

**HABIB ALMULLA
AND PARTNERS**

A night-time photograph of the Dubai skyline, featuring several illuminated skyscrapers. The Burj Khalifa is the tallest building in the center. To its right is the Hotel Indigo, and to its left is a building with a large circular opening. The sky is a deep blue, and the city lights are reflected in the water in the foreground.

ARBITRATION IN THE UAE

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ARBITRATION AGREEMENTS

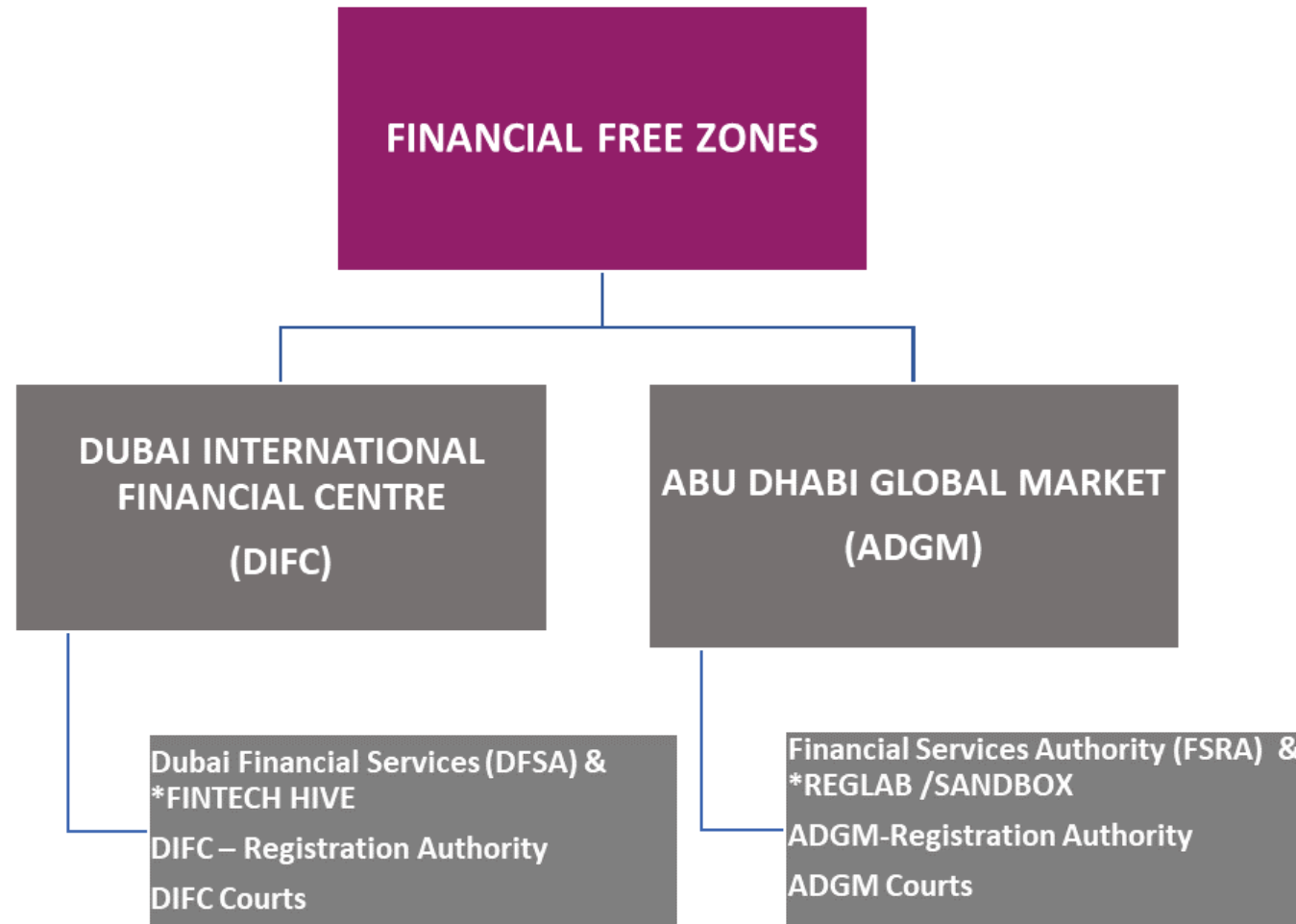
Typical arbitration clause:

“Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to [Center: ICAC or ICC or DIAC] and finally resolved by arbitration under [Center’s Rules]. The number of arbitrators shall be [three or one]. The seat of the arbitration shall be [Moscow, Dubai .. Etc.], and the language of the arbitration shall be in [Russian, English, Arabic ... etc.].

