *Secondly*, to make UAE a world class arbitration centre and to

attract the disputed parties to choose the UAE as arbitration seat. This is indeed a business oriented strategy in order to boost the economy of the country[15].

[15] J. kwan and E. Teale "Arbitration in the United Arab Emirates: the traps, the tricks and tips for the unwary"

Chapter 3: Recent Developments in Arbitration in UAE

a) Arbitration centers

Dubai International Arbitration Centre (DIAC)

The DIAC was originally established in 1994 as 'Centre for Commercial Conciliation and Arbitration'. Later, in year 2005 the ruler of Dubai passed decree for the establishment Dubai International Arbitration Centre. DIAC primarily followed Rules of Dubai Chamber of Commerce and Industry's Commercial Conciliation and Arbitration No. 2 of 1994. Later on in the year 2007 the DIAC arbitration rules were enacted. These rules are available in both English and Arabic languages[16]. It is worth mentioning that the UNICITRAL Law can be found to be reflected in the DIAC rules. All of the arbitrations being taken place in the DIAC are administered under the DIAC rules 2007. The DIAC also plays role as an authority to challenge in the local and ad hoc arbitral proceedings.

In an arbitral proceeding in DIAC, by default seat or place of arbitration will be Dubai unless otherwise determined by the parties. DIAC rules are flexible in language and accept the most suitable language for both parties under the circumstances. The DIAC rules give choice to the parties to agree upon the numbers of arbitrators to deal with their dispute; the parties can choose a sole arbitrator or they may make a choice of tribunal consisting of 3 members.[17] The DIAC claims that they provide ultra-world class services for domestic and International Commercial Arbitration. They also claim that the world's best and renowned arbitrators are associated with the DIAC.

Dubai International Financial Centre – London Court of International Arbitration (DIFC-LCIA)

DIFC-LCIA is a joint venture of two world class financial and arbitration forums; Dubai International Financial Centre and London Court of International Arbitration. DIFC was established as a financial centre as a result of an amendment in the UAE constitution in year

[16] 'Dubai: Dubai International Arbitration Centre (DIAC)', International Arbitration Law Review (2005)

[17] Gordon Blanke & Karim Nassif, 'Arbitration in THE UAE 2011' (2011)

2004. Under the said amendment, the UAE government was empowered to establish a financial free zone in the UAE. The DIFC is a completely autonomous entity empowered to enact rules for its civil and commercial matters[18]. DIFC claims to offer many benefits for the companies and financial groups running businesses within the DIFC including tax free income and profits and the 100% foreign ownership. Because of its eco-geographical importance, the aim behind its establishment was set as to become a bridge between the Asia and Europe. The DIFC played its above role incredibly and provided world class standards and rules within the DIFC jurisdiction. Indeed the DIFC contributed well to make the UAE global hub for financial activities and services. DIFC has its own independent court system and the civil and commercial laws enforced within the DIFC. It functions as a common law jurisdiction designed as the English legal system. Although the DIFC Courts have jurisdiction over all the matters being presented to be dealt with in the DIFC, the parties are given choice to select any other court outside the DIFC while entering into a contract or so on[19].

The LCIA is the oldest world class Arbitration Centre based in London. It was established in year 1892 in the name of 'City of London Chamber of Arbitration'. The LCIA follows its own arbitration rules however a party may prefer to use another set of arbitration rules such as UNICITRAL model law. The seat or place of arbitration will be London if the parties select LCIA for arbitration unless otherwise agreed. In the start of 2007, The Dubai International Financial Centre and the London Court of International Arbitration jointly established a new world class arbitration centre in UAE which is known as DIFC-LCIA. It is established inside the Dubai International Financial Centre. The DIFC-LCIA is considered as separate seat of arbitration distinguished from the Dubai seat. It means that there are two seats in the UAE; the DIFC and Dubai which is the unique feature of the UAE arbitration.

The DIFC-LCIA runs the arbitration proceedings under the DIFC-LCIA International rules of Arbitration 2008. These rules are designed and based on the LCIA international arbitration rules 2008 model. In DIFC-LCIA, the parties are given choice to choose either a sole arbitrator or a three member tribunal for arbitration. As a standard practice, the seat of arbitration would be

[18] http://www.difcarbitration.com/base/faqs/index.html#q1

[19] http://www.difcarbitration.com/base/faqs/index.html#q1

DIFC and arbitration language will be English unless otherwise agreed by the parties[20]. As mentioned earlier, the UAE is signatory of the New York Convention 1958 therefore a valid foreign award will be binding and enforceable within the DIFC upon provision of original award or certified copy of the same award or any other required documents. If an award is rendered in the DIFC but its enforcement is sought in the Dubai, the DIFC court will ratify the award and will issue ratification decree. After this procedure has been exhausted, the DIFC award is enforceable in Dubai. The DIFC award is enforceable in all of the Convention states of New York Convention 1958.[21]

Abu Dhabi Commercial Conciliation and Arbitration Centre

The ADCCAC is another renowned arbitration centre in the UAE. The ADCCAC has enacted its own rules namely the ADCCAC arbitration rules. The language of the arbitration will be Arabic unless otherwise agreed.[22] It was established in 1993 by Abu Dhabi Chamber of commerce and industry with the aim of dispute resolution in two disputed parties trough the arbitration or the conciliation.[23] Similar to other arbitration centers, the parties are given a choice to decide whether they need sole arbitrator or a penal of three arbitrators including a head of all three. The seat of arbitration will be considered as Abu Dhabi and the language will be Arabic unless otherwise agreed. The parties to a dispute will decide the arbitrator's fee for arbitral proceedings. The Centre claims to be world class arbitration centre with outstanding flexibility, confidentiality and ease of the parties.

The UAE Law does not states anything about the applicable law in an arbitral proceeding. The parties in dispute are left free to choose the applicable law of their own choice. However, the parties are required to follow the mandatory provisions of UAE law; failure to comply with these

[20] Gordon Blanke & Karim Nassif, 'Arbitration in THE UAE 2011' (2011)

[21] Simon Roderick, 'United Arab Emirates (Dubai): launch of the new DIFC/LCIA Arbitration Centre – recognition and enforcement of arbitral awards in Dubai', International Law Review 2008

[22] Same

[23] http://www.abudhabichamber.ae/English/AboutUs/Sectors/CCAC/Pages/OverView.aspx

mandatory provisions can affect the enforceability of relevant arbitration award. If the parties in dispute do not agree on applicable law, article 10 of UAE Civil Procedure Code[24].

b) Why UAE Arbitration Centers could be leading centers in Gulf or World?

The legal and professional experts observed that the UAE's Arbitration Centers has greater potential to become the leading centers in the Gulf and the world. There are numerous reasons behind their observation including the following;

Geographical Importance

United Arab Emirate is situated at very important geo-economical location. On one hand, it can serve as a bridge between the Eastern and the Western Europe and on the other hand; it can also provide a fantastic venue for arbitration for the countries like Pakistan, Sri Lanka, India, Bangladesh, Nepal and other countries in Central and South Asia. It is worth mentioning that at present there is no world class and reliable International arbitration centre available in most of the South and Central Asian states. Arbitration, being a rapidly emerging tool for commercial disputes resolution is really need of these countries. The UAE has proved that it can serve these countries and the parties from these countries in their commercial and other disputes at an ultra world class standard.

