



COMPARATIVE ANALYSES OF ARBITRATION AND LITIGATION

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ABSTRACT

Today, because of developing commerce and trade there are occurring various types of disputes between the companies. The arbitration became strong and widely used as a tool for conflict resolution. It is difficult to say the exact percentage of international disputes but some commentators have suggested more than 90% of disputes are governing by arbitration clauses. Sharply globalization and enhancement of business gave effect on drafting different international contracts which settle according to arbitration law. In turn, the existence and effectiveness of international arbitration are targeted at facilitating cross-border trade and investment.

KEY WORDS: Litigation, Arbitration, The UNCITRAL Model law, UAE laws, ADGM laws, DIFC laws, Islamic Sharia, the governing litigation and arbitration by federal and Emirati courts, Onshore and Offshore zones, Civil Procedure Law, UAE Constitution, alternative dispute resolution, Arbitral Tribunal, enforcement.

INTRODUCTION

Today, because of developing commerce and trade there are occurring various types of disputes between the companies. The arbitration became strong and widely used as a tool for conflict resolution. It is difficult to say the exact percentage of international disputes but some commentators have suggested more than 90% of disputes are governing by arbitration clauses.

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As a federation, the United Arab Emirates is governed by a constitution that regulates, among other things, the issuing of legislative powers among the federation (country capital is Abu Dhabi) and the individual emirates. Under the UAE Constitution, federal laws have the advantage over individual laws. However, "private emirates are permitted to enact private laws. Individual emirates can also legislate on matters where the federation has not yet implemented its legitimate powers. Federal laws, with exception of property law, generally govern civil and commercial transactions."

"United Arab Emirates" legal system is based on civil law principles and the Islamic Sharia law. Such as:

- The Constitution;
- Federal laws and regulations;

- Emirate laws and regulations;
- Islamic Sharia;
- The Dubai International Financial Centre (DIFC) and the London Court of International Arbitration (LCIA).

There are many Financial Free zones in United Arab Emirates, but the majority numbers of zones are situated in Dubai. The most popular Free zones are:

- DIFC - Dubai International Financial Centre;
- JAFZ - Jebel Ali Free Zone;
- DMCC – Dubai Multi Commodities Centre;
- DAFZ – Dubai Airport Free Zone;
- DCC - Dubai Creative Clusters, otherwise known as TECOM and which includes Dubai Internet City, Dubai Media City;
- KIZAD – Khalifa Industrial Zone Abu Dhabi;
- Masdar City;

Within most of the free zones we typically see two main types of free zone limited liability companies:

Free Zone Establishment;
Free Zone Company."

The FRZ (free zone) established in the Emirate shall have a sovereign lawful personality and enjoy full legal capacity and financial and administrative independence. It shall be affiliated with the Government and called "Abu Dhabi Global Market. The goals of the Global Market is the promotion of the Emirates as a global financial center, develop the Emirates economy, and to



create an attractive environment for financial investments and contribution to the international financial services industry.

UAE „onshore“ courts:

Court of First Instance;
Court of Appeal;
Court of Cassation.

Dubai International Financial Centre (DIFC) courts:

1. Court of First Instance;
2. Court of Appeal.

Abu Dhabi Global Market (ADGM) courts:

1. Court of First Instance;
2. Court of Appeal.

Arbitration;**Courts of another jurisdiction.**

If the business parties have a dispute with each other and they could go to the UAE “onshore” courts, the disputes will be solved by the Civil law and the judges do not decide the dispute according to the previous dispute (like in a common law system, the law is not binding). In addition, parties could go to the Dubai International Financial Centre (DIFC) courts where all the proceedings will be followed by The Dubai International Financial Centre Court Law. The Dubai International Financial Centre courts were formed in 2004 and have jurisdiction over various civil and commercial matters. The courts set up in the Dubai International Financial Centre according to the Judicial Authority Law, that is the Court of First Instance and the Court of Appeal, should be recognized as a Dubai International Financial Centre court.

Before process starts parties should draft text of the Rules of Court and they should obey the rules by the end of the trial process. The Dubai International Financial Centre Court has the authority to make decisions and provide with guide-lines as to the control of any proceedings in front of the Dubai International Financial Centre Court that it realizes suitable.

The Dubai International Financial Centre (DIFC) Courts could provide the attendance of witnesses and production of any documents which are needed to solve the dispute. The evidences could be in oral, video link, telephone and affidavit forms. After the hearings are finished the judges deliver the judgment and the judgments shall be written down and published to the public.

