

THE INTERNATIONAL
ARBITRATION
REVIEW

TWELFTH EDITION

Editor
James H Carter

THE LAWREVIEWS

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PREFACE

International arbitration is a fast-moving express train, with new awards and court decisions of significance somewhere in the world rushing past every week. Legislatures, too, constantly tinker with or entirely revamp arbitration statutes in one jurisdiction or another.

The international arbitration community has created a number of electronic and other publications that follow these developments regularly, requiring many more hours of reading from lawyers than was the case a few years ago.

Scholarly arbitration literature follows behind, at a more leisurely pace. However, there is a niche to be filled by an analytical review of what has occurred in each of the important arbitration jurisdictions during the past year, capturing recent developments but putting them in the context of the jurisdiction's legal arbitration structure and selecting the most important matters for comment. This volume, to which leading arbitration practitioners around the world have made valuable contributions, seeks to fill that space.

The arbitration world often debates whether relevant distinctions should be drawn between general international commercial arbitration and international investment arbitration, the procedures and subjects of which are similar but not identical. This volume seeks to provide current information on both of these precincts of international arbitration, treating important investor–state dispute developments in each jurisdiction as a separate but closely related topic.

I thank all of the contributors for their fine work in compiling this volume.

James H Carter

Wilmer Cutler Pickering Hale and Dorr LLP

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UNITED ARAB EMIRATES

Matthew Page, John Smy and Alexander Wagg¹

I INTRODUCTION

i The legal system

The United Arab Emirates (UAE) is a federation made up of seven emirates, founded on 2 December 1971. The legal system of the UAE is comprised of the federal judicial system, separate rules and laws applicable to particular emirates within the UAE, and those applicable to certain of the free zones established in the UAE.

Each emirate is bound by federal law but is also allowed under the federation to establish its own legislature and judiciary, although federal law retains primacy. Of the seven emirates, Abu Dhabi, Dubai and Ras Al Khaimah have their own laws and judicial systems.

In Abu Dhabi and Dubai respectively, the Abu Dhabi Global Market (ADGM) and the Dubai International Financial Centre (DIFC) are offshore 'islands' with their own separate courts and laws based on common law.

ii UAE Arbitration Law

Agreements to arbitrate contractual and tortious disputes seated onshore in the UAE, outside of the ADGM and DIFC, are governed by Federal Law No. 6 of 2018 concerning arbitration (the UAE Arbitration Law).

The UAE Arbitration Law was long awaited and is based on the UNCITRAL Model Law, entering into force in June 2018. Article 26 of the UAE Arbitration Law mirrors the principle of equality between the parties within the UNCITRAL Model Law and provides that the parties shall be treated with equality and given adequate and sufficient opportunity for submission of their claims and defences.

Under the UAE Arbitration Law, agreements to arbitrate must be evidenced in writing, and while the Law provides that the agreement can be incorporated by reference and made through correspondence, including emails (Article 7), in a break from the UNCITRAL Model Law the person entering into an agreement to arbitrate must have either capacity or authority to do so (Article 4).

The UAE courts must dismiss an action commenced in respect of a dispute where a valid agreement to arbitrate exists if the respondent raises the existence of an arbitration agreement 'before making any other motions or plea on the subject matter of the action' (Article 8).

Not all provisions of the UAE Arbitration Law are mandatory, with many providing scope for the parties to agree otherwise. One such example is that found in the UAE

¹ Matthew Page and John Smy are partners, and Alexander Wagg is an associate at Hedef & Partners LLC.

Arbitration Law in respect of the date of commencement of the arbitration. Article 27 provides that ‘Unless otherwise agreed by the parties to Arbitration, the Arbitral Proceedings shall commence from the day following the formation of the Arbitral Tribunal’. This article represents a departure from the UNCITRAL Model Law that provides that proceedings commence from the date that the respondent receives the Request for Arbitration.

iii Arbitration seated in UAE free zones

Free zones in the UAE conduct special purpose business in geographic areas under an amendment to the UAE Constitution allowing for their creation. There are two major free zones within the UAE that have their own system of laws and courts, the DIFC and the ADGM.

Dubai International Financial Centre

The Dubai International Financial Centre (DIFC) is one of many economic free zones established across the UAE by Federal Law 35/2004 and Dubai Law 9/2004.

