

Challenging and Enforcing Arbitration Awards: United Arab Emirates

Form of awards

1. Must an award take any particular form?

United Arab Emirates

The requirements for an award issued onshore are provided for under article 41 of Federal Law No. 6 of 2018 on Arbitration (the Federal Arbitration Law), which states that the award must:

- be in writing;
- be issued by a majority of arbitrators;
- be signed by the arbitrators;
- state the reasons on which the award is based (unless otherwise agreed or not required under the applicable law);
- state the parties' details;
- state the arbitrators' details, including nationality;
- include the text of the arbitration agreement;
- give a summary of each party's claims, statements and documents;
- if dispositive in nature, state the order made and the reasons on which it is based (if required to be stated); and
- specify the date and place of issuance of the award.

Under article 44 of the Federal Arbitration Law, the arbitrators must notify the signed award to the parties within 15 days of issuance.

The Federal Arbitration Law does not apply to the special economic (or offshore) zones within the UAE – namely, the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM) – which have their own specific arbitration regulations.

Under article 38 of DIFC Law No. 1 of 2008 (the DIFC Arbitration Law) and article 50 of the ADGM Arbitration Regulations 2015 (the ADGM Arbitration Regulations), the award must be in writing and signed by a majority of arbitrators (if more than one). Article 41 of the Federal Arbitration Law and Article 50 of the ADGM Arbitration Regulations further provide that if there is no majority, the award must be made by the president of the arbitral tribunal alone. Unless otherwise agreed or in the event of settlement, the award must lay out the grounds on which it is based.

It must also specify the date and arbitral seat, and fix the arbitration costs. A signed copy of the award must be delivered to each party.

Procedural law for recourse against an award (other than applications for setting aside)

2. Are there provisions governing modification, clarification or correction of an award? Are there provisions governing retraction or revision of an award? Under what circumstances may an award be retracted or revised (for fraud or other reasons)? What are the time limits?

United Arab Emirates

Article 49 of the Federal Arbitration Law allows a tribunal, upon request, to interpret any obscure or ambiguous part of an award. Unless otherwise agreed, the request must be made within 30 days of receipt of the award. The tribunal will have 30 days (which can be extended by 15 days) from receipt of the request to provide a written interpretation, which will become part of the award.

Article 50 of the Federal Arbitration Law allows for correction of any material errors in an award (clerical or computation), either on request or on its own volition. A request for correction must be made within 30 days of receipt of the award. The tribunal will have 30 days to make the correction. This deadline may be extended by 15 days. Once made, the correction is notified within 15 days and forms part of the award.

Article 51 of the Federal Arbitration Law allows a party, within 30 days of receipt of an award, to request the tribunal to make an additional award on claims presented in the proceedings but not addressed in the award. If deemed justified, the tribunal has 60 days to issue the additional award (subject to a 30-day extension), which will become part of the award. Should the arbitral tribunal refuse a request under Articles 49 to 51, the party may then approach the competent court to do so (article 51(4)).

Under article 54(6) of the Federal Arbitration Law, the court from which the annulment of an arbitral award is sought may suspend the annulment proceedings for a period not exceeding 60 days if it finds it appropriate, at the request of one of the parties, to give the arbitral tribunal an opportunity to take any action or rectify the form of the award that may eliminate the causes of annulment without affecting its content. Similar provisions are available under article 41(4) of the DIFC Arbitration Law.

For offshore awards, article 40 of the DIFC Arbitration Law and article 52 of the ADGM Arbitration Regulations impose a 30-day deadline whereby a party may ask the tribunal to correct an error or provide an interpretation of a part of the award. If

justified, the tribunal must do so within 30 days. It may correct any error on its own within 30 days of the date of the award. A party may also request the arbitral tribunal, within 30 days, to make an additional award which, if justified, it will do within 60 days.

Article 58(4) of the ADGM Arbitration Regulations expressly clarifies that the court must not undertake a merits review of an award on either fact or law.