Importance of the Arbitral Seat:

- The “legal home” of arbitration or “juridical domicile”.
- Lex Arbitri (the procedural law of arbitration).
- Arbitral Seat and the place of the hearing.

ONSHORE VS OFFSHORE ARBITRATIONS



DIAC AMENDMENTS

- DIAC is uniquely placed as it operates under two separate legal systems.
- Implications of the recent changes to the DIAC rules.

UAE ARBITRATION LAW

- **Amendment to UAE Federal Arbitration Law (FAL) in 2018**
- **UAE largely based on the UNCITRAL Model with several modifications echoing CPC:**
 - Capacity to agree arbitration
 - Oath during witness and expert testifying
 - Video conference
 - Signing the award
 - Time limit for rendering Award
- **Applicability of UAE Arbitration Law**
 - Arbitrations seated in UAE, unless stated otherwise, *Article 2(1)*
 - Arbitrations seated outside UAE, agreeing to applicability of FAL, *Article 2(2)*
 - Disputes with legal, contractual or non-contractual relationship governed by UAE law, unless stated otherwise, *Article 2(3)*

VALIDITY, NON-ARBITRABILITY AND SEPARABILITY

Formal Validity

- The requirement that the arbitration agreement be in writing.

Substantive validity

- Defects in formation/impossible to perform (e.g. capacity)

Non-Arbitrability

- the subject-matter of the dispute is not capable of settlement by arbitration (examples in the UAE includes: rental disputes, some insurance disputes, mandatory provisions in the Company's law, certain real estate disputes... etc.)

The Doctrine of Separability or the “anatomy of the arbitration agreement”

- The independence of the arbitration agreement from the main contract.

MULTI-TIERED DISPUTE RESOLUTION CLAUSES AND DEFECTIVE ARBITRATION CLAUSES

- Champagne or midnight clause
- Forced Arbitration or Unequal
- Cooling off
- Multi-Tier Arbitration

“If a dispute of any kind whatsoever arises between the Contractor and the Settlement and subcontractor in connection with, or arising out of, the Subcontract or the Arbitration execution of the Subcontract Works, whether during the execution of the Subcontract Works or after their completion and whether before or after repudiation or other termination of the Subcontract, then the Contractor or the Subcontractor may give a notice of such dispute to the other party, in which case the parties shall attempt for the next fifty-six days to settle such dispute amicably before the commencement of arbitration. Such notice shall state that it is made pursuant to this Clause. Any dispute which has not been amicably settled within fifty-six days after the day on which such notice is given shall be finally settled under the Dubai International Arbitration Centre Rules by a single arbitrator appointed by the Main Contractor. The place of Arbitration shall be Dubai.”

Sub-Clause 20.3 - Failure to Agree Dispute Adjudication Board

Delete this Sub-Clause and replace with the following

Employer Representative's (the Engineer) Decision:
If a Dispute of any kind whatsoever arises between the Employer and the Contractor in connection with, or arising out of, the Contract or the execution of the Works, whether during the execution of the Works or after their completion and whether before or after repudiation or other termination of the Contract, including any Dispute as to any opinion, instruction, determination, certificate or valuation of the Employer Representative, the matter in Dispute shall, in the first place, be referred in writing to the Employer Representative, with a copy to the other party. Such reference shall state that it is made pursuant to this Clause. No later than the eighty-fourth day after the day on which he received such reference the Employer Representative shall give notice of his decision and of the reasons for his decision to the Employer and the Contractor. Such decision shall state that it is made pursuant to this Clause.

If either the Employer or the Contractor be dissatisfied with any decision of the Employer Representative or with the reasons given for his decision by the Employer Representative, or if the Employer Representative fails to give notice of his decision or of the reasons for his decision on or before the eighty-fourth day after the day on which he received the reference, then either the Employer or the Contractor may, on or before the seventieth day after the day on which he received notice of such decision, or on or before the seventieth day after the day on which the said period of 84 days expired, as the case may be, give notice to other party, with a copy for information to the Employer Representative, of his intention to commence litigation, as hereinafter provided as to the matter in Dispute. Such notice shall establish the entitlement of the party giving the same to commence litigation, as hereinafter provided, as to such Dispute and, subject to Sub-Clause 20.3 (d), no legal proceedings in respect thereof may be commenced unless such notice is given.

