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Dubai: a regional arbitration centre?

(An introduction to the legal systems in Dubai and the UAE,
arbitration law and the need for reform)

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This paper is intended to provide an introduction to the legal system in Dubai and the UAE and the present arbitration law in particular with reference to the problems it presents and the need for reform. It will then look at the Dubai International Arbitration Centre (“DIAC”) and its rules, the Dubai International Financial Centre (“DIFC”) court system, the DIFC Arbitration Law and the LCIA-DIFC arbitration centre. Finally, it will consider the enforcement of arbitration awards in the UAE.

An introduction to the legal system in Dubai and the UAE¹

The Constitution of the United Arab Emirates

In 1971, six of Trucial States of the Persian Gulf - Abu Dhabi, Dubai, Ajman, Fujairah, Sharjah and Umm al Quwain - merged to form the United Arab Emirates (“UAE”). They were joined in 1972 by Ras al Khaimah.

Although the UAE has a constitution and a president, it is neither a constitutional monarchy nor a republic. It is a federation of seven monarchies, whose rulers retain absolute power within their emirates. The emirs chose one of their number to be the president of the federation, but this does not alter the monarchical character of the government of the emirates. The constitution is concerned solely with the relations between the emirates as members of the federation, and does not prescribe a constitutional system of government.

The current chief of state is President H.H. Khalifa bin Zayed Al-Nahayan, Ruler of Abu Dhabi (“Sheikh Khalifa”), and the Vice President and Prime Minister is H.H.

Mohammed Bin Rashid Al-Maktoum Ruler of Dubai (“Sheikh Mohammed”) who is also the head of government. There is a Federal Supreme Council (“FSC”) composed of the seven emirate rulers. The FSC is the highest constitutional authority in the UAE; it establishes general policies and sanctions federal legislation. It meets four times a year. The rulers of Abu Dhabi and Dubai, as President and Vice President respectively, have the effective power of veto.

There is also a Federal National Council (“FNC”) or *Majlis al-Ittihad al-Watani* that has the power to review but cannot change or veto legislation. The FNC is comprised of 40 seats, with 20 members appointed by the rulers of the constituent states, and 20 members elected by the citizens of the UAE to serve four-year terms. The last election was held on 18-20 December 2006, when a new electoral college - a body of 6,689 Emiratis (including 1,189 women) appointed by the rulers of the seven emirates - were the only eligible voters and candidates. There were 456 candidates including 65 women who ran for 20 contested FNC seats. One female from the Emirate of Abu Dhabi won a seat and 8 women were among the 20 appointed members.

The UAE’s Legal System

When contrasted with other Arab states, such as Saudi Arabia for instance, the UAE has comparatively liberal laws. The country is a civil law jurisdiction. However, *Shari’a* or Islamic law is applied to aspects of family law, inheritance and certain criminal acts. The country underwent a period of liberalization and modernization during the reign of H.H. Sheikh Zayed bin Sultan Al Nahayan (father of Sheikh Khalifa). Women can drive in the UAE and there is a strong emphasis on equality and human rights brought about by the UAE’s National Human Rights Committee.

A federal court system exists and applies to all emirates except Dubai and Ras al Khaimah, which are not fully integrated into the federal judicial system. All emirates have

secular courts to rule upon criminal, civil, and commercial matters, and Islamic courts to review family and religious disputes. Dubai has retained its own independent courts (and judges), which are not a part of the UAE Federal Judicial Authority.

The federal court system consists of three levels being the Courts of First Instance, Courts of Appeal and the Supreme Court or Court of Cassation. The Supreme Court located in Abu Dhabi, serves as the final court of appeal for all cases heard in the lower courts and is also empowered to adjudicate any disputes between courts in the individual Emirates. In addition, the Court of Cassation is the body empowered to determine the constitutionality of laws, including statutes promulgated at both the local and federal levels. The Supreme Court has jurisdiction to investigate misconduct by high government officials and to try offences against the Federation. The UAE courts, whether federal or local, similarly to courts in most of the countries in the region, are organised to form two main divisions; civil and criminal. The establishment of the civil and criminal courts resulted in diminishing the role of the Sharia'a Courts except for matters related to personal status issues which are to be dealt with in accordance with the Islamic Sharia'a and before the Sharia'a courts.

Dubai's Legal System

Dubai's legal system is founded upon a combination of civil law principles (most heavily influenced by Egyptian law) and *Shari'a* law, the latter constituting the guiding principle and source of law.

In Dubai, legislation tends to be formulated into a number of major codes providing for general principles of law with a significant amount of subsidiary legislation. The influx of regional and international commercial enterprises to Dubai and the UAE over the last 30 years has resulted in an expanding and increasingly comprehensive body of federal legislation being established in the form of federal codes of law. There are now federal codes of law which apply in Dubai and the other emirates dealing with the most important and

fundamental principles of law, including civil, commercial, civil procedure, companies, intellectual property, immigration, maritime, industrial, banking and employment law. In contrast, many of the laws enacted by the Ruler of Dubai relate to matters which are more administrative in nature, such as the establishment and operation of government affiliated entities².

Dubai's courts will first apply federal laws, such as the Companies Law or the Civil Code, as well as the laws and decrees enacted by the Ruler of Dubai where federal law is absent or silent.³

There are three levels of court in Dubai⁴: a Court of First Instance, a Court of Appeal and a Court of Cassation. The Court of First Instance has general originating jurisdiction over all claims. It is divided into 6 Circuits:

- **Civil Court** - has jurisdiction over normal and urgent cases and petitions including petitions of attachments, orders of payments and complaints, it does not include commercial, realty, labor, personal status or endowment or inheritance cases.
- **Commercial Court** - has jurisdiction over cases arising from commercial transactions. This court has two circuits, the minor circuit consists of a single judge to look into commercial claims of less than One Hundred Thousand Dirham (AED100,000 – c. US\$27,000) as well as counterclaims regardless of their value. The second circuit is the major circuit consisting of three Judges with jurisdiction over claims the value of which is not stated or exceeds AED100,000 as well as counterclaims cases regardless of their value.
- **Personal Status Court** - has jurisdiction over authentication of *Shari'a* matters such as marriage and divorce. It also supervises the performance of marriage officials and authenticates the documents issued by them. The court is comprised of circuits presided over by single Judge.

- **Criminal Court** - has jurisdiction over all the violations, misdemeanors and crimes referred by the Public Prosecution. Misdemeanor cases are dealt with by a single judge while other criminal cases are dealt with by three judges. Decisions, orders and verdicts issued by this court are enforced by the Public Prosecution.
- **Labor court** - has jurisdiction over suits filed by employees against employers in the private sector concerning their rights resulting from individual labor contracts as well as counter suits filed by employers in these cases. The court has two circuits: (i) the minor circuit, which consists of a single judge to determine cases of a value less than AED100,000 as well as counterclaims regardless of their value; and (ii) the major circuit, which consists of three Judges who hear labor claims of more than AED100,000 as well as the counterclaims regardless of their value.
- **Real estate Court** - has jurisdiction over disputes and suits resulting from transactions and contracts relating to real property rights (excluding rental disputes). The court is also divided into two circuits: (i) the major circuit, which consists of three Judges, has jurisdiction over cases the value of which is not stated or is estimated to be more than AED100,000 as well as the counterclaims regardless of their value; and (ii) the minor circuit, which consists of a single judge, has jurisdiction over cases of a value less than AED100,000 as well as counterclaims regardless of their value.

