

The UNCITRAL Model Arbitration Law and the UAE Federal Arbitration Law: Points of Convergence and Divergence

Malak Nasreddine

m.nasreddine @tamimi.com - Abu Dhabi, UAE



Arbitration in the UAE is governed by the Federal Arbitration Law No. 6 of 2018 ('UAE Arbitration Law'). The UAE Arbitration Law, which entered into force in June 2018, repealed Articles 203 to 218 of the UAE Civil Procedures Law No. 11 of 1992 ('CPC'), which previously governed arbitration in the UAE. Unlike the former arbitration provisions of the CPC, the UAE Arbitration Law is largely modelled on the UNCITRAL Model Law on International Commercial Arbitration, as adopted by the United Nations Commission on International Trade Law of 1985 and amended in 2006 ('Model Arbitration Law').

The UAE Arbitration Law enacted 61 provisions, many of which can be traced back in the Model Arbitration Law in an effort to modernise the current arbitration process and align the UAE arbitral framework with international standards. However, while the newly enacted law is largely based on the Model Arbitration Law, the UAE Arbitration Law also comprises several provisions that diverge from the Model Arbitration Law. These points of convergence and divergence are discussed below.

Points of Convergence with the Model Arbitration Law

There are significant points of convergence between the UAE Arbitration Law and the Model Arbitration Law. Firstly, in line with the Model Arbitration Law, the UAE Arbitration Law distinguishes between

international arbitration and domestic arbitration. The UAE Arbitration Law applies to both domestic and international arbitration proceedings, and expressly distinguishes between the two.

Secondly, the UAE Arbitration Law requires that the arbitration agreement be evidenced in writing and allows parties to meet this requirement through any correspondence, including electronic mails (Article 7 of the UAE Arbitration Law). This provision is similar to Article 7 of the Model Arbitration Law.

Thirdly, Article 6 of the UAE Arbitration Law recognises the severability of arbitration agreements. In line with Article 16 of the Model Arbitration Law, the nullity, rescission or termination of the main contract does not have any effect on the arbitration clause and does not suspend the arbitral proceedings, provided that the arbitration clause is considered valid (e.g., is not deemed null and void due to the absence of a party's legal capacity).

Fourthly, Article 8 of the UAE Arbitration Law gives effect to Article 8 of the Model Arbitration Law. The UAE courts are required to dismiss any action that falls within the scope of an arbitration agreement. The initiation of court proceedings will not preclude the commencement or continuation of the arbitration proceedings.

Fifthly, Article 26 of the UAE Arbitration Law mirrors Article 18 of the Model Arbitration Law. The parties in the dispute must be treated with equality and must be provided a fair and full opportunity to present their case.

Sixthly, in line with Article 16 of the Model Arbitration Law, Article 19 of the UAE Arbitration Law permits the arbitral tribunal to rule on its own jurisdiction, including objections in relation to the existence or validity of an arbitration agreement. The arbitral tribunal may rule on a plea either as a preliminary question or in a final award. A party may, in the event where the tribunal rules as a preliminary question that it has jurisdiction, request the competent court to review and make its own determination on the matter.

Furthermore, consistent with the Model Arbitration Law, the UAE Arbitration Law empowers an arbitral tribunal to order interim measures, unless otherwise agreed by the parties. Article 21.2 of the UAE Arbitration Law provides that the arbitral tribunal may require the party (requesting the interim or precautionary measure) to submit a security for costs, which is in line with Article 17E of the Model Arbitration Law. The arbitral tribunal may also require the party (requesting the interim or precautionary measure) to bear the damage resulting from the enforcement of the order, where the tribunal subsequently decides that the party was not entitled thereto (Article 21.2 of the UAE Arbitration Law, consistent with Article 17G of the Model Arbitration Law). In addition, the UAE Arbitration Law enables the arbitral tribunal to amend, suspend or repeal the order of the interim measure, upon the request of a party or on its own motion (Article 21.3 of the UAE Arbitration Law, consistent with Article 17D of the Model Arbitration Law).

Finally, consistent with Article 34 of the Model Arbitration Law, the UAE Arbitration Law provides limited grounds to annul the arbitral award (Article 53 of the Arbitration Law).

Points of Divergence from the Model Arbitration Law

While the UAE Arbitration Law is largely based on the Model Arbitration Law, the UAE Arbitration Law also comprises several provisions that deviate from it, which will be discussed below.

Firstly, the UAE Arbitration Law provides that a signatory must be authorised in order to enter into the arbitration agreement, otherwise the arbitration agreement is considered null and void (Article 4 of the UAE Arbitration Law). A representative of a juridical person must have specific authority to enter into an arbitration agreement. This is usually in the form of a power of attorney or board resolution. Proof of a signatory's authority is not required under the Model Arbitration Law.

Secondly, according to Article 27 of the UAE Arbitration Law, the arbitral proceedings are deemed to have commenced from the date following the formation of the arbitral tribunal, unless otherwise agreed by the parties. In contrast, Article 21 of the Model Arbitration Law provides that the arbitral proceedings are deemed to have commenced on the date on which the request for arbitration is received by the respondent.

Thirdly, Article 28 of the UAE Arbitration Law provides that, unless otherwise agreed by the parties, the arbitral tribunal may hold the arbitration hearings (a) at any physical venue it deems appropriate, or (b) through modern means of communication and technology (e.g., video conferencing). However, the Model Arbitration Law does not provide the option for the arbitral tribunal to hold the arbitration hearings through modern technological means. The UAE Arbitration Law introduces technological advancements in an effort to provide flexibility to international arbitrators and parties.

Fourthly, the UAE Arbitration Law expressly protects the confidentiality of arbitration hearings and arbitral awards, unless otherwise expressly agreed by the parties (Articles 33 and 48 of the UAE Arbitration Law). The Model Arbitration Law does not expressly protect the confidentiality of arbitral hearings and awards.

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Fifthly, Article 22 of the UAE Arbitration Law permits the arbitral tribunal to join a third party to the arbitral proceedings, following the request of either party or the third party itself provided that the third party is a party to the underlying arbitration agreement. The Model Arbitration Law does not provide for third party joinder.

Sixthly, Article 54 of the UAE Arbitration Law provides that the party seeking to set aside the arbitral award must submit its request within 30 days from the date of the notification of the award. Article 34 of the Model Arbitration Law permits the party three months from the date of receipt of the award.

Finally, where a party submits an application to annul or set aside the award, the Model Arbitration Law allows the court (where recognition or enforcement is sought) to stay enforcement even if the parties have not requested it (Article 36.2 of the Model Arbitration Law). However, the UAE Arbitration Law provides that a party's request for annulment does not stay enforcement of the award. While it entitles the court (hearing the request for annulment) to stay enforcement, it may not do so sua sponte but only at the request of either party (Article 56.1 of the UAE Arbitration Law).

In addition, unlike the Model Arbitration Law, Article 56 of the UAE Arbitration Law prescribes time limits. The court must decide on the stay of enforcement within 15 days from the date of the first hearing of such request. Where the court decides to stay the enforcement of the award, the court must decide on the annulment of the award within 60 days from the date of issuance of the stay of enforcement order.

Conclusion

As may be seen, there are significant points of convergence between the UAE Arbitration Law and the Model Arbitration Law. There are also significant points of divergence. But even where the UAE Arbitration Law diverges from the Model Arbitration Law, it tends to enhance the support of the UAE arbitral process.

This article was first published on the [Kluwer Arbitration Blog](#) on 22 November 2018.

arbitration proceedings. For further information please contact [John Gaffney](mailto:j.gaffney@tamimi.com) (j.gaffney@tamimi.com).

