# Middle East and North Africa Overview



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# Introduction

The Middle East and North Africa ("MENA") arbitration scene has not only changed but evolved in a revolutionary manner since the publication of this chapter last year. Some countries have exhibited serious attempts to fully incorporate online facilities in response to the pandemic, while others, especially in the Gulf Cooperation Council ("GCC"), have made further developments. Dubai, in particular, has made unprecedented and unexpected changes in rendering its arbitration practice, which according to many practitioners in the United Arab Emirates ("UAE"), is due to the boom in the use of local centres as fora for dispute resolution. Dubai not only created its sole arbitration centre without any foreign alliances, but also chose to have its one forum free of any local competition.

The MENA arbitration legal and regulatory landscape has certainly improved significantly in Morocco and Egypt in North Africa and to a lesser extent in Iraq and Lebanon in the Levant, but there remains room for further development in the region, as many countries have yet to pass arbitration legislation with limited state protection and produce better facilities to attract users to their fora. On the other hand, countries like Bahrain and Qatar in the GCC are certainly on the right track due to their determination to economically expand and attract foreign investment.

There is no doubt that the three leading seats in the MENA region are the UAE, Cairo and the Kingdom of Saudi Arabia ("KSA"). As two of these seats are in the GCC, it is expected that one of the centres in those countries will soon become a seat of choice rather than a contractually bound seat. Despite the hesitation of renowned practitioners to rank such centres as global seats, regardless of their relevance to international arbitration, it seems that Dubai has the most potential to become a preferred seat of choice, which is the vision of the Dubai legislator, not only due its appeal to people outside the MENA region, but because of the ability of its lawmakers to take the bold steps required to make this vision a reality.

#### **UAE**

The UAE ratified the New York Convention in 2006 and has come a long way in its compliance to embrace and uphold treaty obligations.

Broadly based on the UNCITRAL Model Law, the UAE Arbitration Law of 2018 (Federal Law No. 6 of 2018) has successfully addressed the prior Court-caused shortcomings of the arbitration system, such as the annulment of arbitral verdicts on procedural technicalities. To avoid lengthy delays, enforcement proceedings of arbitration rulings are now filed immediately before the UAE Federal or local Court of Appeal rather than the Courts of First Instance as in the past.

The pro-arbitration tendency from recent years has been maintained by legislative changes in 2021 in the UAE's onshore jurisdiction and free zone jurisdictions like the Abu Dhabi Global Market ("ADGM") and the Dubai International Financial Centre ("DIFC").

# The Dubai International Arbitration Centre ("DIAC")

Previously, the administration of institutional arbitration in Dubai was conducted under the DIFC-LCIA, a partnership between the DIFC and the London Court of International Arbitration ("LCIA") handled by the DIFC Arbitration Institute ("DAI"), the Emirates Maritime Arbitration Centre ("EMAC"), a specialised maritime arbitration centre that was founded in 2016, and the DIAC, until Dubai passed Dubai Decree No. 34 of 2021 ("Decree 34"), which took effect on 20 September 2021 and abolished both the DAI and EMAC, setting the DIAC as the sole arbitration institution in Dubai.

Although Dubai's arbitration practice profile is not quite at the level of London, Paris and Hong Kong, it has built a strong ecosystem around arbitration with Abu Dhabi following closely. The value of cases, the type of available practitioners, the online facilities, the law and the Court are all critical factors in the vision of Dubai becoming a preferred seat of choice internationally.

Decree 34 established the new DIAC Arbitration Rules, which went into effect on 21 March 2022, after being accepted at the DIAC Board of Directors meeting on 25 February 2022, making significant modifications to the institution's structure (including the addition of a new DIAC Board and Arbitration Court) and new DIAC Rules, concurrently with the dissolution of the DAI and EMAC. The Arbitration Court of DIAC, which oversees the DIAC's alternative dispute resolution services, was established by Decree 34 and replaced the DIAC Executive Committee.

The appointment of an arbitrator by the Court is covered by Article 12 of the DIAC Arbitration Rules 2022 in which arbitrators are appointed by the Arbitration Court unless stipulated otherwise in the arbitration agreement (parties may nominate arbitrators for appointment by the Arbitration Court). This process is more efficient, with party access to the available arbitrators, and their details and qualifications. The DIAC list of arbitrators has not yet been released and will ease the process of appointment by allowing parties and the Arbitration Court to easily determine issues of conflict and ensure the arbitrator's qualifications are suitable to the nature of the conflict.