Federal Law 8/2004 exempts the DIFC from commercial and civil federal jurisdiction and regulations. The DIFC courts do not, however, have jurisdiction over criminal, administrative and money laundering laws. Dubai Law 12/2004 established the DIFC judicial authority and the DIFC court system which includes the Court of First Instance and Court of Appeal. DIFC Arbitration Law No. 1 of 2008 applies to arbitrations seated in the DIFC.

ADGM

The ADGM is a free zone established in 2015 in Abu Dhabi with another set of common law-based laws and courts including a Court of First Instance and a Court of Appeal. The ADGM Application of English Law Regulations 2015 dictate that ‘The common law of England (including the principles and rules of equity), as it stands from time to time, shall apply and have legal force in, and form part of the law of, the Abu Dhabi Global Market’, ‘so far as it is applicable to the circumstances of the Abu Dhabi Global Market’ and ‘subject to such modifications as those circumstances require’.

The ADGM Arbitration Regulations 2015 (the ADGM Arbitration Law), which are based on the UNCITRAL Model Law, apply to ‘arbitrations where the seat of the arbitration is the Abu Dhabi Global Market, or where an arbitration agreement applies these Regulations’.

iv UAE arbitral institutions

Dubai International Arbitration Centre

The Dubai International Arbitration Centre (DIAC) was established in Dubai by the Dubai Chamber of Commerce and Industry in 1994 and continues today to be one of the busiest arbitral institutions in the UAE.

Abu Dhabi Commercial, Conciliation and Arbitration Centre

The Abu Dhabi Commercial, Conciliation and Arbitration Centre (ADCCAC) was established in 1993.

DIFC-LCIA Arbitration Centre

The DIFC-LCIA Arbitration Centre was established in 2008 as a joint venture between the London Court of International Arbitration (LCIA) and DIFC to set up an arbitral institution.

ADGM Arbitration Centre

The ADGM Arbitration Centre was launched in October 2018. The ADGM Arbitration Centre is not an arbitral institution, rather it is a neutral facility targeted at conducting hearings for both mediations and arbitrations. The Centre can be used to conduct hearings for arbitrations seated in the ADGM as well as any other arbitrations.

It was evident that there were plans for the International Chamber of Commerce (ICC) to open a representative office within the ADGM Arbitration Centre since its launch, and in December 2020 the ICC Court Secretariat announced that it is set to open its fifth international case management office at the ADGM Arbitration Centre.

Other arbitral institutions

Other institutions worthy of note include the Emirates Maritime Arbitration Centre and Sharjah International Commercial Arbitration Centre (Tahkeem).

v Enforcement

The UAE acceded to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) on 19 November 2006.

The UAE is also a signatory to the multilateral treaty known as the 1996 Agreement on Enforcement of Court Judgements, Delegations and Judicial Notices in the GCC States, in relation to the enforcement of arbitration awards between Gulf Cooperation Council (GCC) states. Additionally, the UAE is a party to the Riyadh Convention. There are bilateral treaties entered into by the UAE for enforcement of judgments internationally in France, India, China, Kazakhstan, Pakistan, Armenia, Azerbaijan, Afghanistan, Nigeria and Tadjikistan.

The DIFC and ADGM also benefit from further bilateral memorandums of guidance for reciprocal recognition of judgments with countries such as England and Wales, Australia, New Zealand, Hong Kong and Singapore.

II THE YEAR IN REVIEW

i Developments affecting international arbitration

Covid-19

The outbreak of covid-19 at the start of 2020 caused an unprecedented change in the way both the legal profession and its clients have had to work and adapt.

The Dubai courts immediately postponed civil and commercial hearings at all court levels and thereafter moved quickly to holding remote hearings. The Abu Dhabi courts proceeded immediately to remote hearings.

The DIFC-LCIA instituted remote working, encouraged users to file requests for arbitration by email and using its online filing system, and encouraged parties to adopt remote hearings by video or phone. DIAC closed its offices and instituted remote working, also encouraging users to register claims using its online portal, to make payments by bank transfer and to hold hearings remotely.

Internationally, the ICC issued guidance in April 2020 covering possible measures to mitigate the effects of covid-19 on ICC arbitrations. The guidance encourages parties and the arbitral tribunal to not materially delay proceedings as a result of covid-19 and encourages parties to make use of technology for pleadings and hearings.