Importantly there are also Execution Judges who may order forcible judicial execution.

The Court of Appeal hears appeals from verdicts and judgments of the Courts of First Instance. The minimum financial limit for the jurisdiction of the court is AED20,000⁵ (c. US\$5,500). The decisions of this court may be challenged in the Court of Cassation. The court comprises three judges.

The Court of Cassation is the highest court in the judicial system of the Emirate of Dubai⁶. The minimum cash limit for the jurisdiction of the court is AED200,000 (c. US\$55,000). The Court of Cassation comprises one Superior and four judges.

Subject to the financial limits, all appeals are “as of right” and do not require permission from the lower or appellate court.

There is no system of precedent in Dubai or the UAE. However, judgments of some higher courts are published, not because they are binding on lower courts, but in order to provide useful evidence of future judicial interpretation and practice⁷.

Proceedings before the DIFC Courts are in Arabic and all documents must be translated into Arabic. Non-Emirati advocates may appear before the Dubai courts but not before the UAE Federal Courts⁸. Advocates must prove their power to represent their clients by producing a Power of Attorney to the court⁹.

UAE Arbitration Law and the Need for Reform

The UAE does not have a separate Arbitration Law, the entirety of the relevant legal principles is contained in Articles 203 to 218 of Federal Law No. 11 of 1992, The UAE Civil Procedure Code (“CPC”)¹⁰. The law is notoriously out of date and reform has been debated for several years with various drafts falling in and out of favor. At the date of writing a modern arbitration law appears no nearer.

As will be illustrated in following section of this paper, the current law allows more interference by the UAE Courts with the arbitral process and the enforcement of awards than is generally regarded as acceptable internationally, notwithstanding that the UAE acceded to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“The New York Convention”) on 19 November 2006. The UAE has also entered

into the Agreement for Judicial Cooperation and Recognition and Execution of Arbitral Award in Civil and Commercial Matters with France in 1991¹¹, the 1993 Arab Convention on Judicial Cooperation (“The Riyadh Convention”), and the Convention on the Settlement of Investment Disputes between State and Nationals of Other States on 23 December 1981 (effective as of 22 January 1982).

The UAE has also entered into a number of bilateral treaties with other countries in the MENA Region, including:

- the Agreement on Legal and Judicial Cooperation with Somalia (1972);
- the Agreement on Legal and Judicial Cooperation with Jordan (1999);
- the Agreement on Legal and Judicial Cooperation with Egypt (2000);
- the Agreement on Legal and Judicial Cooperation with Syria (2002);
- the Treaty on Mutual Legal Assistance in Criminal Matters, Extradition of Offenders, Cooperation in Civil, Commercial and Personal Matters, Service of Judicial and Extra-Judicial Documents, Obtaining Evidence, Commissions and the Recognition and Enforcement of Foreign Judgments and Arbitral Awards with Sudan (2005);
- the Treaty on Judicial Cooperation in Criminal Matters, Extradition of Offenders, Cooperation in Civil, Commercial and Personal Matters with Morocco (2006).

It is to be noted that Somalia and Sudan are not parties to the New York Convention.

The UAE ratified the New York Convention after settlement of the enforcement issues arising out of the award made in an arbitration between the Dubai Civil Aviation Authority (“DCAA”) and Bechtel (the “*Bechtel case*”). On 20 February 2002, the sole arbitrator rendered an award against DCAA. On 21 October 2003, the Court of First Instance in Paris (*tribunal de grande instance de Paris*) issued an order enforcing the award against

DCAA. However, on 15 May 2004, the Court of Cassation in Dubai annulled the arbitral award on the ground that the witnesses had not been sworn, in breach of the procedural requirement of the UAE's arbitration law (see below). As a result, DCAA lodged an appeal in the Paris Court of Appeal against the execution order, asking the Court of Appeal to recognize the decision of the Court of Cassation in Dubai annulling the arbitral award. The Paris Court of Appeal rejected DCAA's arguments on 27 September 2005.¹²

The *Bechtel Case* illustrates the importance placed by the Dubai courts and those of the UAE on strict compliance with the terms of the CPC and in the remainder of this section of this paper, I will highlight some of its more important provisions.

- **Art. 203(2):** *No agreement for arbitration shall be valid unless evidenced in writing.*

This means that the arbitration clause must be agreed in writing by both parties. The court will not uphold an arbitration clause which is printed as a standard clause in the general conditions of an insurance policy or at the back of an invoice or delivery note¹³. The signatory of the arbitration agreement is required to have a special authority to sign¹⁴; by way of caution, if the agreement is signed by a party representative, it is highly recommended that such representative possess a notarized power of attorney specifically authorizing him to sign the arbitration agreement¹⁵.

- **Art. 203(3):** *The subject of the dispute shall be specified in the terms of reference or during the hearing of the suit even if the arbitrators were authorized to act as amiable compositors; otherwise the arbitration shall be void.*

The CPC is ambiguous as to whether Terms of Reference are mandatory. The practice is to execute Terms of Reference out of an abundance of caution. Neither the form nor the contents of the Terms of Reference are specified. The practice (at least

amongst the more sophisticated arbitration users) has been to use the form specified under the ICC Arbitration Rules¹⁶.

- **Art. 203(5):** *If the parties to a dispute agree to refer the dispute to arbitration, no suit may be filed before the courts. Notwithstanding the foregoing, if one of the parties files a suit, irrespective of the arbitration provision, and the other party does not object to such filing at the first hearing, the suit may be considered, and in such case, the arbitration provision shall be deemed cancelled.*

Only if the jurisdiction of the court is challenged at the first hearing of the case will the court stay the proceedings and refer the dispute to arbitration. In Dubai, the challenge must be brought at the first hearing irrespective of whether the parties have submitted their pleadings. The court may hear the submissions and arguments of the parties over two to four hearings and may additionally request that the parties make their submissions on the merits of the case as well as jurisdiction, rendering a decision on all aspects of the case in a single judgment¹⁷.

- **Art. 206(1):** *An arbitrator may not be a minor, bankrupt, legally incapacitated or deprived of his civil rights due to a criminal offence unless he has been rehabilitated.*

It is to be noted that in contrast to other Middle East jurisdictions, an arbitrator may be a non-Muslim or a woman¹⁸ and of any nationality.

- **Art. 207(1):** *The acceptance of the appointment of an arbitrator shall be in writing or may be evidenced by recording the same in the minutes of the sessions.*

This provision highlights (albeit obliquely) the requirement that there must be written minutes of each session of the arbitral tribunal.

- **Art. 207(4):** *An arbitrator may not be disqualified except for reasons occurring or appearing after his appointment. A request for disqualification must be based on the same grounds on which a judge may be dismissed or deemed unfit for passing judgement. The request for disqualification shall be filed with the court which has*

jurisdiction to consider the dispute within five days from notifying the parties of the appointment of the arbitrator or from the date on which the reason for disqualification arose or from the time it became known if subsequent to the notification of the appointment of the arbitrator. In all events, the request for disqualification shall not be granted if the court has already passed a judgement or if the hearing of pleadings has been concluded.

In common with most legal systems, the CPC places restriction on parties' ability to challenge arbitrators; indeed the restrictions are more stringent than many, being limited to reasons occurring or appearing after the arbitrator's appointment and lost after conclusion of the hearing on the merits even if the relevant facts were not known.

