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EMERGING STRONGER: HOW UAE’S ARBITRATION SYSTEM ADAPTS TO
POST-COVID INTERNATIONAL NORMS

Jacob Horowitz

On September 29th, 2023, the United Arab Emirates (“UAE”) published Federal Law No. 15 of 2023 (“Amendment Law”).¹ This law effectively amended Federal Law No. 6 of 2018 On Arbitration (“Arbitration Law”) in a manner that demonstrated the country’s aim to further improve and modernize its arbitration system.² Although the Amendment law consisted of numerous changes to UAE’s arbitration system, the most significant was its permittance of modern electronic technologies.³ In other words, the UAE now allows arbitration hearings to be conducted through technological platforms such as Zoom. This change reflects the post-COVID-19 pandemic trend of preference of virtual hearings and deterrence from in-person proceedings.⁴ Article 28(1) of UAE Arbitration Law now allows parties to agree to conduct arbitration and determine its location either in-person or virtually through modern means of technology or in technical environments.⁵ Following this change, arbitral institutions are now *required* to provide appropriate technological platforms to conduct remote hearings.⁶

¹ Chatura Randeniya , Mevan Bandara & Ramesh Fernando, *Recent Amendments to the Arbitration Law*, AFRIDI & ANGELL (Oct. 16, 2023), <https://afridi-angell.com/recent-amendments-to-the-arbitration-law/> [https://perma.cc/68U7-2AM7].

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Sergejs Dilevka & Dimitriy Mednikov, *UAE introduces changes to the UAE Arbitration Law* (Oct. 19, 2023), <https://s3.amazonaws.com/documents.lexology.com/0c5b9530-53d7-48b8-8ffd-ebeee679b52b.pdf?AWSAccessKeyId=AKIAVYILUYJ754JTDY6T&Expires=1698180217&Signature=qV%2BFzIlohNSxkIqzmzSAPCfC5K%2F0%3D> [https://perma.cc/4MYP-YDZK].

⁶ Kieran MacArthur, *Navigating New Horizons: A Summary of The UAE Arbitration Law’s Reforms*, CMS LAW-NOW (July 10, 2023), <https://cms-lawnow.com/en/ealerts/2023/10/navigating-new-horizons-a-summary-of-the-uae-arbitration-law-s-reforms#> [https://perma.cc/4DD4-T8MS].

This change clearly reflects a positive indication that the UAE is building on its reputation as an ‘arbitration friendly’ jurisdiction.⁷ Before the amendments, the law already provided for a possibility of online hearings. However, this amendment deals with the place of arbitration, rather than the hearings, which may foreshadow a move to fully virtual proceedings.⁸ The UAE has also instituted other changes to its Arbitration Law that indicate its focus in becoming “arbitration friendly.” The Amendment Law now requires that the arbitration institution have a special governance system and a secure reporting mechanism to ensure that the arbitrator conducts himself in a neutral and fair manner and to prevent any conflict of interest or preferential advantage. Through this amendment, the UAE aims to grow the pool of qualified and experienced arbitrators available for selection by parties and to respect parties’ autonomy and choice in the selection of arbitrators.⁹ Article 33 of the Amendment Law granted the power and authority to determine the admissibility and weight of the evidence presented by any party regarding a fact or expert opinion.¹⁰ This clearly represents the UAE’s recognition of the arbitration tribunal’s role in safeguarding the effectiveness, and fairness of the arbitration process and outcome.¹¹ This, in itself, demonstrates the UAE’s desire to ensure that its arbitration system is one of quality, efficiency, and most importantly, impartiality. Overall, the UAE’s changes

⁷ Yacine Francis, Arash Koozehkanani, & Kirsten O’Connell, *Middle East A&O Disputes Update: The UAE Revises Its Arbitration Law*, ALLEN & OVERY (Oct. 3, 2023), <https://www.allenoverly.com/en-gb/global/news-and-insights/publications/middle-east-ao-disputes-update-the-uae-revises-its-arbitration-law/>, [<https://perma.cc/QFX3-ULDL>].