In the construction sector, the International Federation of Consulting Engineers (FIDIC) released guidance on the interpretation of FIDIC standard form contracts in light of possible impacts of covid-19.

English courts recognise Dubai judgment

Notably, in *Lenkor Energy Trading DMCC v. Puri* [2020] EWHC 75 (QB) the England and Wales High Court granted summary judgment for the claimant in which it recognised a judgment of the Dubai Court of First Instance.

The original dispute, which was referred to an England and Wales seated arbitration involved two dishonoured cheques that had been signed by the sole shareholder and managing director of a Dubai Multi Commodities Centre (DMCC) incorporated entity, drawn in favour of the claimant in a tripartite agreement for the onward sale of gasoil by the DMCC company. The award granted the claimant only part of the total payment that it should have received on the basis of illegality of the contract because of the gasoil being sourced from Iran.

In Dubai, the claimant attempted to encash the cheques. The cheques were not honoured because of insufficient funds and the defendant was sentenced to three years' imprisonment in criminal proceedings, and in civil proceedings the Dubai Court of Appeal ordered that the defendant pay to the claimant not the full face value of the two cheques but instead the sum that had been received by the defendant as part payment from the ultimate buyer.

The England and Wales High Court granted the claimant's application for summary judgment for recognition of the Dubai court judgment with interest, notwithstanding arguments advanced by the defendant concerning illegality, impermissible piercing of the corporate veil and penalty.

In June 2020, the England and Wales High Court dismissed an appeal by the defendant in *Lenkor Energy Trading DMCC v. Puri* [2020] EWHC 1432 (QB) and enforced the Dubai court judgment as a foreign judgment in relation to a foreign statutory cause of action.

As a result of this case, it remains to be seen whether the Dubai courts may be more willing to enforce judgments of the courts of England and Wales.

First-ever anti-suit injunction granted by DIFC courts

In November 2020, in *Multiplex Constructions LLC v. Elemec Electromechanical Contracting LLC*, the DIFC courts for the first time ever granted an application for an anti-suit injunction restraining a party from pursuing litigation in onshore Dubai courts and to discontinue those proceedings in recognition of an agreement to resolve disputes by way of a DIFC seated arbitration under DIFC-LCIA rules.

Multiplex and Elemec were engaged in a dispute involving a construction subcontract. As can be common in the UAE for any party hoping to avoid, hinder or delay the appropriate determination of a dispute by arbitration, Elemec commenced proceedings in the onshore Dubai courts. Multiplex commenced a DIFC-LCIA arbitration and applied to the DIFC courts for an injunction preventing Elemec from pursuing a remedy in the onshore Dubai courts. Multiplex had participated in the proceedings in the onshore Dubai courts.

The decision clarifies that the DIFC courts will protect agreements to arbitrate intended to be seated within their jurisdiction on the basis that awards issued by DIFC seated arbitral

tribunals are intended for ultimate enforcement by the DIFC courts. Any breach of the injunction can result in fines and imprisonment for the breaching party and the onshore Dubai courts are obliged to recognise the order of the DIFC courts without any review of its merits.

Previously, the DIFC courts have granted anti-suit injunctions against the pursuit of proceedings outside of the UAE. In ARB 010/2016 *Hayri International Llc v. (1) Hazim Telecom Private Limited (2) Hazim Telecom Limited*, the claimant obtained an anti-suit injunction preventing the defendants from progressing proceedings commenced by the defendants in the courts of Pakistan in which the defendants sought an anti-suit injunction and a declaration that an arbitration clause was null and void. In the Ruling of Sir Justice Jeremy Cooke issued on 25 February 2017 in this case, the DIFC court held that there was evidence of an arbitration agreement with a seat in either DIFC or Dubai and granted an order preventing the defendants from pursuit of the Pakistani proceedings or any other proceedings relating to the dispute in any court, tribunal or other dispute resolution forum other than the DIFC courts.

The recent decision of the DIFC courts in *Multiplex Constructions LLC v. Elemec Electromechanical Contracting LLC* follows a United Kingdom Supreme Court judgment delivered in October 2020 in *Enka Insaat Ve Sanayi AS v. OOO Insurance Company Chubb* [2020] UKSC 38 in which the Supreme Court upheld the England and Wales Court of Appeal decision to grant an anti-suit injunction restraining proceedings that had been commenced in Russia, contrary to an agreement to arbitrate disputes seated in England and Wales.