- **Art. 208(1):** *Within a maximum period of thirty days from the acceptance of his appointment, the arbitrator shall, without the need to comply with the rules provided under this Law in respect of serving of notices, notify the parties to the dispute of the date of the first hearing scheduled for consideration of the dispute and the venue thereof. The arbitrator shall fix a date for the parties to the dispute to submit their documents, memoranda and pleadings.*

This appears to be a mandatory requirement, but the DIAC Rules do contain a provision allowing the variation of time limits. In practice, the first hearing is usually a scheduling meeting.

- **Art. 208(2):** *A decision may be issued on the basis of the documents submitted by only one of the parties to the dispute if the other party fails to submit his documents within the time specified.*

This is a salutary power. Many arbitrators are extremely hesitant about proceeding *ex parte* fearing due process challenges. This provision should give them some comfort.

- **Art. 209(2):** *If, during the course of arbitration, a preliminary issue, which is outside the powers of the arbitrator, arises or if a challenge has been filed that a document has been counterfeited, or if criminal proceedings have been taken regarding such counterfeiting or for any other criminal act, the arbitrator shall suspend the proceedings until a final judgement on the same has been passed. In addition, the*

arbitrator shall suspend the proceedings to refer to the President of the competent court the following:

- a. To pass a judgement in accordance with the law to penalize any witness who fails to appear or refuses to give statement.*
- b. To order a party to submit any documents in its possession which are necessary for the issue of the arbitration award.*
- c. To decide on evidence by commission.*

We are now approaching the more problematical areas of the CPC, where we see the policy of what the international arbitral community may regard as excessive court intervention. It is not unheard of for reluctant parties to disrupt the arbitration proceedings by issuing a criminal complaint. Indeed, the issue of criminal complaints is sometimes used as a tactic in the UAE in order to obtain discovery that would not otherwise be available through the courts or arbitral tribunals.

- **Art. 211:** *The arbitrators shall cause the witnesses to take oath. Whoever makes a false statement before the arbitrators shall be deemed to have committed the crime of perjury.*

As has been noted above, the failure of the arbitrator to take evidence on oath was regarded as grounds for annulling the award by the Dubai Court of Cassation in the *Bechtel Case*. The Federal Law of Evidence in Civil and Commercial Matters [No. 10 of 1992] allows no scope for a secular affirmation or declaration, but only religious oath. Art. 41 provides that each witness shall give his testimony individually, in the absence of other witnesses whose testimony has not yet been heard (similar to witness sequestration in the U.S.). Each witness must make an oath in the manner stipulated by his religion.

- **Art 212(4):** *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.*
(5) *The arbitrators' award shall be passed by a majority and shall be made in writing and accompanied by the dissenting vote. In particular, the award shall contain a copy of the arbitration agreement, a summary of the statements of the*

parties, their documents, the grounds and context of the award, the date and place of issue and the signatures of the arbitrators. Should one or more arbitrators refuse to sign the award, such refusal shall be stated in the award; provided, however, that the award shall be valid if signed by a majority of the arbitrators.

(6) *Unless otherwise agreed between the parties to the dispute, the award shall be in the Arabic language; otherwise, the award shall, at the time of filing, be accompanied by a legalized translation thereof.*

This Article sets out the formal requirements for a valid award. An award may be issued outside the UAE, but experienced practitioners regard it as prudent to issue the award in the UAE if UAE is the seat of the arbitration. Awards must be “reasoned” or “motivated”, and contain the usual particulars - the date and place of issue and the signatures of the arbitrators. In addition, the award must be accompanied by a copy of the arbitration agreement. The parties may agree that the award be in another language other than Arabic, but if the award is to be enforced in the UAE, it must be accompanied by an Arabic translation.

- **Art. 213(3):** *Where arbitration is conducted between the parties to a dispute outside the court, the arbitrators shall provide each party with a copy of their award within five days from the date of the issue of the same. The court shall, at the request of one of the parties filed within the normal course of filing the suit, consider whether the award shall be approved or nullified.*

Following delivery of the award to the parties, either party may apply to the court by normal action supported by the relevant documents to ratify or annul the award as the case may be. The court will then consider both parties’ arguments and submissions.

The matter may go into several hearings where both parties submit facts, evidence and arguments before the case is reserved for judgment for the court to decide whether to ratify the arbitration award or nullify the same. While the arbitration award is not subject to appeal, the judgment may be appealed to the Court of Appeal and then to the Court of Cassation. It is unlikely that an arbitration award will be executed or annulled until a final judgment is delivered by the Court of Cassation deciding

whether to ratify or annul the award. An arbitration award cannot be executed in the UAE unless it is ratified by a final judgment¹⁹. The delays consequent on the necessity to ratify awards before they may be executed and the unfettered rights to seek the annulment of awards are responsible for the majority of criticisms of the UAE arbitration law and the calls for reform.

- **Art. 214(1):** *While considering the request for approving the arbitrators' award, the court may refer the same back to the arbitrators to reconsider any issues which they have omitted or to clarify the award if it was not specific to the extent that the enforcement of the same is not possible. Unless otherwise decided by the court, the arbitrators shall, in both cases, issue their revised award within three months from the date of their notification of the court's decision.*

This is a familiar power of remission found in many legal systems (e.g., Art. 34(4) of the UNCITRAL Model Law on International Commercial Arbitration).

- **Art. 215(1):** *The arbitrators' award may not be enforced unless the same has been approved by the court with which the award was filed; provided that the court has reviewed the award and the terms of reference and ensured that there is no encumbrance to such enforcement. The said court shall, at the request of one of the parties concerned, correct the material errors in the arbitrators' award in accordance with the legally prescribed manner applicable to correction of errors.*

The court has the power to correct formal errors in the award which is a useful power, but the mandatory review of the award before enforcement is a cause of delay in enforcement. It has been suggested that courts may sometimes investigate the merits of the underlying claim when reviewing the award²⁰.

- **Art. 216(1):** *The parties to a dispute may, at the time of consideration of the arbitrators award, request the nullification of the same in the following events:*
 - a. *If the award was issued without, or was based on invalid terms of reference or an agreement which has expired by time prescription, or if the arbitrator has exceeded his limits under the terms of reference.*
 - b. *If the award was issued by arbitrators who were not appointed in accordance with the law, or by only a number of the arbitrators who were not authorized to issue the award in the absence of the others, or if it was based on terms of*

reference in which the dispute was not specified, or if it was issued by a person who is not competent to act as an arbitrator or by an arbitrator who does not satisfy the legal requirements.

- c. If the award of the arbitrators or the arbitration proceedings become void and such voidness affected the award.*

(2) *A request for nullification of the award shall not be rejected on the grounds of a waiver by a party of its right to the same prior to the issue of the award.*

The process of ratification or nullification undertakes the form of a separate action subject, as noted above, to Dubai's dual-tier "as of right" appeal system. Thus, before an award may be enforced by the Dubai court, a party wishing to delay may raise not only procedural but also substantive objections in support of nullification before the Court of First Instance and then appeal twice. This process could take 12 months²¹. The position is not helped by the fact that the right to seek nullification cannot be waived before the issue of the award; so it is not possible to contract out of the right within the contract or by the adoption of institutional rules²².

