Arbitration Filing in the UAE Courts: Developments and Technology

March 21, 2021

The United Arab Emirates Arbitration Law (Federal Law No. 6 of 2018) came into effect in June of 2018 after being published in the Federal Official Gazette number 630 on the 15th of May, 2018. Since then, the UAE courts have been implementing internal processes – both administrative and technological – to comply with the Arbitration Law.

In October of 2018, the Dubai Courts website was updated to include an option/button titled (on the English version of the website): "Order on petition, arbitration". The option can be viewed in the Case Registration webpage. The term seems to be literally translated from (أمر على عريضة، تحكيم); the service is otherwise known generally as a petition/court petition.

The service is listed under the categories of services provided by the Dubai Court of Appeal. This reflects the practical application of Article 55 of the UAE Arbitration Law which states that:

A party looking to enforce an arbitral award shall submit a request for its confirmation and enforcement with the chief justice of the Court [of Appeal].

A court petition in the United Arab Emirates requires the competent judge to issue an order in a procedural sense without the parties having to go through a trial. In issuing such orders the judge acts in an administrative capacity as opposed to a judicial capacity; in Arabic, this capacity is known as "صفة ولائية".

The order issued is both that of confirmation and enforcement simultaneously. Enforcement measures would then be followed up with the Enforcement Judge to commence enforcement procedures.

A court petition is submitted when a party requires the court to issue an order and is – as a general matter – governed by Article 140 of the Civil Procedures Law requiring a party to submit a petition with a request directed to the authorized judge or the circuit director who examines the request/petition and must issue the order the next day.

Notwithstanding Article 140 of the Civil Procedures Law, Article 56(3) of the Arbitration Law provides the competent judge with a sixty-day limit to issue the order. The UAE judiciary differentiates between what is loosely translated as a procedural time-bar (مدة تنظيمية) and an obligatory time-bar (مـدة جزائيـة). The former can be extended, the latter cannot, which in this case poses the risk that the sixty-day limit could be extended.

To submit the court petition request through the Dubai Court web portal, the applicant must append the requisites outlined in Article 55 of the UAE Arbitration Law which are:

1. The original award or a certified copy thereof.
2. A copy of the Arbitration Agreement.
3. An Arabic translation of the arbitral award, attested by a competent authority, if the award is not issued in Arabic.
4. A copy of the minutes of deposit of the award in Court.

With respect to Article 55(4), in a practical sense, if the arbitrator was appointed by the court the minutes of deposit are obtained from the court but, as we understand, if the arbitrator was appointed by another competent body (e.g. Dubai International Arbitration Center), that body issues the respective minutes of deposit.

As a general matter, the Emirates of Dubai Courts, Abu Dhabi,

and Ras Al Khaimah have independent court systems. The remainder of the Emirates; Ajman, Fujairah, Sharjah and Umm Al Quwain, utilize the Federal Court systems.

The Abu Dhabi Courts have not yet (as of March 2019) updated their electronic systems to provide for direct submission of a petition order for confirmation of arbitral awards. The current electronic e-filing system necessitate that a primary court judgement be present in the system for the user to be able to lodge a request respective of that primary court judgement with the Appeals Court (the competent court for confirmation of arbitral awards).

Currently, the Abu Dhabi Courts require the party to submit the arbitral award manually to the case management office for it to be registered as a primary court judgement in the electronic system. Subsequently, the user can select the registered arbitral award in the electronic filing system (which would have been registered as a primary court judgement) to lodge with the Abu Dhabi Appeals Court for confirmation.

The Federal Courts have recently developed their electronic portal, but its activation is on-going. Until it becomes fully operational, parties must submit the petition order to confirm an arbitral award manually.

It is clear that he new Arbitration Law is being integrated operationally into the electronic court systems. In other words, the past obstacles of re-litigating the merits of a dispute albeit a final arbitral award has been issued are now foregone with the expediency of the various courts' online procedures and seamless process of confirming and enforcing arbitral awards.

Towards Digital Dispute Resolution

With the increase in technological advancement in arbitral proceedings and the court systems, it is not farfetched that

both arbitral and court proceedings would manifest into a completely digital process soon.

For example, the Dutch Foundation for Transport and Maritime Arbitration Rotterdam-Amsterdam (previously TAMARA, now named UNUM) developed e-arbitration facilities early in 2008 and continues to develop those facilities whilst developing rules on e-arbitration;

Provision 4.2 of the UNUM arbitration rules states that:

"Unless the parties explicitly agree otherwise, the arbitration will be settled via an online platform ("e-arbitration")."

Another example is the Russian Arbitration Association Online Rules issued on 1 October 2015 developed by the RRA which has created an online arbitration system for facilitating the resolution of commercial disputes through means of technology. The RAA administers online arbitrations under its own online arbitration rules of 2015.

On the same date on 1 October 2015, the China Guangzhou Arbitration Commission issued its first Online Arbitration Rules, which was the first set of arbitral rules in Mainland China with specific reference to how an arbitration can be run online.

Moreover, the UAE recently introduced legislation permitting e-trials.

Smart e-Trials were first introduced on 18 September 2017 when His Highness Sheikh Khalifa Bin Zayed Al Nahyan, President of the UAE, issued Federal Decree No. 10 of 2017 (the "e-Trial Law").

The e-Trial Law made amendments to the Civil Procedures Law issued by Federal Law No. 11 of 1992 (the "Law").

The e-Trial Law introduced in Title 6 in Book 3 of the Law

under the name of ‘Use of Remote Communication Technology in Civil Procedures’ Articles 332 to 343 addressing the new e-Trial system.

Article 332 defines the use of Remote Communication Technology in the Civil Procedures as “*the use of audiovisual communication means between two parties or more for the purpose of achieving remote appearance and exchange of documents, including the lawsuit registry, procedures of declaration, trial and execution carried out through this technology*”.

Article 334, regarding ‘Appearance and Trial Procedures’, states that “*All the provisions concerning the collection of fees, registry, declaration, submission of documents, appearance, publicity, pleading, hearing of witnesses, questioning, deliberation, issuance of judgments, submission of appeals and execution through the procedures thereof set forth under the present Law and its amendments shall be deemed valid if carried out totally or partially trough the Remote Communication Technology.*”

Additionally, on 27 March 2019, Ministerial Decisions 260 and 259 of 2019 were issued to regulate the e-trial procedures pursuant to e-Trial Law. Decision 260 regulates electronic proceedings in civil procedures, whilst 259 does so for criminal procedures. The Decisions regulate virtual attendance, digital sharing of files and pleadings, virtual hearings, appointment of experts via electronic communication, and digital judgements (with digital signature by the presiding judge or Head of the respective circuit).

Summary

1. The UAE courts are digitizing to the point where most (if not all) submissions pre-trial and during the course of the trial are electronic.
2. Arbitration procedures and centers are also developing

to e-arbitration capacities.

3. Advocacy can now be done via distance communication through e-trial facilities.

Looking at these developments hand-in-hand, the UAE judicial system is on par and in advancement of international judicial innovations, which in turn results in expediency in arbitration matters and procedures.

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