Independent /Neutral seat

For obvious reasons, seat or place of arbitration is of vital importance in any arbitration proceeding. Parties to a dispute and their legal experts make sure to choose a neutral and the most suitable seat. A suit is very important *firstly* because the arbitration law of the seat will be applicable on the matter. *Secondly*, this is very important that the country of the seat is signatory of New York Convention 1958. If it is not, there would be massive problem for enforcement of such arbitral award issued in the seat of non signatory country. *Thirdly*, at the stage of review of award, it has to be reviewed in the country of seat of arbitration[25]. Therefore great care is

[24] CPC Rules of UAE

[25] R. Merkin & L. Flannery, *Arbitration Act 1996*, 4th ed. (MPG Books 2008)

required and the parties need to be think well before deciding over the choice of seat with due diligence. The UAE is an independent, impartial and neutral seat for all jurisdictions and countries. This is the reason the world prefers to choose the UAE as their seat of arbitration.

Standard and Facilities

Because of its modern development and world standard facilities along with, global business centers, the UAE has become a leader of the global economy. The International Commercial Arbitration Centres in UAE are renowned for provision of ultra world class arbitration services. Because of the availability of comfort and luxurious settings, the parties in a dispute while they are in the UAE continue their businesses. They are happy to initiate their arbitration proceedings in the UAE. The UAE is also attractive for world class arbitration professionals therefore they prefer to join the arbitration centre or arbitration practice in the UAE.

Undoubtedly, the UAE has also become centre for expertise and specialties at world level. This has gathered the world class experts and specialists of different fields in the UAE. These experts and professionals are available to support arbitration or other dispute resolution process in the UAE through their expertise[26].

The arbitration Laws

This is interesting to mention that the institution of arbitration is rapidly emerging in Gulf. Most of the Gulf countries have introduced arbitration law draft. It is evident that most of these proposed arbitration laws have similarity with the UNCITRAL (Model Law). UAE is playing a leading role in this regard and has introduced their proposed Arbitration Law 'Federal law' in 2008.

As a normal practice, the parties to dispute, along with the seat of arbitration, are curious about the Arbitration Law enforced in the seat of the arbitration. Most of the parties prefer the UNICITRAL Model law for the arbitration process in their dispute. As mentioned above, most of the arbitration centres in the UAE have made their arbitration laws which are quite similar to the

[26] http://www.diac.ae/idias/services/dubai/

UNICITRAL model law. This is another attraction for the parties and makes the arbitration in the UAE a favorite.

Most recent development is Kingdom of Saudi Arabia's arbitration law issued under Royal Decree No. M/34 in April 2012[27]. It is foreseen that as construction, maritime, engineering and transportation are considered as major investments in KSA and disputed parties in these areas as a normal practice prefer arbitration as a tool to dispute resolution, the proposed law will play an important role in proving arbitration as an effective forum for such dispute resolution. The Saudi Arbitration Law is under the framework of New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

[27] Khalid Alnowaiser, *'The New Arbitration Law and its Impact on Investment in Saudi Arabia'*, Journal of International Arbitration, Vol 29, No 6, December 2012

Chapter 4: UAE Legislation on Arbitration

a) Background of Legislation on Arbitration

UAE has a classical law background which has roots from Arab and Islamic customs, and laws. Despite having a rigid legal approach, there has been a concept of dispute resolution through the informal means. However this is also a reality that in the recent past United Arab Emirates, the legal institutions including the courts did not welcome the modern concept of arbitration in UAE. As a consequence, the arbitration has faced problems of multiple types in the UAE. The arbitral procedures never has been at an international standard and it has been in continuous debate to improve the situation. The situation has rapidly changed and now as a usual practice, the arbitration is warmly welcomed in the UAE[28].

In order to visualize the background of UAE legislation on arbitration, we should understand the legislation bodies and their mechanism. From very beginning of the establishment of United Arab Emirates, the rulers were keen to enact the new laws to fill the vacuum caused due to the establishment of new Country and successfully achieved their goal on a level however, the drafting was not of a standard level and there were long delays in the legislation process. There was no civil procedural code available in beginning. Traditionally, there are three councils who are delegated powers to make the legislation at federal level; among these councils is the Supreme Federal Council of Rulers which is the highest constitutional authority. This also performed as cabinet for UAE and is empowered to control the legislation in UAE. It consists of seven rulers of the Emirates[29]. The Council of Ministers is the second powerful body which consists of UAE's ministers which deals with the legislation process including suggesting legislation and drafting the same. It is also responsible for the execution of Law. The third council is National Federal Council which consists of forty one elected members from the entire Emirate. These are nominated by the Rulers of each state for a term of 2 years[30].

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[28] Weinberg Wheeler, 'Recent Developments in Arbitration Law in The Middle East' (2012)

[29] Al-Awais H.R., The Federation of the United Arab Emirates and the Legislation power of the Federal Government (Harvard University, 1984), unpublished, (LLM thesis).

[30] Al-Awais H.R., The Federation of the United Arab Emirates and the Legislation power of the Federal Government (Harvard University, 1984), unpublished, (LLM thesis).

The UAE in essence is a civil law jurisdiction. Common law principles in general practice are not recognized however, case laws of the higher courts are usually regarded by the subordinate courts. Interestingly however, the DIFC Courts are based on the Common Law principles following the English legal system.

b) Legislation on Arbitration

We can find that there is no any separate or special law on arbitration available in UAE. In essence, The Civil Procedure Law of UAE is an important source of arbitration practice in the UAE[31]. The arbitration is governed through the Federal Law No. 11 of UAE Civil Procedure Law 1992. This provides the laws for both; the domestic and International arbitration[32]. Chapter III of UAE CPL deals with the arbitration. Article 203 deals with the arbitration generally and states that in order to be a valid arbitration agreement, the agreement should be evidenced in writing[33]. It is interesting to mention here that the English Arbitration Act 1996 also requires the agreement to be in written form of arbitration clause or as separate arbitration agreement[34]. Another interesting rule mentioned in article 203 is that in presence of a valid arbitration agreement, if a party lodges a suit in the court regarding the dispute and the other party does not go to the court at the first hearing, the arbitration proceeding will be deemed as cancelled[35]. Whereas, in UK under arbitration Act 1996, the arbitral tribunal is given substantive jurisdiction over its jurisdiction and once the arbitral proceeding is started the court cannot stop it except under exceptional circumstances[36].

Article 204 deals with the courts role in the event where the arbitrators refuse to act as arbitrators or they are not able to perform their duties. Under article 204, the court is empowered to appoint arbitrators in such situation and the court's decision in this regard is not challengeable. As a

[31] James Whelan, 'UAE Civil Code and Ministry of Justice Commentary – 2010'

[32] Arbitration in the UAE 2011, Gordon Blanke and Karim Nasif (Habib Al Mulla & Company)

[33] Article 203 Civil Procedure Code, UAE

[34] Section 6 of Arbitration Act 1996

[35] Article 203 Civil Procedure Code, UAE

[36] Section 44 of Arbitration Act 1996

whole, articles 203 to 218 of CPL deal with the arbitration in general. Chapter IV of the CPL deals with the Execution of Foreign judgments. Articles 235 to 238 deal with the execution of foreign judgments and awards. Chapter V deals with the Execution procedures, articles 239 to 243 of which state the relevant rules about execution procedures.