If the Employer Representative has given notice of his decision and of the reasons for his decision as to a matter in Dispute to

Sub-Clause 20.5 - Amicable Settlement

Replace this Sub-Clause with:

“It shall be a pre-condition to a Party referring a dispute to arbitration under Sub-Clause 20.6 [Arbitration] that the Parties must attempt to settle the dispute amicably. The referring Party must issue a notice to the responding Party: (i) stating that a dispute, in the opinion of the referring Party, exists, (ii) setting out the broad details of the dispute, including a summary of the factual and legal grounds on which the referring Party intends to rely and (iii) requesting the other Party to attempt amicable settlement. Amicable settlement shall include (but not be limited to) a meeting between a board level director of each party without legal representatives being present to try to resolve the dispute in good faith.”

MULTI-TIERED DISPUTE RESOLUTION CLAUSES AND DEFECTIVE ARBITRATION CLAUSES

- Champagne or midnight clause
 - Lack of intention to arbitrate
- Forced Arbitration or Unequal
- Cooling off
- Multi-Tier Arbitration

“[Parties undertake] to have the dispute submitted to binding arbitration through The American Arbitration Association [hereafter: AAA] or to any other US court. (...) The arbitration shall be conducted based upon the Rules and Regulations of the International Chamber of Commerce”

[Dubai Court of Cassation No. 209/2021 \(dated 21 April 2021\).](#)

[Dubai Court of Cassation No. 1112/2018 \(Commercial\)](#)

“In the case of dispute (contestation), the parties undertake to submit to arbitration but in the case of litigation the Tribunal de la Seine shall have exclusive jurisdiction”

JURISDICTIONAL CHALLENGES

Jurisdictional challenges can be made in relation to:

- A party.
- The Arbitration Agreement.
- The Claim.

Arbitration is the exceptional route; unequivocal consent is required.

- Incorporation by reference.
- Group of contracts.

INDEPENDENCE AND IMPARTIALITY

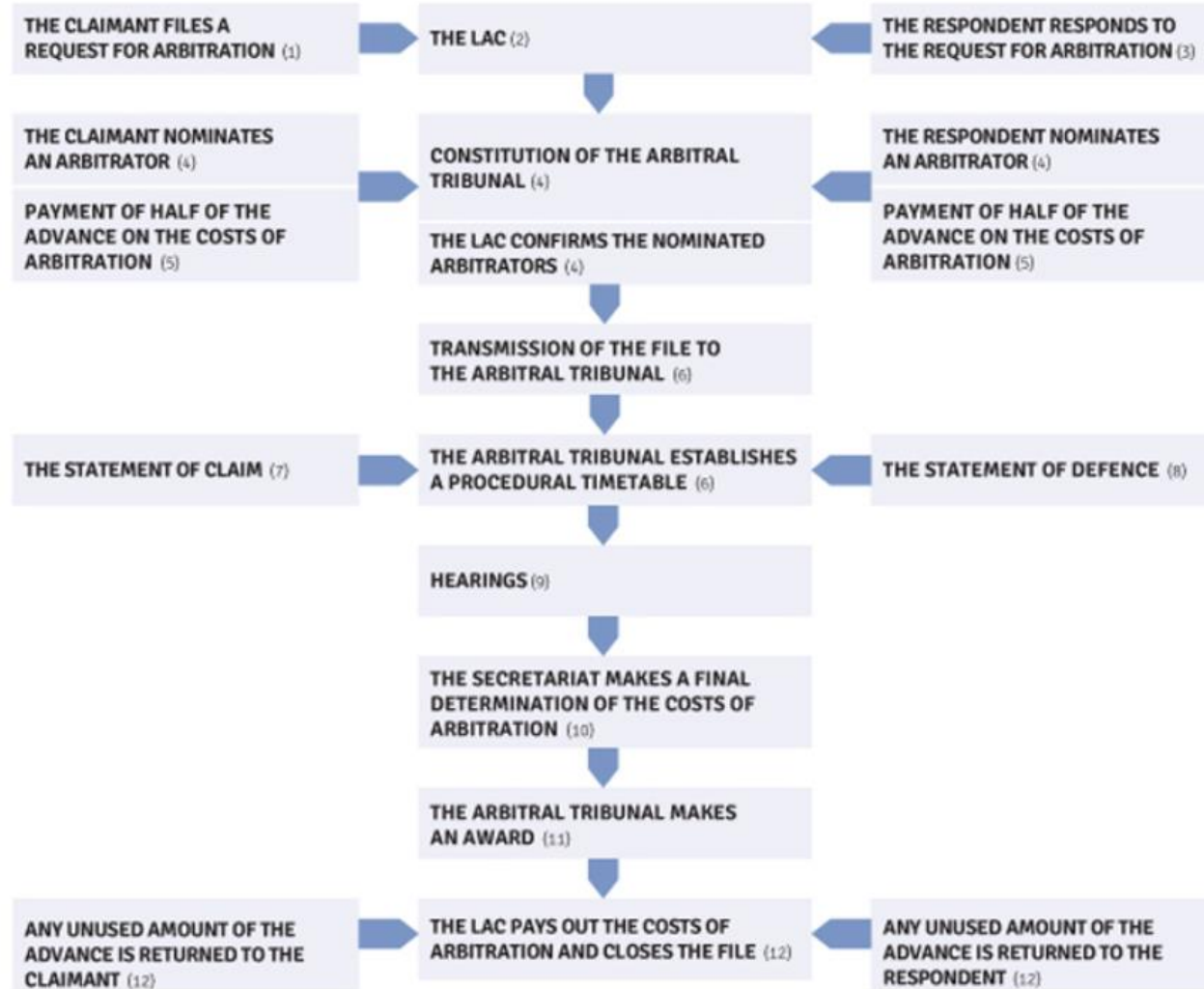
- **Appointment**
 - Number
 - Nationality
 - Nomination and Appointment
- **Impartiality, Independence and availability**
 - Challenge to arbitrators and removal - IBA Guidelines
- **Revocation of appointment and Replacement of Arbitrators**