DIAC and its Rules

DIAC was first created in 1994 as the "*Centre for Commercial Conciliation and Arbitration*". The current DIAC is an autonomous, permanent, non-profit institution. DIAC was created as a means to supply facilities for conducting commercial arbitrations and promoting the settlement of disputes by arbitration, as well as developing a pool of arbitrators experienced in the practice of international arbitration. Information in relation to arbitrators and mediators, of different nationalities and varied legal backgrounds, can also be obtained from the Centre. DIAC also keeps a directory of experts²³.

The current DIAC Arbitration Rules were issued in 2007 by Decree No. 11 2007 upon their approval by the Ruler of Dubai on the 6 May 2007. The Rules are available in both Arabic and English. They were, of course, drafted to be compliant with UAE arbitration law.

The Rules provide for an administered scheme and have clearly been influenced by the ICC Rules. Consequently, this paper does examine them in detail, but rather identifies some features that may be regarded as specific to Dubai.

- To commence an arbitration under the DIAC Rules, it is necessary to serve a written Request for Arbitration in the familiar international form, but it must also include a demand that the dispute be referred to arbitration under the DIAC Rules and a copy of the Arbitration Agreement invoked by the Claimant, together with a copy of the contractual documentation in which the Arbitration Agreement is contained or in respect of which the arbitration arises²⁴.
- Within 30 days of receipt of the Request from the Centre, the Respondent shall submit to the Centre an Answer to the Request with its Answer, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances. The Respondent may make a counterclaim arising out of the same contract²⁵.
- If any party raises one or more pleas concerning the existence, validity, scope or applicability of the arbitration agreement, then the DIAC Executive Committee may decide, without prejudice to the admissibility or merits of the plea or pleas, that the arbitration shall proceed if it is *prima facie* satisfied that an arbitration agreement may exist under the Rules. In such a case, any decision as to the jurisdiction of the Tribunal shall be taken by the Tribunal itself. If the Executive Committee is not so satisfied, the parties shall be notified that the arbitration cannot proceed. In such a

case, any party retains the right to ask any court having jurisdiction whether or not there is a binding arbitration agreement²⁶.

- The parties may be represented or assisted by persons of their choice, irrespective of, in particular, nationality or professional qualification. The Tribunal may, however, at any time, require from any party proof of authority granted to its representative in such form as the Tribunal may determine²⁷. This reflects the obligation in UAE court proceedings for advocates to produce Powers of Attorney to the court and the same procedure is generally followed in UAE arbitration.
- Arbitrators must be both independent and impartial. The Centre may decline to appoint any nominee proposed by a party if it considers the nominee to be lacking independence, impartiality or otherwise unsuitable. Before appointment by the Centre, each prospective arbitrator must provide to the Centre a full CV and a Statement of Independence undertaking a continuing duty to disclose to the Centre, the other members of the Tribunal and to the parties, any circumstances that may arise during the course of the arbitration that are likely, in the eyes of the parties, to give rise to justifiable doubts as to the arbitrator's independence or impartiality. The Centre may appoint arbitrators in default of nomination by the parties and in appointing the Tribunal the Centre will give consideration to the nature of the transaction, the nature and circumstances of the dispute, the nationality, location and languages of the parties and (if more than two) the number of parties²⁸.

- Where the parties are of different nationalities, a sole arbitrator or chairman of the Tribunal shall not have the same nationality as any party unless the parties who are not of the same nationality as the proposed arbitrator all agree otherwise in writing²⁹.
- In relation to the proceedings before the Tribunal, there is power to modify time limits³⁰, and the seat of the arbitration will be Dubai unless agreed or the Centre determines otherwise³¹. Unless otherwise agreed by the parties, the initial language of the arbitration shall be the language of the Arbitration Agreement³².
- Within 30 days from the date of the transmission of the file to the Tribunal, the Tribunal shall notify the parties of the date of a preliminary meeting with them and the venue thereof. The Tribunal shall fix a timetable for the submission of documents, statements and pleadings set out in the Rules³³. This provision is a direct reflection of CPC Art. 208(1). The timetable provides for service of a Statement of Claim within 30 days of the formation of Tribunal (or as allowed by the Tribunal) accompanied by the documentary evidence upon which the Claimant intends to rely, together with a schedule of such documents³⁴. Within 30 days of receipt of the Statement of Claim or receipt of notification of the establishment of the Tribunal, whichever occurs later, the Respondent is to submit its Statement of Defense accompanied by the documentary evidence upon which the Respondent intends to rely together with a schedule of such documents. Any counter-claim by the Respondent shall be made in the Statement of Defense or, in exceptional circumstances, at a later stage in the arbitral proceedings if so determined by the Tribunal³⁵. The Tribunal may allow further written statements³⁶ and new claims and amendments³⁷.

- Each party shall have the burden of proving the facts relied on to support its claim or defense. The Tribunal has the power to decide on the rules of evidence to be applied including the admissibility, relevance or weight of any material tendered by a party on any matter of fact or expert opinion; and to determine the time, manner and form in which such material should be exchanged between the parties and presented to the Tribunal. The Tribunal may, at the request of a party or on its own motion, order a party to produce such documents or other evidence within such a period of time as the Tribunal considers necessary or appropriate and may order a party to make available to the Tribunal or to an expert appointed by it or to the other party any property in its possession or control for inspection or testing. The Tribunal may, at the request of a party or on its own motion, inspect or require the inspection of any site or property, as it deems appropriate³⁸.
- If either party requests, the Tribunal shall hold a hearing. The Tribunal shall determine whether a record shall be made of any hearing and, if so, in what form. In this connection, the obligation under CPC Art, 207(1) to record minutes of the sessions of the arbitration³⁹ should be noted. In practice the rule is often satisfied by the Tribunal signing each page of the daily transcript of proceedings.
- If witnesses are to be heard, at least 15 days before the hearing each party shall communicate to the Tribunal and to the other party the identities and addresses of the witnesses it intends to call, the subject matter of their testimonies and the relevance of such testimonies to the issues in arbitration, and the languages in which such witnesses will give their testimony⁴⁰. The Tribunal has discretion, on the grounds of avoiding duplication or lack of relevance, to limit the appearance of any witness,

whether witness of fact or expert witness. It is not uncommon for arbitral tribunals of a predominantly civil law background (influenced by the predominantly written procedures in their own jurisdictions) to require persuasion that some or all of the witnesses may be called to give oral (as opposed to written) evidence and be cross-examined. This may come as a surprise to advocates from a common law background who are accustomed to presenting witnesses as a matter of right. The Tribunal shall also determine whether any witness shall retire (i.e., be sequestered) during any part of the proceedings, particularly during the testimony of other witnesses. Parties in Dubai tend to ask that witnesses be excluded from the hearing until they have given their evidence - similar to the procedure followed by the courts⁴¹ and Tribunals invariably agree. The Tribunal shall require witnesses to swear an oath before the Tribunal before giving evidence in accordance with any mandatory provisions of the applicable procedural law. This is a direct reflection of CPC Art. 211.