Some of the important rules present in the Federal law No. 11 include rules regarding the arbitration agreement. According to the Federal law 11 the arbitration agreement should be in writing and that the number of arbitrators must be odd. Under the Federal law 11, arbitrators can be appointed in 3 ways; either by nomination by the parties OR by appointment through an arbitral institution, OR by appointment by a relevant competent court at the seat of the arbitration. The issue of public interests and public policy is also addressed in the Federal Law 11. As mentioned earlier, according to the UAE laws, any un Islamic Law cannot be legislated in the UAE and in normal practice an un Islamic practice is deemed to be against the public policy and therefore is not permitted. Arbitrators do not have powers to compel a party to the arbitral proceedings to act or to produce certain documents instead the arbitrators have to suspend the proceeding and make an application to the competent court. The UAE Law does not state anything about the applicable law in an arbitral proceeding instead the parties in dispute are left free to choose the applicable law of their own choice. However, the parties are required to follow the mandatory provisions of UAE law, failure to comply with these mandatory provisions can affect the enforceability of relevant arbitration award. [37].

c) Proposed Federal Arbitration Law

As mentioned above, there is not any special law enacted for the arbitration in the UAE. The UAE government has proposed a draft of Arbitration Law in February 2012 which will be enforced at the federal level. If we analyze the entire draft law, we can find that this is based upon the UNCITRAL Model Law and is aimed to comply with the requirements under the New York Convention 1958. Once enforced, the daft law will repeal the arbitration laws of the federal law 11 of the CPL.

[37] CPC RULES UAE, Fefedral Law No. (11) of 1992

The draft law is a comprehensive set of law which covers the domestic and International Commercial arbitration regardless of place of arbitration with condition that the parties have chosen this law for the arbitral proceeding in their dispute. The Abu Dhabi Federal Court of Appeal will have jurisdiction to deal with the matters coming out of an international commercial arbitration. It is however, yet to examine that which mechanism will be used by this court to enforce its order in the other Emirate states[38]. The draft law provides the parties with the liberty to choose the arbitrators of their own choice and preference. It does not put any restriction to select the arbitrators of a specific nationality or particular ethnic background[39]. It is however, restricted that none of the arbitrators can be national of the party's nationalities[40]. Under the draft law, Arabic is declared as official medium of arbitration process unless otherwise agreed between the parties or the tribunal decides under certain circumstances[41].

The draft law puts an obligation to deposit award to a UAE court within two weeks of issuance of the same[42]. Confidentiality is given importance under the draft law and it is stated that the proceedings and awards will be dealt in a confidential manner unless otherwise agreed by the parties[43]. Similar to the UNICITRAL Model Law, the draft law does not gives any right of appeal against a final award. Under article 57 of draft law, after an issuance of a final award, if either party lodges an application to the court for the annulment of the same award, the enforcement proceeding will not be suspended unless the party proves in front of court that there are serious reasons which are necessary for such suspension. If the court suspends the enforcement process, it should dispose the case within three months of such suspension[44]. Under the Draft Law, an award is contrary to an order already made by a UAE court, will be void. This

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[38] Weinberg Wheeler, 'Recent Developments in Arbitration Law in The Middle East' (2012)

[39] Article 17 of Draft Law

[40] Article 18.3 of Draft Law

[41] Article 28 of draft law

[42] Article 46 of Draft Law

[43] Article 48 of Draft Law

[44] Article 57 of Draft Law

article indeed reflects that enforcement of arbitration award is still problematic as compared to the other jurisdictions.

It is anticipated that the proposed draft law will be much user-friendly as compare to the CPL rules on the arbitration. The arbitration law will be drafted in both English and Arabic languages for the ease of the users. It is also evident that there is a reflection of Model Law and it also includes UNICITRAL Model Law in its annex 1 to it[45]. To make sure that the UNICITRAL Model Law will be consulted as a reference in the situation of any confusion in interpretation of arbitration laws, the draft law includes; 'For the purpose of interpreting any part of Annex of this Law, any arbitral tribunal, court or other authority of, or within, the State, may refer to, and take guidance from, the documents and publications of the UNICITRAL relating to the Model Law, including those of the Working Groups involved in its preparation'[46].

It is important to mention that the proposed Law will not be applicable on the Dubai International Arbitration Centre and the DIFC-LCIA. The DIFC is an autonomous entity which has its own jurisdiction over the commercial and civil matters being acquired and dealt within the DIFC Jurisdiction. The DIFC applies its own DIFC Law No. 8 of 2004. With this unique feature, we can see that there are two seats in the UAE; the DIFC seat and the Dubai seat. Interestingly, an office is promised to establish in the UAE to monitor practices on arbitration in the light of New York Convention 1958 and the UNICITRAL Model Law.

d) The New York Convention 1958

The United Nation has played an important role towards introduction and support of Commercial Arbitration at international level. It constantly supported to make the foreign arbitral awards acceptable throughout the globe. In 1958, United Nations conference on International Commercial arbitration passed a Convention on the Recognition and Enforcement of Foreign Arbitral Awards. This is undoubtedly considered as a mile stone towards the non-judicial solution of regular disputes in the worldwide commercial arena. Prior to the 1958 Convention there was not any effective regime to deal with the International Commercial arbitration and the

[45] Weinberg Wheeler, 'Recent Developments in Arbitration Law in The Middle East' (2012)

[46] Article 3 of Draft Law

recognition and enforcement of foreign arbitral awards. Starting from very low membership, the Convention has gradually increased its membership which has now crossed 145 member countries across the globe.

At present, the member countries consist of both; the developing and developed countries including nearly every nation which can impact the international trade. Most of the European countries ratified the Convention in the sixties whereas the United States ratified it in 1970. In the United Kingdom, there has been a great debate over the advantages and disadvantages of the ratification however the United Kingdom finally ratified the Convention in 1975. A considerable number of the Latin American countries have ratified it however; there are many Latin countries that have developed their own Convention on International Commercial Arbitration. One of these Conventions was passed in Panama in the year 1975. It is very interesting that the Panama Convention is found to be a copy of 1958 Convention in aspects. The most important and problematic matter with every legal document is when it encounters the gaps and the need of interpretation when enforcing the same[47].

The 1958 Convention requires the member states to recognize and enforce the arbitral award being issued by another member state. The Convention consists of 16 articles in total which at most deal with the recognition and enforcement of foreign arbitral awards. Article III of the Convention states, "Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon"[48]. It further forbids the contracting states to put the unreasonable conditions and charges over the recognition and enforcement of arbitral awards. The Convention requires the party seeking the enforcement to provide the relevant court with the original awards received.

The United Arab Emirates has ratified the 1958 Convention on 21st August 2006. Prior to the 1958 Convention, article 235 of CPL was the only relevant and applicable law over the arbitral proceeding and the enforcement of foreign arbitral awards however, some unilateral and bilateral Conventions and agreements were also relevant to deal with the foreign arbitral awards. Since

[47] Sander Pieter, 'Twenty Years' Review of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards'. (1979)

[48] Article III of UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958

the ratification of 1958 Convention, the courts have not willingly followed the Convention in the beginning and at some level they totally neglected it. The courts, more commonly, avoided to follow the applicable rules of 1958 Convention on the grounds that for instance; the arbitral tribunal did not have jurisdiction or either of the parties to the arbitral was not given necessary opportunity to represent their case. Issue of the public policy with reference to the Islamic Laws was also commonly used as shield to ignore the 1958 Convention[49] and enforcement of foreign award may be refused on the "Moral Code and Public order" of New York Convention grounds. However, in present, the Convention is mostly followed with its true spirit in the UAE[50].