NON-REGULAR & COMPLEX ARBITRATIONS IN UAE

Rules	Dubai International Arbitration Centre (“DIAC”) Rules 2022	International Chamber of Commerce (“ICC”) Rules 2021
Centre Location	Dubai	Paris
Expedited Procedure	<p>Article 32 Expedited procedure is available: (i) if the aggregate amount in dispute does not exceed AED 1 million (excluding interest and costs of representation) or such other sum determined by the DIAC Board; (ii) if the parties agree in writing; or (iii) in cases of exceptional urgency as determined by the DIAC Arbitration Court upon a party’s application. The DIAC Arbitration Court must also consider the expedited proceedings to be appropriate based on the circumstances.</p>	<p>Article 30 and Appendix VI Expedited procedure rules may apply if: (i) the parties so agree; or (ii) the amount in dispute does not exceed US\$ 2 million (if the arbitration agreement was concluded on or after 1 March 2017 and before 1 January 2021) or US\$ 3 million (if the arbitration agreement was concluded on or after 1 January 2021). The expedited procedure rules shall not apply if: (i) the parties have agreed to opt out; (ii) the ICC Court determines that the procedure is inappropriate to apply</p>
Joinder	<p>Article 9 1. Prior to the appointment of any arbitrator(s) in the arbitration in which the application for joinder is made, the Arbitration Court may, upon an application by a party, whether or not such party is a party to the arbitration, and after having invited all parties and any proposed additional party to comment, allow one or more additional parties to be joined in the arbitration as Claimant(s) or Respondent(s) provided that: (a) all parties (inclusive of any party to be joined and whether or not such party is a party to the agreement to arbitrate referred to in the Request) have consented in writing to the joinder; or (b) it is prima facie satisfied that any such party to be joined may be a party to the agreement to arbitrate referred to in the Request. Joinder decision without prejudice to decision of jurisdiction over the additional party.</p>	<p>Article 7 “Any Request for Joinder made after the confirmation or appointment of any arbitrator shall be decided by the arbitral tribunal once constituted and shall be subject to the additional party having accepted the constitution of the arbitral tribunal and agreeing to the Terms of Reference, where applicable.” Joinder possible after consideration whether the arbitral tribunal has prima facie jurisdiction over the additional party, the timing of the Request for Joinder, possible conflicts of interests and the impact of the joinder on the arbitral procedure. Joinder decision without prejudice to decision of jurisdiction over the additional party.</p>
Consolidation	<p>Article 8 Upon an application by a party and after having invited all parties to comment, allow the consolidation into a single arbitration of two or more arbitrations, where all parties agree to such consolidation or it is satisfied on a prima facie basis that: (a) all claims in the arbitrations are made under the same agreement to arbitrate; or (b) the arbitrations involve the same parties, the agreements to arbitrate are compatible, and: (i) the disputes arise out of the same legal relationship(s); or (ii) the underlying contracts consist of a principal contract and its ancillary contract(s); or (iii) the claims arise out of the same transaction or series of related transactions.</p>	<p>Article 10 All parties agree – Article 10 (a); The parties in the arbitrations are not the same but have all signed the same arbitration agreement or arbitration agreements – Article 10 (b); The parties in the arbitrations are the same, the disputes in the arbitrations arise from the same legal relationship and the ICC Court finds the multiple arbitration agreements under which the claims are made to be compatible – Article 10 (c).</p>