- The Tribunal is empowered to appoint its own experts⁴². The Tribunal may issue any provisional orders or take other interim or conservatory measures it deems necessary, including injunctions and measures for the conservation of goods which form part of the subject matter in dispute, such as an order for their deposit with a third person or for the sale of perishable goods⁴³.
- The time limit within which the Tribunal must render its final Award is six months from the date the sole arbitrator (or the Chairman in the case of three arbitrators) receives the file. The Tribunal may, on its own initiative, extend the time-limit for up to additional 6 months. The DIAC Executive Committee may extend this time limit

further pursuant to a reasoned request from the Tribunal or on its own initiative if it decides that it is necessary to do so.⁴⁴

- The Tribunal may make preliminary, interim, interlocutory, partial or final awards.

The Rules are drafted to comply with CPC Art. 212(4) and apply the mandatory provisions of any applicable law relating to the making of the award. The award may be made public only with the consent of the parties. There is also a power of correction on the application of a party within 30 days of the publication of the award and a party may also within 30 days of receipt of the award, by written notice request the Tribunal to make an additional award in respect of claims or counterclaims presented in the arbitration but not dealt with in any award⁴⁵.

- There is provision for termination of the arbitration on settlement. No member of the Tribunal or of the Executive Committee, nor the Centre and its employees, nor any expert to the Tribunal shall be liable to any person for any act or omission in connection with the arbitration. Unless all parties expressly agree in writing to the contrary, the parties undertake as a general principle to keep confidential all awards and orders in their arbitration, together with all materials in the proceedings created for the purpose of the arbitration and all other documents produced by another party in the proceedings not otherwise in the public domain – save and to the extent that disclosure may be required of a party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in *bona fide* legal proceedings before a state court or other judicial authority – this provision seems to be heavily influenced by English law.⁴⁶

DIFC Court System

Art. 121 of the UAE Constitution allows the Federation to enact a Financial Free Zone (“FFZ”) Law allowing any Emirate to create a FFZ. Federal Law 8 of 2004 allowed FFZs to be established by Federal Decree. FFZs are exempted from all Federal civil and commercial laws; however, criminal law and international treaties (e.g. New York Convention) will still apply.

Federal Decree No. 35 of 2004 established the Dubai International Financial Centre (“DIFC”) as an FFZ in Dubai. Dubai Law No. 9 of 2004, ‘The Law Establishing the Dubai International Financial Centre’ (“the DIFC Law”) is a Dubai law that establishes the financial and administrative independence of the DIFC. It has been amended by Law No.7 of 2011 emphasizing and reinforcing these aspects. The DIFC Law established the institutions of the DIFC (“the Centre’s Bodies”):

- the DIFC Authority (“DIFCA”) – the governing body of the DIFC;
- the Dubai Financial Services Authority (“DFSA”) - the independent regulator of all financial and ancillary services conducted through the DIFC; and
- the DIFC Judicial Authority – which administers the DIFC courts.

Dubai Law 12 of 2004 (Judicial Authority Law or “JAL”) established the DIFC Court of First Instance and the DIFC Court of Appeal. There is no DIFC Court of Cassation and appeals are not “as of right” but may only be brought with the permission of the Court of First Instance or the Court of Appeal.

The DIFC is a novel and unique jurisdiction in that it is not a sovereign state but possesses its own laws and court system. The language of the DIFC is English and its currency is the US dollar. It is a common law system and while its laws are in part codified,

they may be interpreted in accordance with, and supplemented by, the case law of other countries. The laws that have been enacted so far are:

- Contract Law 2004
- DIFC Court Law 2004
- General Partnership Law 2004
- Law on the Application of Civil and Commercial Laws in the DIFC 2004
- Law Regulating Islamic Financial Business 2004
- Limited Liability Partnership Law 2004
- Markets Law 2004
- Regulatory Law 2004
- Employment Law 2005
- Law of Damages and Remedies 2005
- Law of Obligations 2005
- Law of Security 2005
- Law Relating to the Application of DIFC Laws (Amended & Restated) 2005
- Personal Property Law 2005
- The Implied Terms in Contracts and Unfair Terms Law 2005
- Trust Law 2005
- Investment Trust Law 2006
- Limited Partnership Law 2006
- Data Protection Law 2007
- Real Property Law 2007
- Strata Title Law 2007
- Arbitration Law 2008
- Companies Law 2009

- Insolvency Law 2009
- Payment System Settlement Finality Law 2009
- Collective Investment Law 2010.

In addition there are Regulations and Registrar of Real Property Directives.

Art. 8 of the Law on the Application of Civil and Commercial Laws in the DIFC sets out what has become known as the “Waterfall Provision” setting out the hierarchy of laws applicable in the DIFC:

- so far as there is a regulatory content, the DIFC Law or any other law in force in the DIFC; failing which,
- the law of any Jurisdiction other than that of the DIFC expressly chosen by any DIFC Law; failing which,
- the laws of a Jurisdiction as agreed between all the relevant persons concerned in the matter; failing which,
- the laws of any Jurisdiction which appears to the Court or Arbitrator to be the one most closely related to the facts of and the persons concerned in the matter; failing which,
- the laws of England and Wales.

Thus, in the DIFC, if a claim does not relate to regulatory matters or if a DIFC law does not designate the applicable law, the parties or the tribunal may chose the applicable law. The ultimate fall back is the laws of England and Wales.

The judges of the DIFC courts are drawn from several different jurisdictions. There are two Emirati judges who have been trained in the common law in England, three English judges (one retired from the Court of Appeal, the others from the Commercial Court) and one each from Singapore, Malaysia and New Zealand.

The jurisdiction was specifically intended to be attractive to foreign investors and it is, therefore, no surprise that parties have sought to bring themselves within the jurisdiction of the DIFC courts if possible. Consequently, the provision of the JAL that has attracted the most attention and growing jurisprudence is that which deals with jurisdiction.

Art. 5(A)(1) of the JAL (as amended by Law No, 16 of 2011) provides 5 jurisdictional “gateways” to the DIFC:

- a. Civil or commercial claims and actions to which the DIFC or any DIFC Body, DIFC Establishment or Licensed DIFC Establishment is a party;
- b. Civil or commercial claims and actions arising out of or relating to a contract or promise of contract, whether partly or wholly concluded, finalized or implemented within DIFC or will be implemented effectively or supposed to be implemented within DIFC pursuant to express or implied terms stipulated in the contract;
- c. Civil or commercial claims and actions arising out of or relating to any incident or transaction which is wholly or partly performed within DIFC and is related to DIFC activities;
- d. Appeals against decisions or procedures made by the DIFC Bodies where DIFC Laws and DIFC Regulations permit such appeals.
- e. Any claim or action over which the Courts have jurisdiction in accordance with DIFC Laws and DIFC Regulations.

Law No.7 of 2011 defines “Centre Establishments” as:

Any entity or business established, licensed, registered or authorized to carry on business or activities in the Centre pursuant to the Centre’s Laws, including Licensed Centre Establishments.

and “Licensed Centre Establishments” as:

Any entity or business which is licensed, registered or authorized by the Financial Services Authority to carry on

Financial Services and any other activities in accordance with the Centre's Laws.

Gateways (d) and (e) are self-explanatory. Gateways (a) and (b) are subject to a threshold requirement that the claim must be a civil or commercial case, and provide respectively for *in personam* and subject matter jurisdiction.