The new Rules also contain new accelerated processes, provisions for emergency arbitrators, the joining of third parties and the consolidation of several actions. These Rules are a major improvement over the previous ones and are perhaps better than those of the former DIFC-LCIA. According to DIAC's 2022 annual report, the new Arbitration Rules strengthened Dubai's position as a leading arbitration hub and contributed to its growth.

The DIAC has changed the composition of its Arbitration Court. Dr. Michael Pryles AO PBM was appointed as the President of the DIAC Arbitration Court in February 2023. Robert Stephen joined DIAC as its new registrar in June 2023. This follows the recent appointments to the DIAC made in April 2023, including the 13-member committee of evenly distributed chairs among Emirati, Arab and foreign arbitrators, members of which include Rupert Reed KC of Searle Court and Wendy Miles KC of Twenty Essex.

The DIAC, chaired by Dr. Tariq Humaid Al Tayer, is implementing Dubai's vision of becoming a global arbitral venue. Despite the reservations surrounding the establishment of the DIAC after the abolishment of the DAI and the EMAC, it is clear – as per the new DIAC 2022 annual report – that Dr. Al Tayer is leading the DIAC to its long-awaited global recognition and certainty by appointing the Court justice, restaffing the centre and attracting credible renowned arbitrators worldwide, to add to its list of arbitrators.

# The ADGM Arbitration Centre

On 23 December 2020, the ADGM amended the ADGM Arbitration Regulations 2015 ("Arbitration Regulations") through Amendment No. 1 of 2020. The amendments address the validity of arbitration agreements. Section 14(2) of the Arbitration Regulations states that parties can be bound orally or through conduct if the agreements are not recorded in writing. Section 14(6) clarifies that an arbitration agreement with a unilateral or asymmetrical right to refer a dispute to either an arbitral tribunal or a Court is enforceable and consistent with the Arbitration Regulations.

Thirdly, Amendment No. 1 of 2020 confirmed the ADGM as an "opt-in" jurisdiction for arbitration, meaning that parties can agree to arbitration seated in the ADGM without any connection to the jurisdiction. It further states that the ADGM cannot be used as a "conduit route" for enforcement of non-ADGM judgments and awards rendered in other jurisdictions (save for judgments rendered by other Courts in the Emirate of Abu Dhabi).

In A6 v. B6, rendered on 13 March 2023, the ADGM Court of First Instance recognised its authority to hear a request to vacate an arbitral award made in International Chamber of Commerce ("ICC")proceedings with an Abu Dhabi onshore venue.

ICC

The ICC International Court of Arbitration launched its fifth

case management office worldwide in the ADGM in 2021, becoming the first case management office in a UAE free zone. The office manages regional arbitrations under the ICC Rules of Arbitration, provides training and business workshops, and works with the ADGM on marketing initiatives. In September 2021, the Permanent Court of Arbitration ("PCA") and the ADGM Arbitration Centre signed a Cooperation Agreement, which was another advancement.

#### Other UAE arbitration centres

Other arbitration centres in the UAE include the Sharjah International Commercial Arbitration Centre, or Tahkeem, set up under Amiri Decree No. 6 of 2009, the Abu Dhabi Commercial, Conciliation and Arbitration Centre, the International Islamic Centre for Reconciliation and Arbitration ("IICRA") in Dubai, and the Ras-Al-Khaimah Centre for Reconciliation and Commercial Arbitration ("R.A.K. Reconciliation and Arbitration Centre").

### **Bahrain**

2022 was a transformative year for Bahrain's international dispute resolution centre, the Bahrain Chamber for Dispute Resolution ("BCDR").

The Arbitration Law (Law No. 9 of 2015) applies to arbitrations in Bahrain and outside Bahrain if agreed by the parties. Bahrain ratified the New York Convention in 1998 and adopted the provisions of the UNCITRAL Model Law in the original Bahraini International Commercial Arbitration Act of 1994.