In the UAE jurisdictions, an award may be challenged if any fraud or such other unlawful elements are found in procuring an arbitral award. Under article 169 of the UAE Civil Procedures Code, the parties may apply for a review of a final judgment if one party has been guilty of fraudulent behaviour that influenced the decision. Further, article 170 of the UAE Civil Procedures Code provides that the time limit for a review is 30 days, which does not start to run in the circumstances provided for in article 169, paragraphs (1) to (3) until the day on which:

- **a fraud became apparent;**
- **the perpetrator of the fraud admitted to the falsification of documents or a judgment demonstrating the existence of the falsification was passed;**
- **a judgment was passed against a false witness; or**
- **a withheld document came to light.**

Under article 169(6), the time limit shall start to run on the day on which the fraud, collusion or gross negligence became apparent, and under article 169(8) from the day on which the judgment was served on the judgment debtor or the person validly representing him or her.

3. May an award be appealed to or set aside by the courts? What are the differences between appeals and applications to set aside awards?

United Arab Emirates

Article 53(1) of the Federal Arbitration Law sets out the grounds on which an award can be set aside, namely:

- no arbitration agreement exists or it is void or has become void under the law chosen by the parties (or under UAE law if no law is specified);
- 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;
- the award was not issued within the specified time limit; or
- the award decides matters not falling within the terms of reference or exceed their scope; however, 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.

Article 53(2) of the Federal Arbitration Law allows a court to set aside an award on its own when the subject matter of the dispute cannot be submitted to arbitration or the award violates public policy or the morals of the state.

Although a party can apply for set-aside, it cannot appeal the merits of the award; however, it can appeal a court decision to dismiss a setting-aside action (article 54(1)).

As for offshore jurisdictions, the DIFC Arbitration Law (article 41) and the ADGM Arbitration Regulations (article 53) state that a setting-aside application is the only available recourse and provide the grounds for which setting aside is warranted, namely:

- 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 that exceed their scope; however, 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.

Article 62(1)(a)(vi) of the ADGM Arbitration Regulations provides for setting aside when the award is not yet binding or has been set aside by the competent authority in the arbitral seat or under the law of which the award was rendered.

Both the DIFC Arbitration Law (article 41(2)(b)) and the ADGM Arbitration Regulations (article 58(2)(b)) empower a court to set aside an award when the subject matter of the dispute was not arbitral or it conflicts with UAE public policy. The DIFC Arbitration Law mandates setting aside when the dispute is expressly referred to a different body or tribunal.

Setting aside of arbitral awards

4. Is there a time limit for applying for the setting-aside of an arbitral award?

United Arab Emirates

Article 54(2) of the Federal Arbitration Law imposes a time limit of 30 days after notification of the arbitral award for a party to present a setting-aside action. Article 41(3) of the DIFC Arbitration Law and article 58(2)(c) of the ADGM Arbitration Regulation require that an application for a setting-aside action be made within three months, unless otherwise agreed.

5. What kind of arbitral decision can be set aside in your jurisdiction? What are the criteria to distinguish between arbitral awards and procedural orders in your jurisdiction? Can courts set aside partial or interim awards?

United Arab Emirates

Article 53(2) of the Federal Arbitration Law allows a court to set aside an arbitral decision (partial, interim or final award) on its own if the subject matter of the dispute cannot be submitted to arbitration, or the award violates public policy or the morals of the state. Further, article 53(1) of the Federal Arbitration Law sets out the grounds on which an arbitral decision can be set aside, namely:

- no arbitration agreement exists, or it is void or has become void under the law chosen by the parties (or under UAE law if no law is specified);
- 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 limit; or
- the award decides matters not falling within the terms of reference or exceed their scope; however, 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.

Likewise, the DIFC Arbitration Law (article 41) and the ADGM Arbitration Regulations (article 53) provide the grounds for which setting 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; however, 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.

Arbitral awards are issued by the arbitral tribunal for the final determination of the issues between the parties, which may be interim, partial or a final award; however, the arbitral tribunal may issue various procedural orders or directions at any stage during the case to conduct the proceedings in accordance with the applicable rules and laws.