English courts grant anti-suit injunction against Sharjah proceedings

In November 2020, the England and Wales High Court granted an anti-suit injunction restraining a party from pursuing proceedings in the Sharjah courts that had been commenced in order to preserve a precautionary attachment granted by the Sharjah courts over assets, contrary to an arbitration agreement.

In *SRS Middle East FZE v. Chemie Tech DMCC (Rev 1)* [2020] EWHC 2904 (Comm), the applicant sought an anti-suit injunction restraining the respondent from pursuing proceedings in Sharjah courts in contravention of an agreement to settle disputes by ICC arbitration.

In his judgment, Justice Andrew Baker, without having knowledge of the consequences of such an order in Sharjah, stopped short of ordering an active discontinuance of the Sharjah proceedings. However, in a move of significant importance, Justice Baker did grant both the interim anti-suit injunction restraining the defendant from pursuing the Sharjah proceedings further and also required the defendant to consent to the claimant's application in the Sharjah proceedings under Article 8 of the UAE Arbitration Law that the Sharjah courts dismiss the proceedings.

UAE court pierces the corporate veil

In December 2020, in Cases Nos. 666, 676 and 682/2020 UAE Supreme Court Commercial Cassation, the Court ruled that a foreign parent company and its non-UAE based foreign subsidiaries were jointly liable for the satisfaction of a judgment issued by the UAE courts against a UAE-based, albeit unincorporated subsidiary.

The UAE Supreme Court held that the foreign parent company and its non-UAE based foreign subsidiaries were jointly liable alongside the UAE incorporated subsidiary on the basis of the previous law applicable to commercial companies in the UAE and not under

the current law. Under the previous law applicable to commercial companies in the UAE, a foreign company that does not obtain a licence from the UAE Ministry of Economy is not considered an independent entity from the parent company.

The current law applicable to commercial companies in the UAE contains similar provisions providing that individuals will be personally and jointly liable for contracts concluded in the name of a company where that company is subsequently found to be improperly incorporated.

ADGM – Abu Dhabi Law No. 12 of 2020

The ADGM can no longer be used as a ‘conduit’ jurisdiction for enforcement of an award. Abu Dhabi Law No. 12 of 2020 amended Article 13 of Law No. 4 of 2013 to allow for the courts of the ADGM as an ‘opt-in’ jurisdiction whereby parties to a dispute, either before or after the dispute has arisen, can agree to have the dispute heard by the courts of the ADGM. Pursuant to the amended Article 13, it is confirmed that the ADGM courts cannot be used as a ‘conduit’ jurisdiction for enforcement of ‘a judgment or order issued by a court outside the Emirate’, or ‘any arbitral award rendered by a tribunal where the seat is outside the Global Market’.

DIFC-LCIA Arbitration Rules 2021

The new updated DIFC-LCIA Arbitration Rules were adopted on 1 January 2021 and apply to any DIFC-LCIA arbitration commenced from that date. The 2021 Rules replace the 2016 DIFC-LCIA Arbitration Rules and mirror the newly enacted LCIA Rules of Arbitration, which came into effect on 1 October 2020.

While the 2016 Rules contained a number of provisions to promote efficiency, the 2021 Rules have taken this a step further by crystallising and enhancing the arbitral tribunal’s case management powers, including ‘to make any procedural order’ that the arbitral tribunal considers appropriate ‘with regard to the fair, efficient and expeditious conduct of the arbitration’. Notably, the new enhancements include that the arbitral tribunal is given specific powers to issue an order or award for ‘early determination’ (i.e., the summary dismissal of any claim or defence that is ‘manifestly without merit’, or inadmissible, or ‘manifestly outside the jurisdiction’ of the arbitral tribunal).

In addition, the 2021 Rules provide both the arbitral tribunal and the LCIA with expanded powers to order consolidation of multiple arbitrations into a single arbitration, as well as for the arbitral tribunal to order the concurrent running of two or more arbitrations. Various provisions have also been added to the 2021 Rules to reflect the primacy of electronic communications, increased use of technology and virtual hearings in the post-pandemic era, as well as on matters such as data protection, sanctions and compliance.

ii Arbitration developments in local courts

Validity of arbitration agreements

In a number of recent cases, the UAE courts have confirmed the practical considerations for validly agreeing an agreement to arbitrate a dispute under the UAE Arbitration Law. While there is no system of precedent whereby these cases are strictly binding on decision making in the future, the judgments give some insight into the courts’ approach to the application of the relatively recent UAE Arbitration Law.