Subject matter to another the Dubai International Financial Centre (DIFC) Law, “a proceeding should not be started more than 6 years after the date of the incidents that show increase to the judicial proceedings.”

If a party or the both parties are disagree with the decision they could appeal the Dubai International Financial Centre (DIFC) Court statement according to Article 52 of the Dubai International Financial Centre (DIFC) Law.

According to the Abu Dhabi Global Market (ADGM) Law, “the Global Market Courts shall be of two degrees, first instance courts (formed of a single judge) and courts of appeal (formed of three judges). The

Global Market's Courts shall have a Chief Justice appointed by a Board of Directors resolution which shall become effective upon the expiry of 15 days of notifying the Chairman of the Judicial Department of such resolution and receiving no objections thereto. The remuneration of the Chief Justice shall also be determined in this resolution. The judges of the Global Market Courts shall be nominated by resolutions which were released by the Board of Directors based on the proposal of the Chief Justice of the Global Market Courts. The management of the Global Market's Courts, and the procedures for the litigation and judgments and all forms of dispute resolution procedures shall be controlled by a regulation which was issued by the Board of Directors”.

“The Dubai International Financial Centre (DIFC) Court, on proposition by the parties to a judicial proceeding in front of the Dubai International Financial Centre court (DIFC), may remind any situation relating to the proceedings to an arbitrator.”

Arbitration vs. Litigation in UAE: To what extent is arbitration more advantageous than litigation?

The parties will often strive to settle arguments through arbitration tribunals because of its perceived potential priorities over litigation:

- ✓ Unlike to judicial proceedings, where parties "choose the judge", arbitration authorizes the parties to select the trial. No one shall be prevented by cause of his citizenship from acting as an arbitrator, unless otherwise harmonized by the parties. “The parties are independent to comply on a discipline for nominating the arbitrator or arbitrators.”
- ✓ Arbitration is often faster process than in a full-scale litigation in court. The arbitrator shall start as soon as possible to regulate the proofs of the incident by all proper methods. “Subsequently explore of the written submissions of the parties and of all papers believed upon, the arbitrator shall listen the parties jointly; and failing such a demand he may of his own sign conclude to hear the claimant and defendant.” “Time-limit must be established within two months from the conferment of the document case to the tribunal.”
- ✓ Arbitral proceedings and an arbitral award are usually nonpublic, and can be made strictly confidential. Confidentiality is ensured in some established principles, and can be broadening (to recover witnesses and experts) by the parties” agreement to demand parties to be limited by a confidentiality agreement.
- ✓ The enforcement of an arbitration award is generally easier than a federal court decision because of the provisions of the New York Convention 1958. The Convention is realized to have a pro-enforcement, and the majority number of courts will interpret permissible proofs are very narrow for non-enforcement, advanced to the



enforcement of the numerous of awards. According to the New York Convention, article 3 „requires countries to recognize arbitral awards as binding and to enforce them in accordance with national law, consistent with the provisions of the Convention“.

- ✓ In the majority number of legal systems have restricted avenues for appeal of an arbitral judgment and it evaluates as a priority since it limits period of the disagreement and related liabilities. “The award of the arbitrators may not be contested by any manner of appeal the judgment approving the arbitrators award may be contested in any of the appropriate manners of appeal notwithstanding the preceding paragraph, the award shall not be appeal able if the arbitrators were authorized to reconcile the dispute or if the parties have expressly waived their rights to file an appeal or if the disputed amount was not in excess of AED 20 000”. In contrast to arbitration, in litigation according to articles 158 and 159, the parties may appeal against the judgment of the first instance courts before the higher court of appeal. In addition, the time for appeal shall be thirty days, the unless otherwise provided by law as well as it shall be 10 days in summary cases.

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CONCLUSION

As we mentioned there are many advantages for resolving the disputes according to arbitration rules, such as the process is faster than the civil proceedings, parties could choose the judge or a suitable language for claimant and respondent. In addition, arbitral proceedings and an arbitral decision are nonpublic and can be made in secret. And in particular, the enforcement process is provided by the New York Convention and it leads to enforce the vast majority of awards. In contrast to litigation, arbitration has limited avenues for appeal and it is evaluated as a benefit for the parties, because the time for any further disputes and related liabilities will be restricted.

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