Gateway (b) relates to contractual claims and (c) to non-contractual claims. For there to be jurisdiction over a non-contractual claim, it must arise out of an incident or transaction that has occurred in the Centre and is related to DIFC activities. It is to be noted that the law uses the word “incident” and not “tort” or “wrong”. The concept of an “incident” or “event” imports that an essential part of the cause of action occurred within the DIFC. It matters not which part, but it must be part which would have to be pleaded if the pleading were not to be struck out. In the context of the tort of negligence, it can be either the defendant’s conduct or the claimant’s resulting damage that occurs within the Centre in order to invoke the jurisdiction of the DIFC⁴⁷.

In addition Art. 5(A).2 the Court of First Instance may hear and determine any civil or commercial claims or actions where the parties agree in writing to file such claim or action with it whether before or after the dispute arises, provided that such agreement is made pursuant to specific, clear and express provisions.

Art. 7(1) of the JAL deals execution. The DIFC execution judge has jurisdiction over execution of the judgments, decisions and orders rendered by the Courts and the Arbitral Awards ratified by the Courts if the subject matter of execution is situated within DIFC. The Dubai courts will enforce a DIFC judgment if (a) the DIFC Court issues an execution letter to the Chief Justice of the Court of First Instance of Dubai Courts stating the procedure to be carried out; and (b) the person requesting execution shall submit to the execution judge of Dubai Courts an application accompanied by a copy of the judgment, decision or order, legal

translation of the same, and the execution letter. The execution judge of Dubai Courts shall apply the execution procedures and rules stipulated in the UAE Civil Procedure Code, including any objections to the execution. The execution judge may not reconsider the merits of the judgment, decision or order.

The procedures of the DIFC Courts are regulated by the Rules of DIFC Courts (“RDC”). The RDC are based on the English Civil Procedure Rules (“CPR”) but adapted for use in an international court based in the Gulf. On the one hand, they are quite detailed, drawing on various practice guides in order to assist lawyers from jurisdictions who might be dealing with procedures unfamiliar to them; on the other hand, it modifies common law procedures to bring them more in line with the civil law. For example, the discovery provisions are modeled on the *IBA Rules on the Taking of Evidence in International Commercial Arbitration (1999)* which are seen as a compromise between civil and common law concepts of document production.

The DIFC Court Law allows the Chief Justice to establish Tribunals, the most widely used of which is the Small Claims Tribunal (“SCT”) which has general jurisdiction (e.g. sale of goods or supply of services) of matters involving up to AED100,000, or AED200,000 in employment matters (which comprise most of the SCT’s docket). The most interesting Tribunal is the Dubai World Special Tribunal (“DWST”) which is overseeing the restructuring of Dubai World and its subsidiaries. In practice, most cases have involved the developer Nakheel, which built Palm Jumeirah and many other sites in and around Dubai and internationally, but Nakheel has now been “spun out of” Dubai World and is once again subject to the jurisdiction of the Dubai courts⁴⁸

There is a Court of Arbitration that has been established as one of the Circuits of the Court. Its function is:

- to hear Arbitration Claims under RDC Part 43;

- to recognize and ratify DIFC awards under Art. 43 of the DIFC Arbitration Law, Law No.1 of 2008; and
- enforcement under Art. 42 of the DIFC Arbitration Law.

DIFC Arbitration Law

The DIFC Arbitration Law is a lightly modified version of the UNCITRAL Model Law and very different from UAE law. The overriding policy is embodied in Article 10 which provides that no DIFC Court shall intervene except to the extent provided in the Law.

The Law contains consumer and employee protection and there is a mandatory stay of court proceedings brought in breach of an arbitration agreement.

Recourse to the DIFC Court against an arbitral award made in the seat of the DIFC may be made only by an application for setting aside in accordance with Article 41. The grounds for setting aside (closely modeled on the UNCITRAL Model Law grounds) are:

- a party was under some incapacity; or the arbitration agreement was not valid;
- a party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was unable to present its case;
- the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration;
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties;
- the subject matter of the arbitration is not arbitrable in DIFC;
- the dispute is expressly referred to a different body or tribunal for resolution under the Arbitration Law or any mandatory provision of DIFC Law; or

- the award is in conflict with the public policy of the UAE.

There is a 3 month time limit for bringing proceedings to set aside an award.

By Article 42(1) of the Law, an arbitral award, irrespective of the State or jurisdiction in which it was made, shall be recognized as binding within the DIFC and, upon application in writing to the DIFC Court, shall be enforced subject to the provisions of this Article and of Articles 43 and 44.

Article 42(4) of the Law provides that awards recognized by the DIFC Court may be enforced outside the DIFC in accordance with the JAL, and recognition under the DIFC Arbitration Law includes ratification for the purposes of Article 7 of the JAL. Thus, an order recognizing an award is equated to ratification by the Dubai Courts. The difference is that recognition will not involve the wide ranging review undertaken by the Dubai Courts, as the grounds for refusing recognition or enforcement are the same as those for setting aside an award (plus the additional ground that the award is not yet binding)⁴⁹. In addition, a party cannot resist recognition if it has or could have made an application for recourse against the award.

By Article 43 (2) of the Law, an order recognizing an arbitral award shall be issued in English and Arabic unless the DIFC Court shall determine otherwise.

DIFC-LCIA Arbitration Centre

The DIFC-LCIA Arbitration Centre was founded on a strategic partnership between the two institutions in early 2008. The LCIA is one of the longest-established international institutions for commercial dispute resolution. The history of the LCIA can be traced back to 1883, when the Court of Common Council of the City of London set up a committee to draw up proposals for the establishment of a tribunal for the arbitration of trans-national

commercial disputes. The institution was formally inaugurated in 1892 as the London Chamber of Arbitration and it was re-named, in 1981, as the London Court of International Arbitration to reflect the international nature of its work.

The DIFC LCIA Arbitration Centre's Arbitration and Mediation rules are a close adaptation of the LCIA Rules, with minor changes to align them with the DIFC LCIA Arbitration Centre's needs. The rules are universally applicable and compatible with both civil and common law systems, offering the international business community, international lawyers and arbitrators a comprehensive and modern set of rules and procedures.

The DIFC LCIA Arbitration Centre has access to the LCIA's database of arbitrators. The database is not, however, a closed list and parties are free to nominate arbitrators who are not on the database. Similarly, the DIFC LCIA Arbitration Centre itself will look outside this database when necessary.

The DIFC LCIA Arbitration Centre's alternative dispute resolution services, including arbitration and mediation, are available to all parties wishing to resolve conflicts out of court, irrespective of their location.

The Arbitration Centre will administer the entire dispute resolution process - from filing a case to closing it, including the appointment of mediators and arbitrators, setting hearings, administering funds and issuing the awards rendered by the tribunals it appoints.