The BCDR, established in 2009, was formed through a joint venture between the Bahrain Ministry of Justice and the American Arbitration Association ("BCDR-AAA"). The institution's full administrative autonomy, financial independence and self-sufficiency grew into a leading regional arbitration centre and the collaboration amicably ended in 2022. The centre became known just as the BCDR and enforced its own Arbitration Rules on 1 October 2022. Any arbitration that began on or after 1 October 2022 was immediately subject to these revised Rules

These Rules created notable changes including the requirement to disclose any third-party financial arrangements, both before and during the arbitration, as well as the name of the third-party funder, and that the tribunal has been granted power to order security for costs on the written application of a party with a reasonable opportunity to respond to the application given to all parties. The tribunal may also suspend or reject a party's claim if they fail to abide by a directive.

The BCDR also released the Sports Arbitration Rules in 2022 and anticipates publishing new rules particularly to handle disputes in Islamic banking.

#### **Qatar**

Qatar acceded to the New York Convention on 30 December 2002. Qatar has two arbitral centres: Qatar Financial Centre ("QFC"); and the Qatar International Centre for Conciliation and Arbitration ("QICCA").

Law No. 2 of 2017 Promulgating the Civil and Commercial Arbitration Law ("Qatari Arbitration Law"), based on the UNCITRAL Model Law, controls arbitration proceedings conducted within Qatar, and international commercial arbitration cases overseas put on hold by the parties. The provisions on arbitration in Qatar's Civil and Commercial Procedures Code, Law No. 13 of 1990, were superseded by the Qatari Arbitration Law.

QICCA is the main arbitration institution in Qatar that oversees arbitrations conducted in accordance with the UNCITRAL Arbitration Rules as well as the QICCA Rules and has appointment power under the latter. Additionally, although neither organisation formally administers arbitrations in Qatar, the Qatar International Court and Dispute Resolution Centre ("QICDRC") and the Chartered Institute of Arbitrators ("CIArb"), both based in the QFC, also market arbitration under the QFC Arbitration Regulations and the CIArb Arbitration Rules, respectively.

The judicial system and practices of the QFC are based on common law. When the QFC serves as the arbitration venue, Regulation No. 8 of 2005 is applicable. The laws, regulations and rules of Qatar regarding arbitration shall not apply in the QFC to the greatest degree authorised by the QFC Law.

While Doha and the QFC have identical Arbitration Laws, the QFC is still in its infancy as an arbitral seat and the mainland Qatari Court is preferred because local businesses are more familiar with its supervisory regime. However, the QFC Court shall serve as the supervisory Court when an arbitration is convened in the QFC as mandated by Cv.D [2021] QIC (F) 8. The presence of the common law-operated QFC may begin to play a stronger part in arbitration choice as Qatar continues to expand.

#### **KSA**

The KSA ratified the New York Convention in 1994. On 9 July 2012, KSA Royal Decree No. M/34 dated 24/05/1433 AH on the Arbitration Law went into effect and superseded the old arbitration legislation (KSA Royal Decree No. M/46 dated 12/07/1403 AH.) The UNCITRAL Model Law served as the model for the Arbitration Law, which is applicable to all arbitrations in the KSA. Executive rules established in accordance with KSA Resolution No. 9892 dated 17/04/1434 AH (28 February 2013) was also added to the Enforcement Law. The Executive Regulations (KSA Cabinet Resolution No. 541 of 1438), which implemented the Arbitration Law, was enforced on 7 June 7 2016 and provided useful explanations on the Arbitration Law.

In 2016, the Saudi Centre for Commercial Arbitration ("SCCA") began operations after being legally formed by KSA Cabinet Decree No. 257 dated 14/06/1435 AH (15 March 2014). The SCCA published its updated Arbitration Rules ("New Rules") on 1 May 2023. Any arbitrations submitted on or after 1 May 2023 had the New Rules in effect. This is in alignment with the SCCA's goal of becoming a major arbitration centre and the region's favoured choice for arbitration by 2030.

The New Rules established the SCCA Court that determines the appointment, challenge and removal of arbitrators, evaluates awards, and sets administrative costs and arbitrator fees. Its rulings are explicitly proclaimed to be irrevocable and not subject to review or appeal. The SCCA Court is not intended to intervene in areas that the arbitral tribunal has been given exclusive jurisdiction over.

Tribunals have been granted with more powers over proceedings such as the ability to direct the order of proof, the exclusion of irrelevant testimony or evidence, limit the length of written submissions, decide on preliminary issues, split up proceedings and encourage parties to try mediation. Tribunals may also choose to reject changes in party representation.

