

Rise in Arbitration

The UAE has rapidly emerged as a leading financial centre, attracting large global investors and businesses, and as international developers and contractors continue to invest in construction projects, there has been an increasing trend in the use of arbitration in Dubai. The arbitration process is the preferred method to resolve disputes by commercial companies as; the certified language of arbitration proceedings is in English, a specialist tribunal can be appointed as opposed to the broader UAE courts, and arbitration is generally more cost effective and less time consuming. This has led businesses and investors in the UAE to ensure that arbitration clauses or arbitration agreements are inserted into their contracts. Furthermore, the downturn in economic conditions in the real estate market over the last few years has led to an increase in disputes in general, and parties are more likely to issue court proceedings than to try to recover their losses through other ventures.

1. Arbitration Clause

Arbitration proceedings in the UAE are governed by Articles 203 to 218 of Federal Law No. 11 of 1992 as amended (the Law of Civil Procedure or the Civil Procedure Code ('CPC')).

Federal Law No. 11 of 1992, the UAE Civil Procedure Code is the main statute governing arbitration in the UAE, Article 203 provides that:

1. The parties to a contract may state in the contract or by a supplemental agreement that any dispute arising between them in respect of the performance of a particular contract shall be referred to one or more arbitrators and may also agree to refer certain disputes to arbitration under special conditions.

2. No agreement for arbitration shall be valid unless evidenced in writing.

3. The subject of the dispute shall be specified in the Terms of Reference, or during the hearing of the case, even if the arbitrators were authorized to act as amiable compositors, otherwise the arbitration shall be void.

4. Arbitration is not allowed in matters which are incapable of being reconciled. An arbitration agreement can only be made by the parties who are legally entitled to dispose of the disputed right.

5. If the parties to a dispute agree to refer the dispute to arbitration, no court case may be filed before the courts. However, if one of the parties files a case, irrespective of the arbitration provision, and the other party does not object to such filing at the first hearing, the case may be considered, and in such instance the arbitration provision shall be deemed cancelled.

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 New York

The UAE joined the New York Convention in 2006, this provided great support to arbitration within the UAE, because joining the Convention makes the implementation of the International Arbitration Awards easier in the UAE. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 New York Convention states that:

Article 11.1:

Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not...

Article 11.3: the court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this Article, shall at the request of one party, refer the parties to arbitration.

Arbitration Law DIFC Law No. 1 of 2008

The DIFC is a separate jurisdiction under the UAE Constitution and has its own independent, common law jurisdiction over all civil and commercial disputes within the DIFC financial district. DIFC Law No. 1 of 2008 states that:

Article 12(1) – Definition and Form of Arbitration Agreement

....an agreement by the parties to submit to Arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

Article 13(1)

If an action is brought before the DIFC Court in a matter which is the subject of an Arbitration Agreement, the DIFC Court shall, if a party so requests...dismiss or stay such action.