Article 12 of the Federal Arbitration Law provides that decisions on procedural matters are to be issued by the presiding arbitrator if he or she is so authorised by the parties or the other members of the arbitral tribunal. Article 23(2) of the Federal Arbitration Law authorises the arbitral tribunal to determine the procedures it deems appropriate (which are generally issued in the form of a procedural order), in a manner not inconsistent with the fundamental principles of litigation and international conventions to which the UAE is a party. Article 39 of the Federal Arbitration Law deals with interim and partial awards, whereas article 41 of the UAE Arbitration Law deals with the form and description of the arbitral award, although no particular form of procedural order or direction has been specified in the law.

6. Which court has jurisdiction over an application for the setting aside of an arbitral award? Is there a specific court or chamber in place with specific sets of rules applicable to international arbitral awards?

United Arab Emirates

Article 55 of the Federal Arbitration Law mandates that an enforcement application for a domestic award onshore be made to the chief justice of the competent court of appeal. The Federal Arbitration Law is silent regarding the enforcement of arbitral awards issued outside the UAE; however, under Cabinet Decision No. 57/2018, an

application for enforcement need only be submitted to the competent execution judge. UAE's offshore jurisdictions each have their own competent courts for the enforcement of arbitral awards, namely the courts of first instance.

As international awards are executed through the court of execution, an application for setting aside an international award would be submitted to the Court of Appeal, which reserves a further right to refer the matter to the Court of Cassation.

7. What documentation is required when applying for the setting aside of an arbitral award?

United Arab Emirates

The following main documentation is required when making an application for setting aside an arbitral award before a court in the UAE jurisdictions:

- the original award or a certified true copy thereof;
- a copy of the arbitration agreement;
- if the award was not made in Arabic, a certified Arabic translation of the arbitral award from an accredited body. An English translation of the award (if it is in another language) is required by the DIFC and ADGM courts; and
- a copy of the transcript of filing the judgment with the court.

The aforesaid documents are submitted to the courts electronically or in other forms as may be designated. The concerned parties may be served all documents by electronic means of communication (eg, emails) and will have full access to all documents through the court's website.

8. If the required documentation is drafted in a language other than the official language of your jurisdiction, is it necessary to submit a translation with the application for the setting aside of an arbitral award? If yes, in what form must the translation be?

United Arab Emirates

To file an application for the setting aside of an arbitral award before a local court, if the award was not made in Arabic, a certified translation of the arbitral award into Arabic by an accredited body is required.

When seeking to enforce an award in the DIFC or the ADGM, if the award or agreement is not in English, the courts may request the party to provide a certified translation thereof.

A full translation of the required documents should be submitted with the application for the setting aside of an arbitral award.

9. What are the other practical requirements relating to the setting aside of an arbitral award? Are there any limitations on the language and length of the submissions and of the documentation filed by the parties?

United Arab Emirates

The challenging party would be required to deposit a fee equal to 6 per cent of the claimed amount (with a cap of 40,000 dirhams) at the time of registering its application for setting aside an arbitral award before a local court under the Federal Arbitration Law. All submissions are made in Arabic; therefore, if necessary, the required documents (eg, the final award, notification of issuance of the final award and arbitration agreement) should be translated into Arabic, which may incur the additional costs of translation. Generally, there is no limitation on the length of the submission; however, applications are made in a precise manner, with comprehensive relief therein, accompanied by the required documents.

For registering an application for setting aside an arbitral award before the ADGM Court, the challenging party would be required to pay a fee of 9,175 dirhams. DIFC Practice Direction No. 2 of 2019 provides a scale of fees applicable on claims under article 41 (Application for setting aside as exclusive recourse against arbitral award) of the DIFC Arbitration Law.

10. What are the different steps of the proceedings?

United Arab Emirates

An application for setting aside an arbitral award is submitted through an online registration portal. Once the application is approved by the concerned court, the defendant will be notified of the application, and a hearing date will be fixed for submission of the defendant's response. The parties' representatives may assist the court by their oral submissions during the hearing.

On receipt of the parties' respective submissions, if the court finds the provisions satisfactory, it will proceed to render its decision. Generally, there is one round of written submissions between the parties; however, the court has discretion to request the parties for further submissions (orally or written) if so required.