Authority to agree to arbitrate

In its judgment in Case No. 749/2018, the Dubai Court of Cassation clarified the scope of Article 4 of the UAE Arbitration Law in respect of a party's capacity to enter into an agreement to refer a dispute to arbitration and Article 53 relating to the specific ground for challenge of an award because of a lack of capacity to arbitrate. In this case, a dispute arose because one of the signatories to the DIFC-LCIA arbitration agreement did not hold the required specific delegated authority from the company to agree to resolve disputes by way of arbitration. The Court of First Instance struck out the arbitration clause and referred the dispute to the courts.

On appeal to the Court of Cassation, the court provided guidance as to the mechanism for delegating valid capacity to a signatory in a JAFZA free zone company and held that in this case the signatory had exceeded his powers in signing an agreement that incorporated an arbitration clause where he merely had authority to enter into the agreement and did not have specific authority to bind the company to arbitration.

The decision clarifies the strict approach of the UAE law and the UAE courts to determining a party's capacity to arbitrate on its facts under the UAE Arbitration Law. Previous jurisprudence had shown the UAE courts applying concepts of apparent authority to establishing authority of a signatory in agreements to arbitrate.

That approach to establishing authority of a signatory in agreements to arbitrate was also followed by another recent judgment in Case No. 922/2020 Abu Dhabi Court of Cassation dated 14 July 2020, in which the court held that authority to enter into an agreement to arbitrate must have been in place at the time of the contract rather than at the time of the dispute arising.

Conditions precedent to agreement to arbitrate

The UAE courts have consistently upheld pre-arbitral conditions agreed on by the parties in aid of resolution of a dispute prior to submission to arbitration.

In its judgment in Case No. 32/2019 Dubai Court of Appeal dated 5 February 2020, the court held that the claimant had commenced arbitration prematurely, prior to completion of the pre-arbitral conditions under FIDIC to refer the parties' dispute for determination by the engineer within the meaning of Clause 67.1 of the FIDIC general conditions. This dispute was a challenge to a DIAC tribunal's award on its own jurisdiction.

The court annulled the tribunal's affirmative award on jurisdiction, holding:

If the two parties agreed that the dispute shall be referred to the consultant engineer in construction contracts in order to discuss the same prior to arbitration, then no such party shall have the right to refer the dispute to arbitration prior to referring the dispute to the engineer as aforesaid unless otherwise agreed by the two parties

It is noteworthy that the decision was appealed to the Court of Cassation, and in Case No. 339/2020 Dubai Court of Cassation dated 19 July 2020, the court rejected the appeal on the basis that the Court of Appeal was the final adjudicator of jurisdiction and not subject to appeal. The court relied on Article 19 of the UAE Arbitration Law.

Defence to court's jurisdiction

In its judgment in Case No. 597/2020 Abu Dhabi Court of Cassation dated 24 August 2020, the court clarified the application of Article 8(1) of the UAE Arbitration Law relating to the procedural time frame in which a defence to the court's jurisdiction on the basis of an agreement to arbitrate must be raised.

The court held that a party seeking to rely on an agreement to arbitrate as a defence to the court's jurisdiction must raise the defence before submission of its procedural or substantive defence, or any other request made to the court.

This judgment supports the direct wording of the UAE Arbitration Law and provides clarity from the prior scenario under the old law in which a defence to the court's jurisdiction on the basis of an agreement to arbitrate was to be raised at the 'first hearing'.

Joint Judicial Committee

The Joint Judicial Committee (JJC) was established in 2016 by Dubai Decree 19/2016 as a final adjudicator of disputes involving jurisdictional conflict between the DIFC courts and the onshore Dubai courts.

In a recent notable case, Case No. 8/2019 Joint Judicial Committee Cassation dated 11 December 2019, the JJC held that the DIFC courts had jurisdiction to hear any application or proceedings related to an arbitral award issued in a DIFC seated arbitration.