⁸ Luka Kristovic-Blazevic & Taisiya Vorotilova, *United Arab Emirates: Amendments to the Federal Arbitration Law*, BAKER MCKENZIE (Oct. 17, 2023), <https://insightplus.bakermckenzie.com/bm/viewContent.action?key=Ec8teaJ9VarMeFR4%2FKX2t17eOOGbnAEFKLOR72fHz0%2BNbpi2jDfaB8lgiEyY1JAvAvaah9IF1sWg%2Fh4myq2Q%3D%3D&nav=FRbANEucS95NMLRN47z%2BeeOgEFCt8EGQ0qFfoEM4UR4%3D&emailtofriendview=true&freeviewlink=true> [<https://perma.cc/TQ3B-Z6NE>].

⁹ Hassan Arab, Rita Jaballah & Hend Al Mehairi, *Breaking: UAE Ushers in Changes to the Arbitration Law*, AL TAMIMI & Co. (Sept. 26, 2023), <https://www.tamimi.com/news/breaking-uae-ushers-in-changes-to-the-arbitration-law/> [<https://perma.cc/U48W-4EG2>].

¹⁰ *Id.*

¹¹ *Id.*

show its efforts in designing an arbitration system that is increasingly modern, flexible, and attractive for domestic and international parties. As a result of the changes involved, the Amendment Law has been understood by many to “bolster the global arbitration community by offering a modernized approach with greater procedural flexibility.”¹²

UAE’s Amendment Law not only foreshadows the country’s possible shift to fully virtual proceedings but demonstrates the country’s attempt to align its arbitration system with the International ADR system as a whole. The international arbitration system has dramatically conformed towards a modernized approach with the realization of the efficiency and effectiveness that modern technology offers.¹³ Before the pandemic, electronic submissions were common, but arbitration rules generally did not articulate a preference for electronic over hard-copy submissions.¹⁴ However, once the pandemic came about, international arbitral institutions quickly recognized the impact of the quarantine and lockdown orders on hard-copy filing requirements in that it essentially made it impossible to comply with. On March 13, 2020, International Centre for Settlement of Investment Disputes announced that it was “taking further steps to reduce reliance on paper-filings in its cases” and that it would require “only an electronic copy of a request for arbitration . . . and any accompanying documents.”¹⁵ Many other international arbitration forums began to follow suit.¹⁶

Like electronic document submissions, virtual hearings were also not too common pre-pandemic. However, once the international forums were made aware of the possibility of utilizing virtual platforms for the purpose of conducting arbitration hearings, they did not look

¹² *Id.*

¹³ *See* KRISTEN M. YOUNG ET AL., THE IMPACT OF COVID ON INTERNATIONAL DISPUTES 84–99 (Shaheez Lalani & Steven G. Shapiro, 2022).

¹⁴ *Id.* at 88.

¹⁵ *Id.* at 89.

¹⁶ *Id.* (ICC and LCIA began to institute policies demonstrating their preference for electronic submission of relevant documents).

back. Before the pandemic, a study reported that a majority of its respondents have never used virtual hearings in international arbitration.¹⁷ However, in May 2021, seventy-two percent of respondents reported having used virtual hearings.”¹⁸ These changes, although pose some issues such as “zoom fatigue” and cybersecurity risks, have truly helped strengthen the international arbitration system.¹⁹ As a result of its shift towards virtual hearings, a majority of major international arbitral institutions witnessed increased caseloads in 2020 and the number will continue to rise as more and more countries such as the UAE utilize this modernized technological approach.²⁰

¹⁷ 2021 *International Arbitration Survey: Adapting Arbitration To A Changing World*, Queen Mary University of London, WHITE & CASE LLP, http://www.arbitration.qmul.ac.uk/media/arbitration/docs/LON0320037-QMUL-International-Arbitration-Survey-2021_19_WEB.pdf [https://perma.cc/GTQ7-ZD66] (last visited October. 25, 2023).

¹⁸ *Id.*

¹⁹ YOUNG *supra* note 13, at 95–8.

²⁰ *Id.* at 98.