11. May an arbitral award be recognised or enforced pending the setting-aside proceedings in your jurisdiction? Do setting-aside proceedings have suspensive effect?

United Arab Emirates

Article 56 of the Federal Arbitration Law provides that the filing of an annulment action does not entail the suspension of the arbitral award; however, the court

hearing the annulment action may order a suspension at the request of any of the parties if the request is based on serious grounds. The court will decide on a request for the suspension of an arbitral award within 15 days of the date of the first hearing scheduled for considering the request. If the court orders the suspension of the award, it may require the party requesting the suspension to post a security or monetary guarantee. Further, it must decide on the annulment action within three months of the date the order is rendered.

Rule 43.70(2)(b) of the DIFC Court Rules and Rule 234(3) of the ADGM Court Regulations provide that a court may adjourn enforcement proceedings pending its setting-aside decision.

Article 56 of the Federal Arbitration Law states that the court hearing the annulment action may order a suspension at the request of any of the parties if the request is based on serious grounds.

12. What are the grounds on which an arbitral award may be set aside?

United Arab Emirates

Article 53(2) of the Federal Arbitration Law allows a court to set aside an arbitral award on its own when the subject matter of the dispute cannot be submitted to arbitration, or the award violates public policy or the morals of the state. Further, article 53(1) of the Federal Arbitration Law sets out the grounds on which an arbitral decision can be set aside, namely:

- no arbitration agreement exists, or it is void or has become void under the law chosen by the parties (or under UAE law if no law is specified);
- 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 was not in accordance with the Federal Arbitration Law or the parties' agreement;
- the proceedings were marred by irregularities that affected the award;
- the award was not issued within the specified time limit; or
- the award decides matters not falling within the terms of reference or exceed their scope; however, 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.

Likewise, the DIFC Arbitration Law (article 41) and the ADGM Arbitration Regulations (article 53) provide the grounds for which setting-aside is warranted, namely:

- 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; however, 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.

13. When assessing the grounds for setting aside, may the judge conduct a full review and reconsider factual or legal findings from the arbitral tribunal in the award? Is the judge bound by the tribunal's findings? If not, what degree of deference will the judge give to the tribunal's findings?

United Arab Emirates

To assess the grounds for setting aside an arbitral award, the judge may not conduct a full review and reconsider factual or legal findings from the arbitral tribunal in the award; however, he or she may take note of any procedural irregularity during the arbitration proceedings.

Article 53 of the Federal Arbitration Law provides certain reasons for setting aside an arbitral award. Article 53(2) states that the court shall invalidate the arbitral award on its own if it finds out that the subject matter of the dispute is a matter in which arbitration may not be held or the arbitral award contradicts public policy and morality in the UAE.

14. Is it possible for an applicant in setting-aside proceedings to be considered to have waived its right to invoke a particular ground for setting aside? Under what conditions?

United Arab Emirates

Article 54(2) of the UAE Federal Law states that an action for annulment of an arbitral award shall not be heard after 30 days have passed since the notification of the arbitral award by the party requesting annulment; therefore, the party requesting annulment may include different grounds for annulment of an arbitral award within the provided 30-day period following the notification of the arbitral award to avoid any waiver of its right to invoke a particular ground for setting aside an arbitral award.

15. What is the effect of the decision on the setting-aside application in your jurisdiction? What challenges or appeals are available?

United Arab Emirates

Article 54(3) of the Federal Arbitration Law provides that a judgment nullifying an arbitral award entails the cancellation of the award in whole or in part, depending on whether the nullification pertains to all or part of the award. If an interpretation has been issued on the part that is rendered nullified, the interpretation shall likewise be nullified.

Under article 57 of the Federal Arbitration Law, a party can appeal a court order granting or denying enforcement of an award with the competent court of appeal within 30 days of the order being notified to the parties. This order may be further appealed to the Court of Cassation.

In offshore jurisdictions, the court of first instance's decision to refuse recognition of an award can be appealed to the relevant court of appeal.

16. Will courts take into consideration decisions rendered in relation to the same arbitral award in other jurisdictions or give effect to them?