[49] Gordon Blanke's article on Enforcement of New York Convention awards: are the UAE courts coming of age? (2012)

[50] Gordon Blanke's article on Enforcement of New York Convention awards: are the UAE courts coming of age? (2012)

Chapter 5: Role of Courts in Arbitration

a) Courts and Arbitration:

In essence, in every jurisdiction, the national courts play a key role and provide the arbitral proceeding with the necessary support. It is very interesting fact that although, the arbitration wants to get rid of almost court's interference in an arbitral proceeding, it seeks support from the same courts. Undoubtedly, an ideal working relation between the courts and the arbitral process is of fundamental importance for an effective and impartial arbitration process[51]. The English Courts have played an historical role in order to strengthen and empower the arbitral institutions and the UK courts role has been accepted as model for other countries and jurisdictions where the arbitration is rapidly emerging.

The UAE Courts played variety of roles in past during the deferent phases of emergence of International Commercial arbitration in the UAE. As mentioned in above, historically, there has been existence of arbitration in the UAE in one shape or another. The people however, used to prefer litigation in customary court to resolve their disputes[52]. This is because the arbitration was not empowered as it is empowered today. Also, the Court proceedings were in Arabic – their own language therefore they were familiarizing with the litigation in court. Arbitration, like today, was also considered as an expensive tool for dispute resolution as compared to the courts. Due to court's un-helpful attitude towards the arbitration, enforcement was also considered as a difficult and complex process[53].

As soon the UAE has started boosting its economy and it started its journey to become a financial hub for the Middle East and south eastern countries, the situation started changing. The UAE courts moving towards the Alternative Dispute Resolution took first revolutionary step and barred the litigation until the parties to the dispute exhausted the forum known as 'Committee for

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[51] http://www.globalarbitrationreview.com/cdn/files/gar/articles/david_williams_Defining_the_Role_of_the_Court_in_Modern_Intl_Commercial_Arbitra.pdf

[52] http://www.globalarbitrationreview.com/reviews/50/sections/173/chapters/1947/

[53] http://www.globalarbitrationreview.com/cdn/files/gar/articles/david_williams_Defining_the_Role_of_the_Court_in_Modern_Intl_Commercial_Arbitra.pdf

Conciliation and Arbitration'. This Committee was established at the Dubai Chamber of Commerce and Industry to be the first body that ever provided formal arbitration services in the UAE. In this process, any party to a dispute used to file a petition in the federal courts along with the proof of a valid arbitration agreement for the appointment of arbitrators. Under these rules the venue of the arbitration (seat) must be UAE otherwise the award will be treated as a foreign judgment.

A need to make further changes and improvement in the arbitration process was being felt in past and it has increased by the passage of time. The fiftieth century is an eye witness towards recognition of basic concepts of International Commercial Arbitration in the UAE. The reason behind this recognition was the discovery of petroleum in the UAE. In 1965, establishment of Dubai Chamber of Commerce and Industry provided foundation to the International Commercial Arbitration in order to emerge into the UAE corporate arena. The establishment of ADCCAC in 1993, DIAC in 1994 – 2005 and finally of DIFC-LCIA was a turning point for the emergence of arbitration in UAE. Apparently, the DIAC and DIFC-LCIA have introduced their own arbitration laws. These developments have totally redefined the courts role in the arbitral process in the UAE. The reality is that the UAE Law has curtailed the courts fluent involvement in arbitral proceeding. The UAE being bi –seats city; DIFC being a separate arbitration seat; detached from the Dubai seat is another unique feature of UAE arbitration which makes the UAE different from the other countries.

b) **Court's power with reference to the arbitration**

Similar to the UK's 1996 Act[54], the DIAC rules 2007[55] and the DIFC-LCIA rules 2008[56] give powers to the arbitrators to rule over their own substantive Jurisdiction however under the UAE Civil procedure law[57], either of the parties can challenge an award on the basis of arbitrator's jurisdiction. The UAE courts have been un-supportive in this regard whereby they granted anti

[54] Arbitration Act 1996, Art 30

[55] DIAC Rule 2007, Art 6

[56] DIFC Arbitration Law No. 1 of 2008, Art 23

[57] CPL, Art 216

arbitration injunctions on the request of defendant challenging the arbitrator's substantive jurisdiction when the arbitral proceeding has already started. In The Dubai Court of First Instance No. 203/2005[58], the parties entered into a valid agreement in Dubai. The agreement included an arbitration clause to begin arbitration proceeding in London if required. The dispute arisen and party 'A' commenced arbitration in London however, the other party went to the Dubai Court for an anti arbitration injunction. The court granted anti arbitration injunction and held that as the matter is attached with UAE, no other court or arbitrator has jurisdiction to try the matter hence the LCIA had no substantive jurisdiction to hear the matter. By the passage of time, the UAE courts reviewed their attitude in this regard and gradually started accepting the substantive Jurisdiction of the arbitrators. In The Dubai Court of Cassation[59], the parties entered in to a valid agreement for supply of construction items, whereby, 'F' to supply construction items to 'M'. The agreement included an arbitration clause to proceed arbitration in SIAC if required. 'M" made the agreed payment however 'F' failed to supply the items as per agreement. 'M' went to the SIAC and started arbitral proceeding against 'F'. Ultimately, the SIAC issued an award in favor of 'M' together with costs. 'M' seeks to enforce the award in Dubai. The court recognized the award as valid and held that it is a valid agreement and no point to discuss the substantive jurisdiction of the arbitrators.

Under the DIFC Rules 2008[60] the parties to dispute are in liberty to agree what is to happen in the event of a failure of the procedure for the appointment of the arbitrators. If no such agreement is found, either of the parties are free to apply to the court to appoint or revoke any or all arbitrators. The position of UK's 1996 Act[61] and DIAC Arbitration Rules 2007 is same at this point.[62] Under the UAE CPC Rules[63], No arbitrator can be removed except with the approval of

[58] The Dubai Court of First Instance No. 203/2005

[59] The Dubai Court of Cassation No. 233/2007

[60] DIFC Arbitration Rules No.1 of 2008, Art 17

[61] Arbitration Act 1996, Art 18

[62] DIAC Arbitration Rules 2007, Art 13 & 14

[63] The UAE Civil Procedure Code, Art 207 (3)

all the parties to the dispute. However, it keeps silent if the parties are not agreed regarding what is to happen in the event of a failure of the procedure for the appointment of the procedures.

Under the DIFC Rules 2008[64] the parties are free to request to the DIFC court to decide on the removal of the arbitrators on the basis of irregularity, impartiality, lack of qualification or incapacity. It further states that Court's such decision will not be appealable. It is interesting to mention that under the UK's 1996 Act[65], a party may apply to the court to remove an arbitrator on the grounds that there are reasonable doubts of impartiality of arbitrators, lack of required qualification of the arbitrators, physical or mental incapacity of the arbitrators or the arbitrator has refused to perform his duties as arbitrators[66].

The UAE Civil Procedure Code states, "the court can support an arbitral process by assisting in the production of documents from third party that are necessary for determining the dispute before the tribunal, by sanctioning the absence of or false testimony from a witness called in a arbitral proceeding and rendering interim measures including injunctions, to preserve required evidence or attachment orders"[67]. Interestingly, the UK's 1996 Act[68] provides similar rules in this regard which states, "in order to support the arbitral proceedings, the court can take evidence of witnesses, preserve the evidence, sale of goods subject to the proceedings, grant of an interim injunction. A leave of the court required for any appeal from a decision of the court"[69].