The judgment creditor sought to enforce the DIFC-LCIA award via the DIFC courts. The judgment debtor made an application for nullification of the award in the Dubai courts and launched an application to the JJC arguing that since the parties held the arbitral hearing in on-shore Dubai (at a hotel located in Dubai Marina) and not geographically within the DIFC, the Dubai courts should have exclusive jurisdiction to hear matters related to the award.

While in a previous decision the JJC had resolved such conflicts with different reasoning, in this case the JJC held that the seat of the arbitration, not the physical place of the hearing, was the relevant factor in determining the court of jurisdiction, and thus the JJC ruled that the DIFC courts had jurisdiction. The JJC specifically referenced the Rules of DIFC-LCIA Arbitration Centre, which provide, at Article 16.3, for 'any convenient geographical place' for hearings, and should the geographical place not be within the seat of the arbitration 'the arbitration shall nonetheless be treated for all purposes as an arbitration conducted at the arbitral seat and any order or award as having been made at that seat'.

Validity of awards

In its judgment in Case No. 1083/2019 Dubai Court of Cassation dated 28 June 2020, the court held that as a matter of public policy in the UAE arbitral awards must be signed on each page of the grounds and operative part of the award by the tribunal.

The case concerned a challenge to a DIAC award issued in a Dubai seated arbitration. The appellant before the Court of Appeal sought nullification of the award drawing on similarities between the provisions in the UAE Arbitration Law and the prior prescriptive provisions of the now repealed UAE Civil Code in respect of requirements of an award. The Court of Cassation held that an award will be invalid if it does not contain essential details including the date of award, place of arbitration, the grounds and operative part of the award, as well as being signed by each arbitrator on each page of the grounds and operative part of the award.

iii Investor–state disputes

The UAE is a signatory to 92 bilateral investment treaties, including most recently with Brazil, Gambia, Hong Kong, Israel and North Macedonia. Bilateral investment treaties signed between states establish the terms for investment by investors of one state in the other state, and often provide for disputes to be referred to an international arbitration institution such as the International Centre for Settlement of Investment Disputes (ICSID). Jersey is due to ratify a bilateral investment treaty with the UAE in the near future.

The UAE is a signatory to the ICSID Convention, ratified in December 1981. The UAE is also a signatory to multilateral investment treaties including the Organisation of Islamic Cooperation Agreement of Promotion (the OIC Agreement), Protection and Guarantee of Investments, the Arab League’s Unified Agreement for the Investment of Arab Capital in the Arab States, and the Energy Charter Treaty.

Recently, on 21 April 2021, a Swedish national registered an ICSID dispute² against the Government of Dubai Legal Affairs Department under Sweden’s bilateral investment treaty with the UAE. The dispute arises from the Swedish national’s investment in an optical data storage company in Dubai and has been commenced as a result of the Swedish national’s deportation from the UAE. The Swedish national argues that the UAE breached the equitable treatment standard under the bilateral investment treaty.

On 3 April 2020, the tribunal issued its award in an ICSID dispute³ commenced by the UAE based VTEL Middle East and Africa Limited and VTEL Holdings Ltd, together with two Jordanian entities, Itisaluna Iraq LLC and Munir Sukhtian International Investment LLC, against the Republic of Iraq. Following the acquisition of a licence by the claimants for the provision of telecommunications services in the Republic of Iraq, the dispute arose because the claimants were prevented from operating their own international gateways.

The claimants commenced their claim as investors under Article 8(1) of the OIC Agreement seeking fair and equitable treatment, and full use and protection of their investment. The tribunal had to determine ‘whether the Claimants are able to incorporate into the OIC Agreement, by operation of its MFN clause, the ICSID arbitration clause in the Iraq Japan BIT’.

The tribunal found that it did not have jurisdiction under the OIC, whether read alone or together with any other treaty, and upheld the respondent’s objection to jurisdiction.

In the past year, an ICSID dispute⁴ commenced by Indian and United Kingdom nationals has been continuing against the UAE as a party (the President of the United Arab Emirates, and Vice President and Prime Minister of the United Arab Emirates). The dispute involves the sale of plots of land at the World Islands Project in Dubai, developed by Nakheel and subsequently bailed out by the Dubai government following the 2008 global financial crisis.