United Arab Emirates

Both onshore and offshore courts will generally consider the decisions rendered by other jurisdictions, particularly in relation to recognising or enforcing a foreign award. The courts shall refrain from recognising or enforcing a foreign award until after a setting-aside application at the arbitral seat has been decided or the time limit for a setting-aside application has expired. If a foreign award is set aside at the seat of the arbitration, it would not be possible to recognise or enforce the award in jurisdictions within the UAE.

Procedural law for recognition and enforcement of arbitral awards

17. What is the applicable procedural law for recognition and enforcement of an arbitral award in your jurisdiction?

United Arab Emirates

The recognition and enforcement of awards issued onshore outside the UAE (ie, foreign awards) are governed by an amendment to the Civil Procedure Code (ie, Cabinet Decision No. 57/2018, which repealed articles 235 to 238).

The UAE is also party to treaties that promote the recognition and enforcement of foreign awards, including the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the New York Convention).

The UAE has signed several bilateral investment treaties and is a member of multilateral agreements (ie, the Investment Protection Agreement of the Organisation of Islamic Cooperation (1981), the Riyadh Convention on Judicial Cooperation between States of the Arab League (1983) and the GCC Convention for the Execution of Judgments, Delegations and Judicial Notifications (1996)).

The recognition and enforcement of offshore awards are governed by article 42 of the DIFC Arbitration Law and article 55 of the ADGM Arbitration Regulations. The provisions in the above-mentioned treaties also apply offshore.

18. Is your jurisdiction a party to treaties facilitating recognition and enforcement of arbitral awards (eg, the ICSID Convention or bilateral treaties)? (In particular, is your state a party to the 1958 New York Convention? If yes, what is the date of entry into force of the Convention? Was there any reservation made under article I(3) of the Convention?)

United Arab Emirates

The UAE ratified the New York Convention in August 2006 without reservation. The Convention applies to awards being enforced in the UAE, including by the DIFC (DIFC Arbitration Law, article 42) and the ADGM (ADGM Arbitration Regulations, article 60).

Recognition proceedings

19. Is there a time limit for applying for the recognition and enforcement of an arbitral award?

United Arab Emirates

There are no specific provisions in the Federal Arbitration Law, the DIFC Arbitration Law and the ADGM Arbitration Regulations regarding a time limit for applying for the recognition and enforcement of an arbitral award; however, as general practice, a party wishing to enforce an arbitral award must submit a request for the confirmation of the award and order to enforce, after issuing a notice of demand to the award debtor and providing sufficient time (eg, two weeks) for the award to be settled.

20. Which court has jurisdiction over an application for recognition and enforcement of an arbitral award? Is there a specific court or chamber in place with specific sets of rules applicable to international arbitral awards?

United Arab Emirates

Article 55 of the Federal Arbitration Law mandates that an enforcement application for a domestic award onshore be made to the chief justice of the competent court of appeal. The Federal Arbitration Law is silent regarding the enforcement of arbitral awards issued outside the UAE; however, under Cabinet Decision No. 57/2018, an application for enforcement need only be submitted to the competent execution judge. The UAE's offshore jurisdictions each have their own competent courts for the enforcement of arbitral awards, namely the courts of first instance; therefore, an application for the enforcement of an international arbitral award is submitted to the court of execution.

21. What are the requirements for the court to have jurisdiction over an application for recognition and enforcement and for the application to be admissible?

United Arab Emirates

A petitioner seeking to enforce a domestic award onshore must comply with the Federal Arbitration Law (article 55). The enforcement of a foreign award depends on the state in which it was issued, as the UAE has executed treaties with states for the recognition of awards.

Under Cabinet Decision No. 57/2018 (article 85), the court must confirm the following before enforcing a foreign arbitral award:

- the court does not have exclusive jurisdiction over the dispute, and the foreign court was competent in accordance with the rules of international jurisdiction established by its law;
- the award was made in accordance with the law of the arbitral seat;
- the parties to the arbitration were summoned and duly represented;
- the award has the force of *res judicata* in accordance with the law of the seat; and

- the award does not conflict with the judgment of a domestic court and is not contrary to public policy or the morals of the state.