Challenging an award is another important issue as the awards used to be challenged over very minor issues in the past. Article 216 of UAE CPC deals with the challenge of an award which states that either of the parties may apply for nullification if the award is based upon invalid terms of agreement or the arbitrator has exceeded his limits. A party may also apply for annulment of award on the basis that the appointment of arbitrators was unlawful. The Dubai

[64] DIFC Arbitration Rules No.1 of 2008, Art 20

[65] Arbitration Act 1996, Sec 24

[66] Arbitration Act 1996, Sec 24

[67] The UAE Civil Procedure Code 1992, Art 209

[68] Arbitration Act 1996, Sec 44

[69] Arbitration Act 1996, Sec 44

Court of Cassation in petition No.270/2008[70] categorized the grounds for challenge into two groups; *first* the ground related to the existence or validity of arbitration agreement and arbitrator's excess of his authority. Whereas, *second* ground related to the arbitral proceedings which include invalid composition of the arbitral tribunal, issuance of award without authority to do so or either of the party's capacity to enter an arbitration agreement. It is worth to mention that under the UK's 1996 Act[71], "any party to the arbitral proceedings may apply to the court to challenge an award as to its substantive jurisdiction or for an order declaring an award made by the tribunal on the merits to be of no effect in whole or in part because the tribunal did not have substantive jurisdiction. The court may confirm, vary or set aside the award in whole or in part"[72].

The UAE law does not include an explicit right of appeal against an award however, court ratification is compulsory for enforcement. The competent court will, prior to ratification ensure that there is no obstacle to the enforcement[73]. This position is similar to the UK's 1996 whereby it[74] states "a party to arbitral proceedings may appeal to the court on a question of law arising out of an award made in the proceedings. The court may confirm, vary or set aside in whole or in part. The leave of the court is required for the appeal"[75]. The UAE Courts have played a positive role in this regard and continuously held that they have limited powers which do not extend to the decision's merit. In Judgment No. 271 of 2000[76], the Dubai Court of Cassation held,

"There is no obstacle to the execution of the award if it satisfies its formal requirements, takes into consideration principle of conformation in the dispute and does not contravene a prior

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[70] Dubai Court of Cassation, petition No. 270/2008, dated 24/03/2009

[71] Arbitration Act 1996, Sec 67

[72] Arbitration Act 1996, Act 67

[73] Reza Mohtashami & Merryl Lawry - White, '*Appealing arbitral awards in Arabia: another perspective on section 69 of the English Arbitration Act*'

[74] Arbitration Act 1996, Sec 69

[75] Arbitration Act 1996, Sec 69

[76] Dubai Court of Cassation Judgment No. 271 of 2000

decision that has been rendered between the same parties and concerning the same subject matter. Moreover, the subject that has been decided must not contradict public policy or good morals. Beyond that the role of the court does not extend to reviewing the subject matter of the dispute, or to appreciating the validity the validity of what the award has decided, or to deciding other requests beside ratification, given that after the award has fulfilled the above mentioned conditions, it is considered a decision holding the power of *res Judicata*"[77].

This clearly demonstrates that the court has started playing a supportive role to the arbitral proceeding and have stopped interfering in the arbitral proceedings, especially in the matters involving the merits of an arbitral award.

c) Public Policy and the Court's role

Matter of Public policy is prevalent to the recognition and enforcement of foreign arbitral awards. This can be used as defense against recognition and enforcement of a foreign arbitral awards. The UK has adopted a moderate strategy over that; under the 1996 Act, a party to arbitral proceedings may apply to the court challenging an award on the ground of serious irregularity affecting the tribunal, the proceeding or the award[78]. Among many other kinds, the irregularity also includes the award being obtained by fraud or by the way in which it was procured being contrary to public policy[79]. Although the UAE higher courts as a whole moved towards a supportive role in the arbitration practice, they very recently started dealing with the issue of public policy strictly pursuant to the article 203(4) of UAE Civil Procedural Code.

The Dubai Court of Cassation has recently surprised the arbitration world with a ruling that an arbitral award may be set aside on the grounds of public policy. In Appeal No. 180/2011[80] on 12 February 2012, the dispute brought before the arbitrator arose out of a contract of sale of an off-plan unit. The Respondent asked the arbitrator to cancel the contract and refund it for payments it has already made towards the purchase price because the contract was not registered on the

[77] Dubai Court of Cassation Judgment No. 271 of 2000

[78] Arbitration Act 1996, Sec 68

[79] Arbitration Act 1996. Sec 68 (g)

[80] Property Appeal No. 180/2011, dated 12/02/2012

interim property register. The arbitrator granted the Respondent's request on the basis that the Appellant had registered the contract only after the 60 day period mentioned in Article 3(2) of Law No. 13 of 2008. The Court of Cassation held that:

"This Court has consistently ruled that the Court of Cassation may, in an appeal, take a point of law which is a matter of public policy provided that the trial court had, when making a decision, considered all the elements relevant to understanding the point and ruling on it. This Court has also held that matters amounting to public policy are outside the realm of conciliation. According to Article 203(4) of the Civil Procedure Law, arbitration is not permissible in areas that cannot be subject to conciliation. On that basis, the sale of off-plan units without compliance with the mandatory registration requirement as provided for in Article 3 of Law No. 13 of 2008 regulating the interim property register in the Emirate of Dubai cannot be a subject matter for arbitration as it contravenes public policy. Therefore, where a dispute subject to Article 3 of Law No. 13 of 2008 is brought before an arbitrator and that arbitrator renders an award settling the dispute, such award is void as only the Court can decide the dispute of its own motion, being a matter which relates to public policy. The arbitrator's award is thus void for deciding an issue related to public policy. The trial court should therefore have dismissed the Respondent's action for confirmation of the award. Based on the above considerations, the first instance decision is reversed and the action dismissed.[81]"

In Dubai Court of Cassation in Property Appeal No. 14/2012[82] Dynasty lodged an application against BAYTI via Property Action No. 965/2010 before the Dubai Court of First Instance seeking to confirm the arbitral award issued by the Dubai International Arbitration Centre (DIAC) for recognition and enforcement. By a sale agreement dated 29 May 2008, BAYTI sold Dynasty all the units of the proposed property development on Plot no. 50B1, Dubai Waterfront. BAYTI defaulted on its obligation to execute the project and conclude the deal. The agreement included an arbitration clause which refers the parties to arbitration by a single arbitrator from DIAC in the event of a dispute between the parties. Pursuant to the same clause, Dynasty filed Application for Arbitration. The Seller (BAYTI), in turn, filed Counter-Application for

[81] The judge in Property Appeal No. 180/2011, dated 12/02/2012

[82] Dubai Court of Cassation property Appeal No. 14/2012, dated 16/09/2012

Arbitration No. 160/2009 (Dubai) with DIAC which joined the two applications and appointed an arbitrator.

The arbitrator conducted arbitration in accordance with the law and issued an award requiring BAYTI to refund the amount paid by Dynasty (AED 32,082,490) within 14 days of receiving the award. According to Article 215 of the Civil Procedure Code, to be effective, an arbitral award must be confirmed by the competent Court of First Instance. BAYTI filed a counterclaim against Dynasty to set aside the arbitral award and prevent its confirmation on the ground that it has been issued contrary to Law No. 13 of 2008 which makes it compulsory to register the property with the interim property register. The arbitrator has exceeded his authority to resolve a property dispute under Law No. 13 of 2008 and a contradiction between the reasons and the operative part of the award. On 26.06.2011, the Court dismissed the counterclaim and confirmed DIAC Arbitral Award. BAYTI appealed in Property Appeal No. 486/2011 on 29 November 2011 which was dismissed and the court upheld the decision of the Court of First Instance.