The New Rules also provided new procedures for the early disposal of claims and defences, introduced consolidation and multi-contract provisions, removed the previously existing reference to Sharia, permitted greater use of technology, and provided that a party that is relying on litigation funding is required to disclose the third-party funder. The SCCA also

opened SCCA Dubai, its first office outside of the KSA, on 13 November 2022, in line with its goals to establish KSA as a global arbitration hub.

#### Iraq

Iraq is a signatory of the 1983 Riyadh-Arab Agreement for Judicial Cooperation ("Riyadh Convention"), which only allows the enforcement of arbitral awards in Iraq if they were made in other signatory countries or if they were made in countries with separate treaties on mutual legal enforcement with Iraq. The New York Convention came into force in Iraq on 9 February 2022 and covers the recognition and enforcement of arbitral awards, awards arising out of disputed contracts that were only of a commercial nature, as defined by Iraqi legislation under Articles 4–7 of the Commercial Code 1970, and arbitration agreements concluded, or arbitral awards rendered, after the date of accession.

The Iraqi Civil Code (Law No. 40 of 1951) provides Iraqi Courts with considerable review powers, including the power to adjudicate according to Sharia principles in the absence of any applicable legislative provisions. Under the Iraqi Code of Civil Procedure (Law No. 83 of 1969), Civil Courts cover all natural and juridical persons and have the competence to hear any type of dispute. Therefore, the Iraqi Courts may possess the ability to reject the recognition and enforcement of arbitral awards. However, the New York Convention sets out limited grounds for refusing recognition and enforcement under Article V, which must be proven to the competent Court to result in the rejection of recognition and enforcement of arbitral awards.

The contradiction between the New York Convention and Iraqi legislation was not addressed in Iraqi's ratification statue of the New York Convention or the Iraqi Constitution and Treaty Conclusion Law regarding conflict between an international treaty and local law. However, the provisions on the rejection of the recognition and enforcement of arbitral awards in the Convention take precedence over Iraq's domestic legislation.

# **Egypt**

Egypt ratified the New York Convention on 9 March 1959 and the Washington Convention on 11 February 1972.

The Egyptian Arbitration Law No. 27 of 1994 is aligned with the UNCITRAL Model Law in its implementation of global concepts such as competence-competence and the principle of separability. The Cairo Court of Appeal resides over arbitral matters.

The Asian-African Legal Consultative Organization established the Cairo Regional Centre for International Commercial Arbitration ("CRCICA"), an independent non-profit international organisation, in 1979. This decision was made with the intent to form centres for international commercial arbitration in Asia and Africa. Following several amendments, the current CRCIA rules, effective on 1 March 2011, conform with the latest 2010 UNCITRAL Arbitration Rules.

Law No. 137 of 2021 amending Law No. 48 of 1979 was passed and published in the Egyptian Official Gazette on 15 August 2021 and expanded the Supreme Constitutional Court's duties regarding the constitutional review of foreign Court judgments seeking enforcement and decisions made by international organisations. Fortunately, the review of arbitral awards was not included, and the Supreme Constitutional Court does not hold jurisdiction over their revision, thus maintaining the regime under the Egyptian Arbitral Law and the New York Convention.

The pandemic expedited Egypt's development in digitalising its services, both inside and outside the legal system, by providing

more online services to the public. Since then, the grounds for setting aside an arbitral award fall under the Egyptian Arbitration Law and the Court of Cassation has adopted a "pro-arbitration policy" in terms of the recognition and enforcement of arbitral awards by abiding by the grounds set under the Arbitration Law. The Court also expanded on an aspect of international arbitration where arbitrators may refuse to sign an award by producing a dissenting opinion. This does not necessarily result in setting aside the award, as the rules for such fall under the Egyptian Arbitration Law, as was the case in Challenge No. 8199 of JY 80 (2022) of the Commercial and Economic Circuit of the Court of Cassation.

The Cairo Court of Appeal held that exchanging the arbitration agreement through digital forms of communication meets the writing requirement, which is in line with UNCITRAL Model Law's requirement for arbitration agreements to be in writing.