The use of the DIFC courts to enforce foreign judgments in onshore Dubai has been a topic of discussion in the UAE. The Joint Judicial Committee for the Dubai Courts and DIFC Courts rules on the ability of DIFC courts to enforce awards outside the DIFC.

A petitioner seeking to enforce an award in the ADGM must comply with the formalities in article 56 of the ADGM Arbitration Regulations.

Under UAE law, an applicant is not bound by any law provision to identify assets in the UAE to recognise or enforce an arbitral award.

22. Are the recognition proceedings in your jurisdiction adversarial or ex parte? What are the different steps of the proceedings?

United Arab Emirates

A petition for recognition of an award is obtained *ex parte* but the recognition proceedings themselves are adversarial. Article 55 of the Federal Arbitration Law mandates that the petition be made with the chief justice (or anyone he or she delegates), who then serves it on the respondent. The respondent can challenge the award with a setting-aside action or when opposing the petition to confirm the award.

Articles 85 and 86 of Cabinet Decision No. 57/2018 require a party seeking to enforce a foreign award onshore to file a petition with the execution court in the jurisdiction in which enforcement is sought. The judge will have three days to render his or her decision and this can be appealed by the respondent.

Application for recognition and enforcement of awards in the DIFC (regardless of where issued) can be made without notice. Nevertheless, the court may instruct the applicant to serve the application on the respondent if the setting-aside deadline has not yet expired, or there is some doubt about regularity of the award or its service on the respondent.

Rule 232 of the ADGM Court Procedure Rules 2016 provides that an applicant seeking enforcement can make an application without notice. If permission to enforce is granted, the order must be then served on the respondent (Rule 234). In the UAE jurisdictions, the parties' representatives may assist the court by their submissions (written or oral) during the hearing. The courts do not address issues relating to the merits of the case as decided by an arbitral tribunal in its award, and deal with only the procedural irregularities or other grounds to challenge an award as specifically mentioned in the relevant laws. Generally, the courts do not conduct cross-examination of parties; however, they may invite a party for this purpose if an issue is not determined through documents.

On receipt of the parties' respective submissions, if the court finds these satisfactory, it will proceed to render its decision. Generally, there is one round of written submissions between the parties; however, the court has discretion to invite the parties for further submissions, if so required.

23. What documentation is required to obtain recognition?

United Arab Emirates

Article 55 of the Federal Arbitration Law requires that a party seeking enforcement submit an application to recognise the award. The application must be accompanied by:

- the original award or a certified copy;
- a copy of the arbitration agreement (translated into Arabic);
- an Arabic translation of the award, attested by a sworn translator (if issued in any other language); and
- a copy of the minutes of filing of the original award in court.

A party seeking to enforce an award offshore must submit an arbitration claim form with the original, or duly certified copy, of the award and arbitration agreement. If these are not in English, the court may request the party to provide a translation. The aforesaid documents are submitted to the courts by electronic means, or in designated forms, and the concerned parties may be served all documents by electronic means of communication (eg, emails). They will also have full access to all documents through the court's website.

24. If the required documentation is drafted in a language other than the official language of your jurisdiction, is it necessary to submit a translation with an application to obtain recognition? If yes, in what form must the translation be?

United Arab Emirates

For the enforcement of onshore awards in the UAE, an award issued in a language other than Arabic must be fully translated into Arabic. The translation must be attested by a sworn translator.

When seeking to enforce an award in the DIFC or the ADGM, if the award or agreement are not in English, the courts may request the party to provide a certified translation thereof.

A full translation of the required documents should be submitted with the application for the setting aside of an arbitral award.

25. What are the other practical requirements relating to recognition and enforcement? Are there any limitations on the

language and length of the submissions and of the documentation filed by the parties?

United Arab Emirates

In all three jurisdictions, an application for recognition and enforcement requires payment of a court fee. Under the Federal Arbitration Law, an application for recognition or enforcement to the concerned court should be in Arabic. Applications before the DIFC and ADGM courts should be in English.

There are no specific restrictions imposed by the jurisdictions in the UAE in relation to the length of submissions or of the documentation filed by the parties.