It is not proposed to analyze the Rules in detail in this paper. The LCIA Rules themselves will be familiar to all those who practice international arbitration. Some notable features include:

- proceedings commence with a Request for Arbitration and there is provision for a Response⁵⁰;
- the Arbitral Tribunal is appointed by the LCIA Court⁵¹;

- the Rules provide that in cases of exceptional urgency, on or after the commencement of the arbitration, any party may apply to the LCIA Court for the expedited formation of the Arbitral Tribunal⁵²;
- the Arbitral Tribunal is obliged to adopt procedures suitable to the circumstances of the arbitration, avoiding unnecessary delay or expense, so as to provide a fair and efficient means for the final resolution of the parties' dispute⁵³;
- in default of agreement the schedule of submissions will be as follows⁵⁴ –
 - within 30 days of receipt of written notification from the Registrar of the formation of the Arbitral Tribunal, the Claimant is to file its Statement of Case
 - within 30 days of receipt of the Statement of Case the Respondent is to file a Statement of Defense and any counterclaim;
 - within 30 days of receipt of the Statement of Defense, the Claimant is to file a Statement of Reply and (if relevant) a Defense to Counterclaim;
 - if the Statement of Reply contains a Defense to Counterclaim, within 30 days of its receipt the Respondent is to file a Statement of Reply to Counterclaim;
 - all Statements shall be accompanied by copies (or, if they are especially voluminous, lists) of all essential documents on which the party concerned relies and which have not previously been submitted by any party, and (where appropriate) by any relevant samples and exhibits;
- any party which expresses a desire to that effect has the right to be heard orally before the Arbitral Tribunal on the merits of the dispute, unless the parties have agreed in writing on documents-only arbitration⁵⁵;
- before any hearing, the Arbitral Tribunal may require any party to give notice of the identity of each witness that party wishes to call (including rebuttal witnesses), as well as the subject matter of that witness's testimony, its content and its relevance to the

issues in the arbitration. The Arbitral Tribunal may also determine the time, manner and form in which such materials should be exchanged between the parties and presented to the Arbitral Tribunal; and it has a discretion to allow, refuse, or limit the appearance of witnesses (whether witness of fact or expert witness)⁵⁶;

- unless otherwise agreed by the parties in writing, the Arbitral Tribunal may appoint one or more experts to report to the Arbitral Tribunal⁵⁷;
- unless the parties at any time agree otherwise in writing, the Arbitral Tribunal shall have the power, on the application of any party or of its own motion, *inter alia* -
 - to allow amendments of Statement of Case and grant extensions of time,
 - to order any party to produce to the Arbitral Tribunal, and to the other parties for inspection, and to supply copies of, any documents or classes of documents in their possession, custody or power which the Arbitral Tribunal determines to be relevant;
 - to decide whether or not to apply any strict rules of evidence (or any other rules);
 - to order the correction of any contract between the parties or the Arbitration Agreement⁵⁸;
- by agreeing to arbitration under the Rules, the parties shall be treated as having agreed not to apply to any state court or other judicial authority for any order available from the Arbitral Tribunal⁵⁹;
- the Arbitral Tribunal shall have the power to rule on its own jurisdiction⁶⁰;
- the Arbitral Tribunal shall have the power, unless otherwise agreed by the parties in writing, to grant interim and conservatory measures⁶¹;
- all awards shall be final and binding on the parties. By agreeing to arbitration under the Rules, the parties undertake to carry out any award immediately and without any

delay; and the parties also waive irrevocably their right to any form of appeal, review or recourse to any state court or other judicial authority, insofar as such waiver may be validly made⁶².

Enforcement of Arbitration Awards in the UAE

So far as domestic UAE awards are concerned, under Art. 210 of the CPC, if the parties do not stipulate in the arbitrator's Terms of Reference a period for issuing the final award, then the arbitrator must issue his award within six months of the date of the arbitration hearing, otherwise either party can refer the dispute to the courts. As noted above, any arbitral award must be ratified by the courts before it can be enforced in the UAE against the losing party. Enforcement of the ratified award is done by way of application to the Execution Court and the award will be enforced in the same way as a court judgment⁶³.

As to DIFC awards, within the DIFC, enforcement is relatively straightforward. The party relying on an award or applying for its enforcement must supply to the DIFC Court the original award (or a duly certified copy) and the original Arbitration Agreement (or a duly certified copy). Once the award has been ratified by the DIFC Court, it will be enforceable within DIFC, pursuant to Art. 42(1) of the DIFC Court Law.

As to the enforcement of DIFC awards within Dubai, the situation has been clarified under a protocol - the *Protocol of Enforcement between Dubai Courts and DIFC Courts* (the "Protocol") – which was issued in 2010 by the DIFC Courts and the Dubai Courts. Pursuant to the terms of the Protocol, DIFC Court judgments can be enforced through the execution department of the Dubai Courts, provided that a number of procedural requirements are met. In order to enforce a DIFC arbitral award within Dubai, the award is first converted into a DIFC Court judgment and then presented (with an Arabic legal translation) to the execution

judge at the Dubai Courts, under cover of a letter from the DIFC Court Registrar to the Chief Justice of the Dubai Court of First Instance requesting enforcement. The advantage of this procedure is that it avoids the need to go through the ratification procedure which can often delay the enforcement of an award.

While a DIFC award may be enforced within Dubai without the necessity of ratification, in Abu Dhabi and the other Emirates, the position is less clear. There remains some doubt as to whether a DIFC arbitral award will be enforced immediately in those jurisdictions, or will remain subject to the ratification procedure under the CPC.⁶⁴

So far as the enforcement of foreign arbitral awards are concerned, in Commercial Case 35/2010, the Fujairah Court of First Instance ratified two English arbitration awards made under LMAA (London Maritime Arbitrators' Association) Rules. The Fujairah Court followed two decisions of the UAE Court of Cassation which held respectively that the enforcing court is precluded from examining the merits of the award⁶⁵ and conventions made between the UAE and other countries regarding the enforcement and execution of arbitral awards are to be considered as domestic legislation⁶⁶. The court ratified the substantive award together with interest until the date of actual payment and a second award relating to the costs of the arbitration, again with interest until actual payment. The court also ordered the defendants to pay legal expenses and attorney's fees.

As noted above, the UAE acceded to the New York Convention by Federal Decree No.43 2006 with effect from 19 November 2006. Commercial Case 35/2010 is believed to be the first occasion since then that a court in the UAE has ratified a foreign award under the Convention.

Within Dubai, the Dubai Court of First Instance on 12 January 2011 found in favor of a large international trading company, ordering the recognition and enforcement of a London Arbitration Award under the New York Convention. The case was unusual as the

arbitrator in the concerned DIFC-LCIA arbitration had found that the seat of the arbitration was London, rather than DIFC, so it was necessary to apply to the local courts (i.e. Dubai) to enforce the award, in which a Dubai LLC had been found liable in damages. The application was, therefore, based on the New York Convention rather than being an application (as would normally be expected in a DIFC-LCIA arbitration) first to the DIFC Courts and then to the local courts pursuant to the Protocol between the Dubai Courts and the DIFC Courts. Unlike the ruling of the Fujairah Courts, the Dubai enforcement action was fully contested by the Dubai company which lost in the arbitration in London.

The Dubai Court of First Instance held that it had no jurisdiction to hear the subject matter of the dispute with respect to the pleading of nullity of the arbitral award or impugning the signature on the arbitration clause since the arbitrator had jurisdiction to decide that issue and did, in fact, decide that issue. The court held that it only had jurisdiction to consider whether or not the foreign award was contrary to the Federal Decree on ratifying the New York Convention and whether or not its formal requirements satisfied the Federal Decree. On the facts of the case before it, the court held that the arbitral award satisfied the requirements of the Decree and as such, the court granted recognition.

Conclusions

The UAE labors under the burden of an out-of-date arbitration law. It is, however, not alone in experiencing a protracted period of debate over reform of its laws. The English Arbitration Act 1996 enjoyed what Lord Steyn (a former member of what is now the Supreme Court and one of the UK's leading arbitration lawyers) called an "elephantine" gestation period lasting more than 7 years⁶⁷. This did not mean that England did not enjoy a thriving and vibrant arbitration market. The same is true of the UAE, especially Dubai.