COMMENCEMENT OF ARBITRAL PORCEEDINGS

Ljubljana Arbitration Rules – Slovenia



EVIDENCE AND DISCLOSURE

- Experts and Fact witnesses
 - Written
 - Testifying
 - Oath
 - Cross-examination
- Evidence Collection and Disclosure
 - Process – Procedural Order until completion; last stage of evidence (Fact and legal)
 - Redfern Schedule
 - IBA Taking of Evidence
 - Corruption etc
- Cost implications and Third-Party Funding Considerations

INTERIM MEASURES

- **Interim remedies in the UAE courts in support of arbitration**
 - Security for Costs
 - Precautionary attachment orders
 - Preservation of goods and evidence
 - Travel bans
- **Interim remedies in the DIFC courts and enforcement**
- **Interim remedies and Emergency Arbitration under institutional rules**

REMEDIES FROM TRIBUNAL

- **Damages; Specific Performance; Declaration**
- **Costs**
 - Administrative costs and expenses and
 - Legal fees
- **Interest rates**
 - UAE law vs Dubai Court of Cassation

PECULARITIES OF ARBITRAL PROCEEDINGS IN UAE

- Power of Attorney.
- Signing of the award.
- Oath taking.

SETTING ASIDE OF ARBITRAL AWARDS (ONSHORE)

Article 53 of UAE Arbitration Law sets out the grounds on which an award can be set aside, which are that:

- no arbitration agreement exists, or it is void or has become void under the law chosen by the parties;
- either party was incompetent or lacked capacity to execute the arbitration agreement;
- an individual does not have the legal capacity to dispose of the disputed right under the law governing his or her capacity;
- a party was deprived of the right to present its case because it did not receive proper notice of the appointment of an arbitrator or of the arbitration, the tribunal breached the party's right to due process or for any other reason beyond the party's control;
- the award does not apply the designated law;
- the appointment of the arbitrators and establishment of the tribunal were not in accordance with the Federal Arbitration Law or the parties' agreement;
- the proceedings were marred by irregularities that affected the award or the award was not issued within the specified time; or
- the award decided matters not falling within the parties' agreement or exceed their scope. - When (1) the subject matter of the dispute cannot be submitted to arbitration or (2) the award offends public policy or the morals of the state.

SETTING ASIDE OF ARBITRAL AWARDS (OFFSHORE)

- **As for offshore jurisdictions, the DIFC Arbitration Law (Article 41) and the ADGM Arbitration Regulations (Article 53) state that a set-aside application is the only available recourse and provide the grounds for which set-aside is warranted, which are that:**
 - a party to the arbitration agreement lacked capacity;
 - the arbitration agreement is not valid under the applicable law;
 - the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the proceedings or was otherwise unable to present its case;
 - the award decides on matters not falling within the terms of reference or exceed their scope but, if those matters can be separated from those on which the tribunal had the authority to rule, only the portion of the award addressing issues on matters not submitted to arbitration may be set aside; and
 - the composition of the tribunal or the procedure was not in accordance with the parties' agreement or, absent such an agreement, with the applicable law.

ENFORCEMENTS OF ARBITRAL AWARDS

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“The New York Convention”).

Enforcement of Judgements issues by the English Courts in the UAE: implications for the enforcement of foreign arbitral awards:

- A recent important development concerns the directive issued by the UAE Ministry on 13 September 2022, confirming that judgements issues by English Courts can be enforced by the UAE Courts under the principle of reciprocity.
- As an alternative route to enforcing London-seated arbitral awards under the New York convention, the parties may now seek enforcement before English courts, and then seek enforcement of the English Court judgement (exequatur) in the UAE (pursuant to the conditions set forth by Cabinet Decision No. 57/2018 governing the enforcement of foreign judgments in the UAE).

UAE AND RUSSIAN DISPUTES

- Drawing comparative analysis between UAE and Russia of adjudication of disputes through arbitration

Q&As

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