26. Do courts recognise and enforce partial or interim awards?

United Arab Emirates

Interim and partial awards are enforceable in the UAE (Federal Arbitration Law, article 39). A party seeking to enforce an interim or partial award must apply to the chief justice of the competent court of appeal (or anyone he or she delegates).

Article 21(4) of the Federal Arbitration Law requires a party seeking to enforce an interim order to obtain prior written permission from the tribunal.

Article 24 of the DIFC Arbitration Law permits a party to apply to the DIFC Court of First Instance to enforce an interim measure, provided that the applicant has first obtained written permission from the tribunal.

Article 28 of the ADGM Arbitration Regulations provides that a party seeking to enforce an interim measure must make an application to the ADGM Court of First Instance or 'any competent court', with notice to the opposing party.

27. What are the grounds on which an arbitral award may be refused recognition? Are the grounds applied by the courts different from the ones provided under article V of the New York Convention?

United Arab Emirates

Article 55(2) of the Federal Arbitration Law provides that the grounds for which an onshore court can refuse recognition of an award are the same as those entitling it to grant a setting-aside action under article 53(1).

The grounds for which a court can refuse enforcement in the DIFC and the ADGM mirror those under the New York Convention (article V), that is, where a party has established that:

- a party to an 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; however, 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;
- 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; and
- the award has not yet become binding on the parties or has been set aside or suspended by a court of the jurisdiction in which, or under the law of which, that award was made.

Recognition and enforcement of an award may be refused if a court finds that:

- the subject matter of the dispute was not arbitral under the applicable law; or
- it would be deemed contrary to UAE public policy.

28. When assessing the grounds for refusing recognition, may the recognition judge conduct a full review and reconsider factual or legal findings from the arbitral tribunal in the award? Is the judge bound by the tribunal's findings? If not, what degree of deference will the judge give to the tribunal's findings?

United Arab Emirates

Article 52 of the UAE Federal Arbitration Law states that arbitral awards rendered in accordance with the provisions of the Federal Law shall be binding on all the parties and shall also have the authority of *res judicata*. Article 52 also states that the arbitral award shall have the same self-executing force as if it were a judgment; therefore, the judge will generally be bound by the tribunal's findings as the judge may not review and reconsider factual or legal findings from the arbitral tribunal, provided there is no procedural irregularity in the arbitration proceedings. However, under article 53(2) of the Federal Arbitration Law, the judge has the power to invalidate the arbitral award on its own if he or she finds that the subject matter of the dispute is not arbitrable or if the arbitral award contradicts the public policy and morality in the state.

29. Is it possible for a party to be considered to have waived its right to invoke a particular ground for refusing recognition of an arbitral award?

United Arab Emirates

Under article 54 of the UAE Federal Arbitration Law, the time limit for pursuing an action for annulment of an arbitral award is 30 days after the notification of the arbitral award by the party requesting annulment; therefore, the party requesting annulment may submit an application for annulment based on various grounds provided under the Federal Arbitration Law during the 30-day period following the date of notification of the arbitral award. Any application for annulment after the expiry of the 30-day period may not be accepted by the court.

30. What is the effect of a decision recognising an arbitral award in your jurisdiction?

United Arab Emirates

Under the Federal Arbitration Law (article 55), the judge has 60 days from receiving an application to recognise and enforce an award, unless there are grounds calling for setting aside. Under article 56, an action for setting aside does not stay enforcement; however, the court may issue a stay upon request if a party can establish good cause. The court must decide on a request for suspension of an arbitral award within 15 days of the date of the first scheduled hearing. If the stay is ordered, the court has 60 days to decide on the setting-aside application. If the court orders the suspension of the award, it may require the party requesting the suspension to post a security or monetary guarantee.

In the DIFC, a party applying for award enforcement must submit the original award (or a duly certified copy) and the original arbitration agreement (or a duly certified copy). Pursuant to article 41 of the DIFC Arbitration Law, recourse to the court against an arbitral award may be made only by a setting-aside application. Once the award has been ratified by the court, it will be enforceable both within and outside the jurisdiction to the extent permitted under the Judicial Authority Law. Articles 55 and 56 of the ADGM Regulations provide that an award issued in the ADGM should be enforced as if it were a judgment of a court within the jurisdiction, and all the court's powers in respect of the enforcement of judgments will apply to its enforcement.