BAYTI appealed in the Court of Cassation where he argued that the Court of Appeal's dismissal of his claim is unlawful and seek to set aside the arbitral award on the grounds that the arbitration clause in the contract served as terms of reference and did not exclude any dispute from arbitration even if it related to the invalidity of the sale agreement according to the provisions of Law No. 13 of 2008 and its implementing regulations, concerning interim registration when the arbitrator's application of that Law and accordingly declaring the sale agreement invalid and ordering BAYTI to refund the amount paid by Dynasty were issues of public policy that were outside the realm of conciliation and, in turn, outside the scope of the arbitrator's jurisdiction and not a dispute relating to the performance of the contract. The arbitral award is thus void, as is the arbitration clause itself.

Further, the Court of Appeal addressed this argument in vague terms by holding that the alleged invalidity was not related to public policy and proceeding to confirm the arbitral award and its decision is thus flawed and should be reversed. The Court of Cassation found that the sale contract was void because it was not registered on the interim property register in accordance with Law No. 13 of 2008 regarding the interim property register in the UAE relates to a public policy issue involving rules of individual ownership and the circulation of wealth. Hence, the arbitrator erred and incorrectly applied the law by ruling on the issue of invalidity and the Court

of First Instance's decision to confirm the award and recognize it and dismissing BAYTI's counterclaim to set aside the award is contrary to the law therefore it will be dismissed without the need to examine the remaining grounds of appeal. The first instance decision will be cancelled and Property Action No. 965/2010 dismissed and Arbitral Award No. 80-2009 (Dubai International Arbitration) set aside with costs and Representative's fees.

In Supreme Court Appeal No. 665-2012[83], the court set aside an award on the ground of Public policy. In this case, an award was issued against Rakaa Real Estate Holding Company in Abu Dhabi Commercial Action No. 32/2012. The respondent is Rakaa Real Estate Development & Construction Company, an unrelated entity. Rakaa filed in Abu Dhabi Court an Objection against Enforcement No. 91/2012 seeking a stay of enforcement of ADCCAC Arbitral Tribunal Award canceling the reservation agreement for the residential units specified in the award and ordering the contract payments refunded on the basis that the award in question is unenforceable due to Rakaa's lack of capacity. On 25/06/2012, the Court of First Instance heard the matter however dismissed it on the merits and Rakaa was ordered to pay AED 1,000. Rakaa appealed in Commercial Appeal No. 1156/2012 and on 19/09/12. The Court of Appeal heard the case and dismissed it on the merits and upholds the lower Court's decision.

Rakaa again appealed the above decision in the Supreme Court. It is well established rule that the Supreme Court will, as a matter of public policy, decide whether or not to entertain any appeal. Under Article (173) of the Civil Procedure Law, an appeal to the Supreme Court is not available for a dispute concerning enforcement where a request is already made to invalidate enforcement under certain reasons. The Court of Appeal made his decision which was issued objecting the enforcement of the award in question. Therefore, the Court dealt with the matter as an enforcement dispute involving a certain aspect of the process of compulsory enforcement under article 173(3) of the Civil Procedure code which states that no appeal would lie to the Supreme Court from the decision rendered in the objection[84].

[83] Supreme Court Appeal No. 665-2012, dated 20-03/2013

[84] UAE Civil Procedure Code, art 173 (3)

d) Recognition and enforcement of foreign Arbitral awards

The recognition and enforcement of foreign arbitral wards has been problematic in past in the UAE. The courts used to refuse the enforcement over the tiny issues. However we should be aware of the fundamental shift that occurred in the courts role following the UAE's accession to the New York Convention 1958. Prior to the ratification of the Convention in 2006, the UAE courts role had not been supportive towards foreign arbitral awards. UAE courts would only uphold awards upon the satisfaction of conditions that can be described at the very least as unsustainable. These conditions were set out in Article 235 of Law No. 11 of 1992 civil procedure code, as amended by Law No. 30 of 2005, regarding the enforcement of foreign arbitral awards[85]. In principle, similar to the English Law, the UAE Law considers an award as *Res Judicata* however enforcement is not possible until the recognition process is undergone[86]. Under the federal Law on CPC, there is no any time limit to apply for nullification or recognition of award. However, the Courts have now started adopting a moderate and proactive position in this regard[87].

As mentioned earlier, the UAE courts redefined their role towards the arbitration proceeding gradually. Before the ratification of 1958 Convention, the UAE courts used to set aside an arbitral award on minor reasons. A very good example of this fact is The Dubai Court of Cassation decision No. 08/2005[88] whereby the court set aside the award on the ground that the arbitrators failed to follow the appropriate oath-taking procedure. In this case, the respondent 'G' signed an agreement with the claimant 'M' for provision of logistics services in the construction project. The agreement included arbitration clause to resolve the dispute arisen through arbitration in Dubai. The respondent received all the agreed money however failed to provide the services to the claimant as per agreement. The claimant went for arbitration and ultimately, the arbitrators issued an award in favour of claimant and ordered respondent to pay back the money

[85] Hassan Arab, The Approach of the Courts on International Arbitration in the United Arab Emirates

[86] The Dubai Court of Cassation, petition No. 265/2007

[87] Karim J. Nassif, 'Overview on enforcement of domestic and foreign arbitral awards under UAE Law', Cotty Vivant Marchisio & Lauzeral, 2013

[88] The Dubai Court of Cassation petition No. 08/2004

paid together with costs. The respondent challenged the award on the basis that as the arbitrator during the arbitral proceeding failed to follow the oath taking procedure as laid down in the civil procedure code, the award is not valid therefore the court set aside the award.

In a ruling in 2011 the Dubai Court of first instance[89] refused to recognize and enforce an award issued by Singapore International Arbitration Centre (SIAC) on the ground that the award was not ratified in the country of origin and could therefore not be executed under the UAE CPC. In this case, the claimant and defendant entered into a contract whereby the defendant was given rights for broadcasting for 6 one day cricket matches in the gulf and the defendant to pay license fee to claimant. The contract also included an arbitration to resolve any dispute out of agreement through arbitration in Singapore under the SIAC rules. During the performance, dispute arose between the parties and was referred to the SIAC. The SIAC issued award in question on 28th September 2010 which included and order against defendant to pay the claimant he arbitration costs with interest. The claimant lodged an application in Dubai Court for recognition and enforcement of same award under 1958 Convention. The court dismissed the application disregarding the 1958 Convention. The claimant lodged an appeal against the lower court's decision and requesting recognition of the SIAC award. The Court held,

"Whereas both UAE and Singapore are signatories of the New York Convention, and Article 3 of the said Convention stipulates that 'Each state party shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the ward is relied..... the ruling will thus be challenged and therefore the court rendered its judgment recognizing and enforcing the arbitral award issued by SIAC and the defendant is to pay fees and costs".[90] The Dubai Court of Cassation, petition No. 233/2007[91] is also an important case. In this case the Dubai Court of Appeal set aside the award on the grounds that the arbitrators failed to sign the dispositive and the reasoning of the award.