The illiquidity of financial markets due to the Global Financial Crisis caused a corresponding melt-down of the Dubai property market which, in turn, has produced a massive upsurge in arbitration – relating mostly to failed construction projects and the cancellation of many real estate developments. DIAC is now one of the busiest arbitral institutions in the world. The UAE is coping well with this upsurge - both in terms of the conduct of arbitrations and the enforcement of awards.

¹ *The CIA World Factbook*, <https://www.cia.gov/library/publications/the-world-factbook/geos/ae.html>

² *Dubai's Legal System, Creating a Legal and Regulatory Framework for a Modern Society*, Tabuck & Lester, page 7, Latham & Watkins LLP, http://www.lw.com/upload/pubContent/_pdf/pub2787_1.pdf

³ *Ibid.*, page 8

⁴ Dubai Courts' Website,

http://www.dubaicourts.gov.ae/portal/page?_pageid=53,72555,53_72567:53_78357:53_338969&_dad=portal&_schema=PORTAL

⁵ For more details on the jurisdiction of the court see Articles 158 to 168 of the Dubai Civil Procedures Law No.11 of 1992

⁶ The jurisdiction of the Court of Cassation is stipulated by the Articles 173 to 188 of the Dubai Civil Procedures Law No.11 of 1992 and Courts Formation Law in the Emirate of Dubai No.3 of 1992 and the Law No.3 of 2005.

⁷ *Dubai's Legal System, Creating a Legal and Regulatory Framework for a Modern Society*, Tabuck & Lester, page 8, Latham & Watkins LLP, http://www.lw.com/upload/pubContent/_pdf/pub2787_1.pdf

⁸ The National, "Ruling allows expatriate lawyers in all Dubai courts", <http://www.thenational.ae/news/uae-news/courts/ruling-allows-expatriate-lawyers-in-all-dubai-courts>

⁹ Arts. 55 to 59, UAE Law Federal Law No. 11 of 1992, The Civil Procedure Law

¹⁰ *Arbitration Law Handbook*, Horn & Hopkins, Informa (2007), pp. 807ff.

¹¹ [Much of this appears in the text above. Suggest deleting the duplicative text]. The UAE ratified the New York Convention after settlement of the enforcement issues arising out of the award made in an arbitration between the Dubai Civil Aviation Authority ("DCAA") and Bechtel. On 20 February 2002, the sole arbitrator rendered an award against DCAA. On 21 October 2003, the Court of First Instance in Paris (tribunal de grande instance de Paris) issued an order enforcing the award against DCAA. However, on 15 May 2004, the Court of Cassation in Dubai annulled the arbitral award on the ground that the witnesses had not been sworn in, in breach of the procedural requirement of the UAE's arbitration law. As a result, DCAA lodged an appeal in the Paris Court of Appeal against the execution order, asking the Court of Appeal to recognize the decision of the Court of Cassation in Dubai annulling the arbitral award. The Paris Court of Appeal rejected DCAA's arguments on 27 September 2005: *La Direction Générale de l'Aviation Civile de l'Émirat de Dubai v. société Internationale Bechtel Co.* (Paris Court of Appeal, Chamber 1C, 27 September 2005).

¹² *La Direction Générale de l'Aviation Civile de l'Émirat de Dubai v. société Internationale Bechtel Co.* (Paris Court of Appeal, Chamber 1C, 27 September 2005)

¹³ *Arbitration: Theory and Practice in the United Arab Emirates*, Al Tamimi & Company, page 1

¹⁴ Art. 53 CPC

¹⁵ *Global Arbitration Review, UAE GAR Reference*, Habib Al Mulla and others

¹⁶ Art. 23 Rules of Arbitration of the International Chamber of Commerce 2012

¹⁷ *Arbitration: Theory and Practice in the United Arab Emirates*, Al Tamimi & Company, page 2

¹⁸ For example in Saudi Arabia

¹⁹ *Arbitration: Theory and Practice in the United Arab Emirates*, Al Tamimi & Company, page 5

²⁰ Clyde & Co, *Enforcement of Arbitral Awards in the UAE*, Mills and Bell,
<http://www.clydeco.co.uk/knowledge/articles/enforcement-of-arbitral-awards-in-the-uae.cfm>

²¹ *Arbitration: Theory and Practice in the United Arab Emirates*, Al Tamimi & Company, page 12

²² Reference to new ICC Rules

²³ DIAC website, <http://www.diac.ae/idiias>

²⁴ Art. 4 DIAC Rules 2007

²⁵ *Ibid.*, Art. 5

²⁶ *Ibid.*, Art. 6.2

²⁷ *Ibid.*, Art. 7

²⁸ *Ibid.*, Art. 9

²⁹ *Ibid.*, Art. 10

³⁰ *Ibid.*, Art. 19

³¹ *Ibid.*, Art. 20

³² *Ibid.*, Art. 21

³³ *Ibid.*, Art. 22

³⁴ *Ibid.*, Art. 23

³⁵ *Ibid.*, Art. 24

³⁶ *Ibid.*, Art. 25

³⁷ *Ibid.*, Art. 26

³⁸ *Ibid.*, Art. 27

³⁹ *Ibid.*, Art. 28

⁴⁰ *Ibid.*, Art. 29

⁴¹ Art. 41(1) of Federal Law No. 10 of 1992, Law of Evidence in Civil and Commercial Transactions

⁴² Art. 30 DIAC Rules 2007

⁴³ *Ibid.*, Art. 31

⁴⁴ *Ibid.*, Art. 36

⁴⁵ *Ibid.*, Arts. 37 and 38

⁴⁶ *Ibid.*, Arts. 39, 40 and 41

⁴⁷ *Khalil v Shuaa Capital psc* (CFI 017/2009)

⁴⁸ All disputes related to Nakheel as from October 2011 are to be heard by the Real Estate court in Dubai, in accordance with the Decree No. 326 of 2011 issued by the Department of Legal Affairs, Government of Dubai.

⁴⁹ Art. 44 Arbitration Law 2008

⁵⁰ Arts. 1 and 2 DIFC LCIA Arbitration Rules 2008

⁵¹ *Ibid.*, Art. 5.5

⁵² *Ibid.*, Art. 9

⁵³ *Ibid.*, Art. 14.1(ii)

⁵⁴ *Ibid.*, Art. 15

⁵⁵ *Ibid.*, Art. 19.1

⁵⁶ *Ibid.*, Art. 20

⁵⁷ *Ibid.*, Art. 21

⁵⁸ *Ibid.*, Art. 22.1

⁵⁹ *Ibid.*, Art. 22.2

⁶⁰ *Ibid.*, Art. 23.1

⁶¹ *Ibid.*, Art. 25

⁶² *Ibid.*, Art. 26.9

⁶³ *Enforcement of Arbitral Awards in the UAE*, Chris Mills and Richard Bell, Clyde & Co.

⁶⁴ *Enforcement of Arbitral Awards in the UAE - Part II: Enforcing DIFC-LCIA Arbitral awards*, Richard Bell and Laura Chicken, Clyde & Co.

⁶⁵ (Cassation No. 556 - 19 April 2005)

⁶⁶ (Cassation No. 774 - 7 April 2005)

⁶⁷ 1993 Freshfields Arbitration Lecture