On 13 November 2019, an England and Wales court dismissed the claimant’s application to discharge a worldwide freezing order obtained by The World LLC against his assets. The claimant had issued an application to stay the English proceedings under Section 9 of the Arbitration Act 1996 on the basis that The World LLC was party to an arbitration agreement in the form of the bilateral investment treaty; however, this application was withdrawn.

2 *Amir Masood Taberi v. United Arab Emirates* (ICSID Case No. ARB/21/19).

3 *Itisaluna Iraq LLC and others v. Republic of Iraq* (ICSID Case No. ARB/17/10).

4 *Shokat Mohammed Dalal v. United Arab Emirates* (ICSID Case No. ARB/19/10).

In 2020, Qatar Airways commenced investment treaty claims seeking at US\$5 billion in damages from the United Arab Emirates, Bahrain, Saudi Arabia and Egypt, who banned it from their airspace and their markets, and revoked its licences to operate from June 2017. Qatar Airways' claims are based on the Arab Investment Agreement, and the OIC Agreement.

III OUTLOOK AND CONCLUSIONS

Currently, the DIFC-LCIA, DIAC and the ADGM in the UAE continue to remain a popular choice for parties seeking to arbitrate domestic and international disputes.

The new DIFC-LCIA Rules 2021 were welcomed by commercial parties and the arbitration community, given that they promote the efficiency and effectiveness of the arbitral process and reflect international practice. The ADGM also took recent steps in encouraging parties to elect to arbitrate disputes seated in the ADGM, with the introduction of the recent ADGM Arbitration Guidelines.

In notable recent cases, the DIFC courts have granted an anti-suit injunction ordering discontinuance of onshore litigation in recognition of an agreement for DIFC seated arbitration, and the UAE courts have pierced the corporate veil.

While there have been certain decisions of the UAE courts that stand out as anomalous, the prevailing UAE court jurisprudence has clarified the application of articles of the relatively recent and long-awaited UAE Arbitration Law.

Covid-19 has had an impact on both the substantive nature of claims and the procedural running of disputes, with UAE-based arbitration centres being quick to encourage exclusive usage of digital methods for filing, exchange of pleadings and virtual hearings.

In the construction sector, to which by far the most significant proportion of UAE arbitral disputes relates, squeezed cash flow has led to a rise in bonds being called and a consequent further increase in arbitrations commenced arising out of the resulting dispute and, in particular, to seek to protect any attachment granted by the UAE courts preventing payment of those bonds.

Major players such as Arabtec Holding PJSC, one of the largest construction contractors in the UAE, filed for liquidation in September 2020 as a result of adverse market conditions, as reported in the press, and the effects of this will be felt throughout the wider UAE construction industry over the coming year as well as in the arbitration sphere.

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Matthew is a partner specialising in construction, arbitration and litigation in the UAE and internationally. He is a solicitor-advocate qualified in England, a registered legal practitioner of the DIFC courts, and also sits as an arbitrator.

Matthew's main practice is in handling complex high-value construction disputes on all types of construction projects, in both arbitration and litigation in the DIFC and Dubai courts. He advises developers, main contractors, subcontractors and consultants on all aspects of construction dispute resolution, including at domestic and international arbitrations (such as DIFC-LCIA, DIAC, ICC, LCIA, ad hoc) as well as litigation.

Matthew has published extensively on arbitration and presents at international conferences and events, and is recognised in the leading legal directories.

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John advises the full spectrum of construction clients on all forms of UAE construction matters, working with developers, funders, main contractors, major sub-contractors and consultants in all types of construction projects.

John's real forte is in leading and managing complex construction disputes, be they at arbitration or litigation in the courts. He is recognised as being a leader and strategic thinker and is very well liked by his clients and external counsel.

John's main practice, therefore, is in handling all aspects of dispute resolution covering issues such as time, cost and quality, extensions of time, prolongation, acceleration, disruption, loss and expense, variations, and payment and final account claims.

John handles such disputes at arbitration both domestically and internationally and pursuant to all of the well-known arbitration fora, such as DIAC, the DIFC-LCIA, the ICC, and also ad-hoc arbitrations. These disputes are usually complex, high value and extremely document heavy.

John also handles local law litigation matters working together with his in-house Arabic colleagues.

John is recognised and referenced in the leading legal directories and has been designated a leading individual for engineering and construction in the UAE in *The Legal 500* from 2018 to 2021.

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