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[89] The Dubai Court of Appeal - Civil Appeal No. 531/2011 dated 22 June 2007

[90] The Dubai Court of Appeal - Civil Appeal No. 531/2011 dated 22 June 2007

[91] The Dubai Court of Cassation, petition No. 233/2007

Since the UAE has become party to the 1958 Convention in 2006, the world has changed a lot. The judgment of the Fujairah Federal Court of First Instance[92] dated 27th April 2010 clearly reflects a new tone of the UAE Courts. The case was regarding enforcement of an award issued by arbitration in London. The court in line with the 1958 Convention recognized and enforced the award which the opponent party did not challenge. There are three significances of this judgment; *Firstly*, the UAE court did not touch the merits of the arbitral award in issue. *Secondly*, it held that bilateral ratified treaties and agreements between the UAE and other States have effect as domestic legislation with relation to the recognition and enforcement of foreign arbitral awards. *Thirdly*, the Court finally recognized the foreign arbitral award made in London on the grounds that the UK is a signatory to the 1958 Convention. In this case, the claimant (L) and the defendant (F) entered into a valid agreement which included a valid arbitration clause to refer the matter to arbitration in London if a dispute arises out of performance of this agreement. The dispute arisen between the parties and was referred by the claimant to London Maritime Arbitrators Association (LMAA) claiming US$ 235,735.76 with interest and costs since the UAE and the UK were both parties to the New York Convention, the claimant sought to enforce the award in the UAE. The arbitration was conducted in London by a sole arbitrator, who issued a final award against the defendant for US$ 235,080.43 with interest. The court held:

"According to Article 212(4) of the Civil Procedure Law, the arbitral award shall be issued in the UAE; otherwise the rules pertaining to foreign arbitral awards shall apply".

"Article 215(1) of the aforementioned Law states that the arbitral award shall not be enforced except after being recognized by the court with whose office of the clerks it was filed; and that after reviewing the award and the terms of reference and ascertaining that there is no impediment to enforcement".

"It is a well settled principle of judicial construction that the court would not review the substantive merits of the arbitral award when hearing an action to recognize it (Appeal No. 556-24, 19.04.05 Hearing) and that ratified treaties and Conventions between the UAE and other states are applicable as internal legislation with respect to the enforcement of

[92]The Dubai Court of Cassation Case No. 35/2010 (27.04.2010)

foreign arbitral awards subject to national courts verifying that the necessary criteria are met before confirming any award (Appeal No. 764-24 – 07.04.05 Hearing)[93]".

The court further held that whenever an arbitral award has been issued in conformity with the domestic laws of the foreign country, it will be recognized in the UAE:

"Having reviewed the mandatory arbitration clause and the two awards to be recognized, the Court sees no legal impediment to confirming the awards".

Furthering the following of 1958 Convention, The court continuously changed its attitude towards the enforcement of arbitral awards. Maxtel International FZE v Airmec Dubai LLC dated 12th January 2011[94] is another breakthrough in regard to recognition and enforcement of the foreign arbitral awards in UAE. This In this case, the UAE court recognized the foreign judgment issued by an arbitral tribunal with seat in London disregarding the strict obligations put in the article 235 and 236 of UAE CPC. The Court completely endorsed the 1958 Convention and followed its true spirit and held that the court is supposed to play its supervisory role while dealing with such a matter which is to ensure that the matter is being dealt as accordance with the 1958 Convention. The court further stated that we assured that the matter is being dealt accordingly. The court's ruling was challenged however was affirmed in 2012 via Dubai Court of Appeal No. 126/2011[95], judgment dated 22 February 2012. The court affirmed the previous ruling and held that being signatory of 1958, the court has rightly followed the 1958 Convention.

Dubai Court of Cassation's Commercial Appeal No. 132/2012[96] also reflects the courts supportive role in arbitration in the UAE. In this case, The plaintiff 'M' entered into an agreement with 'N' for the sale of steel sheets whereby the plaintiff agreed to sell the steel sheets to the defendant and the defendant agreed to buy the same. It was also included into the agreement that if a dispute arises out of this agreement, it will be referred to the DIFC-LCIA. The dispute was referred to the DIFC-LCIA accordingly under Case No D-L 9001. The DIFC-

[93] Appeal No. 764-24 – 07.04.05 Hearing

[94] Maxtel International FZE v Airmec Dubai LLC

[95] Dubai Court of Appeal No 126/2011

[96] Dubai Court of Cassation Commercial Appeal No. 132/2012

DCIA rendered an award in favor of the plaintiff dated 17 November 2009 and in addition passed another award for the costs and fees dated 22 December 2009 in favor of the plaintiff. The defendant refused to pay amount of money adjudicated in both awards and consequently, the plaintiff filed a claim in the Court of First Instance against the defendant. Upon hearing on 29 March 2010, the defendant in his counterclaim through his representatives pleaded to set aside both awards on the alleged grounds that the party made the arbitration clause did not have capacity for making this and that formulation of arbitrators' panel is invalid. The defendant also argued that the awards rendered were not issued through a valid arbitration forum. The Court of First Instance recognized the both awards and passed an order for fees and costs against the defendant. The court also dismissed defendant's counterclaim. The defendant appealed the above decision of the Court of First Instance[97] in the Court of Cassation on 19 April 2012 to set aside the awards. The Court of Cassation dismissed the defendant's allegations and held that being signatory of 1958 Convention, the UAE is obliged to recognize and enforce a foreign arbitral award under Article 5 of the 1958 Convention. The court further ruled that the local courts do are not competent to invalidate foreign arbitral awards on the alleged grounds however they competent to recognize and enforce all foreign arbitral awards. The Court dismissed the challenge.

The Dubai court of Cassation No. 132/2012[98] (International Bechtel v Department of Civil Aviation of the Government of Dubai) reflects the UAE Courts attitude in relation to enforcement. In this case[99] the Claimant and defendant entered into a valid agreement which included an arbitration clause for arbitration in LCIA – London under DIFC – LCIA arbitration rules. The dispute arose and the matter was put in LCIA. A sole arbitrator heard the matter and issued the award in favor of the claimant. The claimant lodged an application in DIFC Court of First Instance for enforcement. The Dubai court ruled in favor of claimant for recognition and enforcement of award. The defendant lodged an appeal in the Dubai Court of Cassation arguing that the main contract was invalid because it was not signed and authorized by the authorized

[97] Appeal No 126/2011 - Commercial

[98] The Dubai Court of Cassation No. 132/20102, dated 18/10/2012

[99] Gordon Blanke and Soraya Corm-Bakhos, 'Enforcement of foreign awards in the UAE (2011)

person. Therefore, the arbitration clause was also invalid (Separability Sec 7 of 1996 Act). The court did not accept this agreement as the defendant did not raise the validity of contract in the lower court. The court also referred to the Article 212 (4) CPC[100] and held that the awards issued in a foreign country are governed by that country's national laws and that the enforcement of foreign award in Dubai is governed exclusively by the 1958 Convention.

e) Future of Arbitration in UAE

Since last decade, the arbitration has gradually become an integral organ of the UAE legal system. By the passage of time, as the UAE successfully established its image as a business hub of the Golf, it has attracted the businessmen and the entrepreneurs from all over the world to use the UAE as a junction for their business activities. The UAE courts, since the United Arab Emirates ratified the 1958 Convention on 21st august 2006, re-defined their role towards the arbitral proceedings. The people and the institutions have now accepted the arbitration as a major alternative dispute resolution forum in the UAE and they have increasingly started using arbitration as a successful dispute resolution mechanism. The reason behind this increase is the construction boom in Middle East which caused disputes. In addition, multiplied level of foreign investment and the trade in the UAE is presumed as another reason behind that.

