Recently, it was announced that a new draft arbitration law has been submitted to His Highness Sheikh Khalifa bin Zayed bin Sultan Al Nahyan for his approval and that the law is likely to come into effect before the end of 2017. The draft law is said to be based on the UNCITRAL Model Law – which no doubt will be welcome news for many. The current United Arab Emirates ("UAE") ‘arbitration law’ is enshrined in Articles 203-218 of Federal Law No. 11/1992, as amended (the “UAE Civil Procedure Code”).

Interestingly, the UAE acceded to the New York Convention in 2006 and, since then, has attempted to enact an arbitration law on two occasions; first in 2008 ("2008 Draft") and later in 2014 ("2014 Draft"). When the Ministry of Economy and Justice released the 2008 Draft, it is fair to say that it received mixed reviews. The 2008 Draft appeared to be pro-arbitration. For example, the Court of Appeal was given exclusive jurisdiction to hear requests for interim measures and was to consider such requests only if no other institution could act in this manner. At the same time, the 2008 Draft had retained some provisions of the UAE Civil Procedure Code. For reasons unknown, the 2008 Draft was never enacted.

Similarly, the 2014 Draft - although modelled on the UNCITRAL Model Law - retained a number of provisions of the UAE Civil Procedure Code which raised legitimate questions as to whether it genuinely offered any significant improvement over the existing laws. In particular, the 2014 Draft provided that a signatory to an arbitration agreement must have the requisite ‘capacity to dispose of his rights’. This mirrored the almost identical wording of Article 203 (4) of the UAE Civil Procedure Code. Unfortunately, the draft law did not provide any clarity on the authorisation required to enter into an arbitration agreement on behalf of a third party. It is not uncommon for respondents to raise a 'no authority' objection in arbitration proceedings and/ or during enforcement proceedings and the courts frequently uphold and recognise such objections resulting in the annulment of numerous final awards.
Another common challenge raised by respondents in enforcement proceedings – typically as means to avoid the financial consequences of an adverse award - is that the award was not issued within six (6) months. The 2014 Draft provided a long-stop date of eighteen (18) months for a tribunal to issue its award and stated that if an award was issued after this date without the parties’ agreement it may be annulled. This extended the six (6) month timeframe for the issuance of a final award set out in Article 210 of the UAE Civil Procedure Code. The 2014 Draft made a fair attempt to extend the timeframe with the aim to reduce challenges of this type. However, some commentators felt that an absolute time limit of eighteen (18) months within which the tribunal must issue an award is unrealistic. Some commercial disputes – particularly in the engineering and construction sectors – may require the tribunal to address many complex and high-value issues which, in turn, may require detailed consideration of extensive evidence and witness testimony, similarly, an 18-month long-stop period could potentially play into the hands of uncooperative respondents that might seek to disrupt the arbitral process.

The challenge faced by those involved with preparing the previous draft arbitration laws was to achieve a balance between the provisions of the UAE Civil Procedure Code and the need to achieve a set of rules that were consistent with internationally-accepted arbitration principles and standards. It will be interesting to see whether the new arbitration law has achieved this balance. If so, this could be an important step forward for the UAE in its efforts to demonstrate its commitment to becoming a modern international arbitration centre. In that quest, the UAE may be able to take some comfort from the experience of neighbouring countries, such as Bahrain, who adopted the UNCITRAL Model Law with minimal modifications.

Whilst there is optimism surrounding the new draft arbitration law, it remains to be seen if the new arbitration law will fare a better outcome than its predecessors. There are many people that believe that a consolidated arbitration law would be extremely helpful in encouraging international business and would further boost the UAE as an arbitration hub of the region.

June 2017

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