

With New Law, The UAE Looks To Make Itself An Arbitral Hub

By **Caroline Simson**

Law360 (March 20, 2018, 7:56 PM EDT) -- A long-awaited modern federal arbitration law set to be enacted in the United Arab Emirates is meant not only to attract international companies to do business in the country, but also to make the UAE a global hub for arbitration like Singapore, Hong Kong or London, experts say.

Practitioners have been calling for a more modern arbitration law in the country for years, and draft versions of the law have been circulating for at least a decade. But according to Baker McKenzie partner J.P. Duffy, the new law is about more than just assuaging concerns about the way international disputes are resolved in the country: It's about the UAE becoming an international hub for business and for arbitration.

"A huge part of international business is the ability to resolve disputes efficiently and in a modern fashion, so the UAE has taken a huge step forward," he said. "The UAE is saying, 'We're on the same footing now as every other modern economy that people turn to when they want to arbitrate.' ... That's really what they're trying to accomplish with this, so it's pretty huge."

The new law — which was approved by the UAE's Federal National Council in late February and now awaits ratification by the UAE Supreme Council and approval by UAE President Khalifa bin Zayed Al Nahyan — will repeal a 26-year-old law that currently governs arbitrations in the country. Although an official copy of the new law has not yet been promulgated, it is expected to introduce a number of "much-needed" changes to bring the UAE into line with international practice, according to Freshfields Bruckhaus Deringer LLP partner Sami Tannous.

The new law will regulate the conduct of arbitrations conducted in "onshore" UAE, meaning proceedings that are seated in the UAE proper, and the recognition and enforcement of awards there. It will not apply to offshore arbitrations seated in certain free zones in the country like the Dubai International Financial Centre, an independent jurisdiction within the UAE that operates under its own common-law based legal system and regulatory framework.

The new law will likely be based, at least in part, on the arbitration model law put forward by the United Nations Commission on International Trade Law, which is broadly considered to be the gold standard for modern arbitration law.

"Further, UAE lawmakers have emphasized that the new law simplifies the arbitration procedures, speeds up the resolution of disputes and preserves their confidentiality, acknowledging that efficiency and

discretion are important aspects of this form of dispute resolution, particularly in commercial cases," said Crowell & Moring LLP counsel Randa Adra.

Stakeholders have been pressing lawmakers in the country for a new federal arbitration law since at least 2006, when the UAE ratified the New York Convention, an international agreement that applies to the enforcement of foreign arbitral awards. And the UAE has for years been trying to diversify from a petroleum-based economy to become an international hub for business, according to Duffy.

But it wasn't until the financial crisis of 2008, which prompted companies in the UAE and other Persian Gulf countries to abandon a traditional aversion to formal dispute resolution, that adopting a more modern arbitration law in the UAE became a priority, according to Duffy.

"Once that genie's out of the bottle, you can't put it back in," he said. "There's been a groundswell shift in attitude among [Gulf Cooperation Council] companies."

Even so, efforts to put forward a modern arbitration law have remained in a holding pattern until now. Experts told Law360 that there hasn't been any specific incident that prompted the country's lawmakers to take action on the legislation now, other than the government's continuing commitment to economic development and its use of the arbitration law as a means of attracting investment.

But it could be that the country and the region as a whole have been facing an economic downturn, meaning companies and other investors are seeking more economical and efficient ways of resolving their disputes, according to Adra.

"The UAE's pressing desire to attract additional foreign investment is likely why the law, drafts of which have been in the works for over a decade, has finally been approved," she said.

Despite the legislative morass that surrounded efforts to modernize its arbitration law, the country is already one step ahead, since it is currently considered to be a regional hub for business and arbitration. Even though other surrounding nations already have preferable arbitration legislation in place, other concerns temper the willingness of international businesses to agree to arbitrate there, according to Tannous.

"Frankly, the other options in the Middle East are limited, whether due to concerns over government interference, or — even where there is an established arbitration framework such as in Egypt or Lebanon — concerns over stability," he said.

Meanwhile, Dubai is a politically stable and physically safe seat for arbitration, according to DWF LLP partner Gordon Blanke. Moreover, he added, Dubai offers a modern, state-of-the-art infrastructure that serves the conduct of arbitration proceedings there, including world-class hearing facilities, and is easily accessible by plane from anywhere in the world.

"Dubai also benefits from a tertiary service infrastructure in support of arbitration, including, in particular, a matured local and international arbitration-specialist community," he said.

Local arbitral institutions like the Dubai International Arbitration Centre and the Abu Dhabi Commercial Conciliation and Arbitration Centre already boast healthy caseloads, and the offshore arbitration regime in the Dubai International Financial Centre has fostered a growing caseload there as well, according to Tannous.

Those caseloads can be expected to continue to grow once the new law is in place.

"The UAE has established itself as the seat of choice in the Middle East, and its reputation has grown significantly in the 11 years I have been here," said Herbert Smith Freehills LLP partner Craig Shepherd. "It is now seen [as] a safe, sensible choice. The new law can only help."

--Editing by Katherine Rautenberg and Jill Coffey.

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