As mentioned earlier, the Dubai International Arbitration Centre (DIAC) was established in 1994 with formal approval by the UAE ruler in 2004. It has now become the busiest arbitration centre in the region[101]. The DIAC registered 15 arbitration cases in 2003 however this figures reached 100 cases by the year 2008. 413 new cases were registered in 2010 to be seated in Dubai. As we are already aware of the fact that the Dubai International Financial Centre (DIFC) was established as a financial centre in year 2004. It has established DIFC-LICA in 2008 which is another renowned arbitration centre in the UAE. Its unique feature is that it has a separate seat for arbitration in the DIFC jurisdiction. The DIFC is a completely autonomous entity empowered

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[100] Article 212 (4) states, "The arbitrators' award shall be issued within the United Arab Emirates; otherwise, the rules applicable to arbitration awards passed in foreign countries shall apply thereto."

[101] Mohtashami Reza & Antonia Birt & Lee Rovinescu, 'Arbitration Guide; IBA Arbitration Committee United Arab Emirates', Freshfields Bruckhaus Deringer LLP, February 2013.

to enact rules for is its civil and commercial matters[102]. Due to its independent nature of jurisdiction, it has attracted the arbitration market on a large scale. Statistics reflect that the DIFC-LCIA has rapidly established its market as a main stream arbitration centre in the UAE.

The people also feel a different in proceeding; because the arbitration is a comparatively speedy procedure as compare to the litigation in the courts. Language used to be a barrier in the litigation in the UAE whereby Arabic was the only medium for litigation while in arbitration however, as recent development, the parties are now given choice to decide the language for an arbitral proceeding. This has put the international investors on ease and they are now less reluctant to choice the UAE as a seat for arbitration. Another attraction in UAE as a seat for arbitration is that it is considered as a neutral and impartial seat therefore the people very confidently choice UAE as arbitration seat.

[102] http://www.difcarbitration.com/base/faqs/index.html#q1

Chapter 5: Conclusions

In conclusion, the UAE has successfully emerged as a modern business hub for the Middle East and has rapidly changed its preferences towards the economy and potential sources of revenue. The UAE has proved itself proactive, moderate and ready to adopt new ideas and initiatives in the rapidly changing world. In every country arbitration has two–Tier importance, *firstly*, to attract the foreign investor by providing them excellent, neutral and flexible seat for arbitration to resolve their potential disputes, so that they can confidently decide to invest in the UAE. *Secondly*, to provide the world a world class seat for arbitration equipped with latest technology and an international standard service provision.

In the past, the UAE has been classified as an un-supportive country towards the arbitral proceeding however, through the passage of time, UAE's above image has changed and it started accepting arbitration as an effective method of dispute resolution. Gradually, laws were amended to accommodate the arbitration and to enable people to use it as an alternative mechanism for dispute resolution. The courts powers were also curtailed in order to strengthen the arbitration institute and to stop court's unnecessary interference in arbitral proceedings. UAE's ratification of 1958 New York Convention in 2006 played an important role towards acceptance and effectiveness of arbitral institution in the UAE. It is evident that following the ratification of 1958 Convention, the courts have started playing a very supportive role in arbitral proceedings.

As a recent development, the UAE has drafted a proposed arbitration draft which makes significant improvements to the arbitration laws in the UAE Civil Procedure Code in order to bring it up to international standard. It has been reported that the said draft law is similar to UNICTRAL Model Law. As the UAE has recently enacted new Insolvency law and Company Law, it is suggested that the proposed Federal Arbitration Law should be finalized and passed by the parliament on urgent basis to carry the UAE legal framework into the twenty-first century. As it reflects, the salient features of proposed arbitration law will include; it will not make any distinction between domestic and foreign arbitral proceeding and awards. It will also show

flexibility on Arabic language compulsion in arbitral proceedings. It will focus to abide by the true spirit of 1958 New York Convention.

The great work has been done for the effectiveness of arbitration in the UAE; however continuous jurisprudential improvement is needed in order to spanning an arbitration-friendly environment. In spite of various positive steps being taken, there are yet some procedural pitfalls which are still subject to address and resolve. Under the UAE laws, no right of appeal has been given to either of the parties against an award however; the award must be ratified by the Court of First Instance as a judgment in order to be enforced (contrary to the UK's 1996 Act.)[103] This clearly reflects the dependency of arbitration over the courts which should be changed. The issue of Public Policy should be addressed properly and the Court powers should be curtailed which presently allow the courts to set aside a valid award using the shield of article 4 of New York Convention 1958[104] together with the grounds of strict Islamic law provisions such as restrictions on interest and sale of wine etc. There are certain disputes which are non-arbitral under the UAE law which include Commercial Agency and distribution disputes and Labour disputes. There should not be such exception and every commercial dispute should be arbitrable. In the past, Arabic language was the default language for arbitration process however, through the passage of time; by ratifying the 1958 Convention and establishment of new world class arbitration centers, the UAE have shown flexibility and arbitration tribunal has been given discretion to decide the language of arbitral proceedings most suitable in the circumstances however, the final award should be translated into the Arabic language for ratification if it is issued in a language other than Arabic. As a language of global business, English is fluently used in international business community who do not want the expenditures and unsatisfactory translations and evidence in Arabic language therefore the tribunal should also be given discretion to issue an award in most suitable language.

It is an observation that there is no uniformed attitude from the Courts towards arbitration as it is observed that the lower courts are unsupportive to the arbitration as compare to the higher courts. There is however consensus that the UAE courts have become less jealous of their powers and

[103] Arbitration Act 1996, Sec 66

[104] Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, Art 4(b)

are more happy to support arbitral proceedings than the past. Most recent case laws reflect that the courts have started ignoring UAE CPC rules on arbitration and have started strictly following the New York Convention 1958 in the matters connecting the International Commercial Arbitration. Establishment of DIAC and DIFC – LCIA together with other arbitration centers and their introduction of Arbitration rules is a great achievement and UAE's government's positive role in all these developments means that UAE is fully committed to support the ongoing modernism in arbitration. It is worth to mention that both; the DIAC and DIFC-LCIA rules are mostly similar to the Model Law which is quite attractive for foreign investors and parties to dispute. An interesting question is still un-answered; if an arbitration agreement is made before 2006, it is outside the DIFC or DIAC scope therefore the parties cannot use DIFC-LCIA or DIAC as arbitration tribunal as it was not mentioned in the arbitration agreements rather will be subject to the normal UAE CPC rules to start the arbitration proceeding. Are the rules still silent over this problem? A proposed solution could be to develop another arbitration agreement to choose DIFC-LCIA, DIAC or any other tribunal as a place for their arbitration and their Arbitration rules respectively.

Finally, for the courts to continue to play a supportive role in the arbitral proceeding in the UAE, Judges should change their mindset regarding the arbitration. They should truly accept arbitration as an alternative dispute resolution institution, rather than merely an 'exception'. An 'exception' is considered as a narrow interpretation of the relevant legal provisions. However, in case arbitration is recognized by the Judges as an equally efficient dispute resolution mechanism similar to courts proceedings, a wider interpretation might be sought.

Empowering the arbitral institution and courts to accept it as comprehensive and complete alternative dispute resolution is the only way to make the business community and investors more confident to come along with the foreign investment in the UAE and in order to substantively enhance the position of UAE as an attractive seat for international arbitration.

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