#### **Morocco**

On 12 February 1959, Morocco ratified the New York Convention. The Moroccan Code of Civil Procedure (2007) is based on the UNCITRAL Model Law and governs local and international arbitral awards. To address the confusion that arose regarding its implementation and to modernise arbitration, the Moroccan Council of Government introduced Bill No. 95.17 on 5 March 2020. The government aimed to attract foreign investment by separating new arbitration legislation from existing laws and the resulting Arbitration and Mediation Act No. 95-17 was published in the Official Gazette on 13 June 2022. This Act aligns with international arbitration principles, covering appointment, conduct, recusation, the role of domestic Courts and enforcement of arbitral awards. It recognises electronic signatures and permits email delivery of Arbitration Notices. Additionally, Morocco has embraced technological involvement in judicial proceedings, including arbitration, by drafting a Bill on technology usage amidst the pandemic.

Furthermore, the Arbitration Act remains in line with the ICC Rules of Arbitration, as the Moroccan Courts can provide interim or conservatory relief and may preside over the enforcement of decisions deriving from arbitration. As Morocco is a signatory of the New York Convention, the new Act continues to implement the Convention by regulating the Courts' ability to recognise and enforce arbitral awards. Obtaining an *exequatur* decree as required by Moroccan law may take up to four months, therefore the requirements of enforcing awards under the new Act are expected to simplify the recognition and enforcement of foreign awards in which the arbitration agreement, award itself and any supporting documents must be translated into Arabic by a certified translator and presented to the Court.

ICC Morocco includes the Moroccan Court of Arbitration and is one of the country's most important arbitration organisations. Other arbitration organisations include the Rabatbased Euro-Mediterranean Centre for Mediation and Arbitration, the Moroccan Centre for Mediation and Arbitration, and the Casablanca International Mediation and Arbitration Centre, which opened in 2016 because of ongoing efforts to promote dispute resolution in the MENA region and conducts arbitration proceedings in Arabic, English, French and Spanish.

#### Lebanon

Arbitration has been implemented in Lebanon's legal framework since the first Code of Civil Procedure ("CCP") in 1933. The CCP under Decree-Law 90/83 amended by Law No. 440 on 22 July 2022 covers arbitration in two parts, domestic (Articles 762–808) and international (Articles 809–821). However, these

provisions are not based on UNCITRAL Model Law. In 1998, Lebanon became a signatory of the New York Convention.

The Lebanese Arbitration Centre was established in 1995 by the Beirut and Mount Lebanon Chambers of Commerce, Industry, and Agriculture, with the intention to resolve national and international disputes through alternative conflict resolution, and has its own set of rules to do so. The Lebanese National Committee of the ICC of Paris is used to nominate arbitrators in some instances; however, typically the Lebanese Court of First Instance presides over arbitrator appointments. The CIArb and the Lebanese and International Arbitration Center of the Beirut Bar Association hold international arbitral proceedings in Lebanon. The Lebanese Arbitration and Mediation Centre is the main institution that covers domestic disputes under rules that are largely based on the 1998 version of the ICC Rules of Arbitration. Lebanon also hosts arbitral proceedings for other arbitral institutions in the region including the DIAC, CRCICA and Abu Dhabi International Arbitration Centre.

The latest addition to Lebanon's legal framework is Law No. 48, released on 7 September 2017, which regulates public-private partnerships. This law allows disputes between parties, including state entities, to resort to arbitration. When it comes to the recognition and enforcement of awards in Lebanon, these are made through *ex parte* proceedings. This requires a legitimate interest for the Court to accept jurisdiction regarding the recognition and enforcement of foreign awards, as per Article 795 of the CCP.

## **Conclusion**

The MENA legal landscape regarding arbitration has certainly improved since the last publication of this chapter, particularly in response to the pandemic. However, there is still room for further development in the region as many nations have yet to pass specific arbitration legislation. Additionally, some MENA countries have produced legislation that conflicts with international principles of arbitration, thus making it difficult for arbitral regulation to be harmonised on an international level.

The MENA region is constantly developing, particularly in the GCC, where governments are determined to economically expand and attract foreign business. While they are moving in the direction of compatibility and harmonisation under the UNCITRAL Model Law and New York Convention, there is room for further development. Regarding the legal framework of arbitration in the MENA region, there are gaps yet to be bridged to ensure the implementation and harmonisation of arbitration in the region is more aligned with other more mature jurisdictions. It is safe to say that the MENA region is willing and intending to further improve and develop its arbitral land-scape to ensure the region remains "arbitration friendly".

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