31. What challenges are available against a decision refusing recognition in your jurisdiction?

United Arab Emirates

Under article 57 of the Federal Arbitration Law, a party can appeal a court order granting or denying enforcement of an award with the competent court of appeal within 30 days of the order being notified to the parties. This order may be further appealed to the Court of Cassation.

In offshore jurisdictions, the court of first instance's decision to refuse recognition of an award can be appealed to the relevant court of appeal.

32. What are the effects of annulment proceedings at the seat of the arbitration on recognition or enforcement proceedings in your jurisdiction?

United Arab Emirates

Article 56(1) of the Federal Arbitration Law clarifies that a setting-aside action will not stay enforcement of an award; however, the court may nonetheless stay enforcement on request when good cause is shown. The court must decide on a request for a stay of enforcement within 15 days of the date of the first scheduled hearing.

Rule 43.70(2)(b) of the DIFC Court Rules and Rule 234(3) of the ADGM Court Regulations provide that a court may adjourn enforcement proceedings pending its setting-aside decision.

The courts of onshore and offshore jurisdictions in the UAE will generally consider the decisions rendered by other jurisdictions particularly in relation to recognising and enforcing a foreign award. The courts shall refrain from recognising and enforcing a foreign award until after a setting-aside application at the arbitral seat has been decided or the time limit for a setting-aside application has expired; therefore, if annulment proceedings at the seat of the arbitration are successful and the foreign award is set aside at the seat of the arbitration, it would not be possible to recognise or enforce that award in the UAE jurisdictions.

33. If the courts adjourn the recognition or enforcement proceedings pending annulment proceedings, will the defendant to the recognition or enforcement proceedings be ordered to post security?

United Arab Emirates

A court may, upon a petition to adjourn the recognition and enforcement proceedings pending the annulment proceedings, order the applicant to post security or provide a monetary guarantee (Federal Arbitration Law, article 56(3)). The DIFC Arbitration Law (article 44(2)) and the ADGM Arbitration Regulations (article 57(1)(c)) provide that a court may order a party requesting a stay to post appropriate security. Pursuant to Practice Direction No. 1 of 2017, the presiding judge in the DIFC will evaluate the merits of the respondent's challenges when deciding whether to order the respondent to pay the amount of the award into the court.

34. Is it possible to obtain the recognition and enforcement of an award that has been fully or partly set aside at the seat of the arbitration? If an arbitral award is set aside after the decision recognising the award has been issued, what challenges are available?

United Arab Emirates

Both onshore and offshore courts will generally refrain from recognising and enforcing a foreign award until after a setting-aside application at the arbitral seat has been decided or the time limit for a setting-aside application has expired. If a foreign award is set aside at the seat of the arbitration, it would not be possible to recognise or enforce that award in the UAE jurisdictions.

Service

35. What is the procedure for service of extrajudicial and judicial documents to a defendant in your jurisdiction?

United Arab Emirates

Chapter 1 of Cabinet Decision No. 57/2018 sets out the procedure for service in the UAE. Notice by a litigant or the court may be served by a process server or, if authorised by the court, the litigant or his or her agent (article 3). Under articles 6 and 7 of Cabinet Decision No. 57/2018, service may be performed electronically or, where not possible, in person at the head office of the respondent's legal representative or any of its partners. In the absence of a legal representative, notice shall be delivered to an employee of the respondent's offices. As a last resort, notice may be made by way of posting or publication.

Part 9 of the DIFC Court Rules and Part 4 of the ADGM Court Regulations prescribe the different ways in which documents may be served on the opposing party, and the circumstances in which service must be performed by the court.

Chapter 1 of Cabinet Decision No. 57/2018 further provides (under article 5(3)) that if the official language of the defendant is not Arabic, the plaintiff shall be bound to attach to the notice a certified translation in English, unless there is an earlier agreement between the parties to attach the translation in another language. In other offshore jurisdictions, the official language is English and any correspondence in any other language should be translated into English.

Article 11 of Federal Law No. 42 of 2022 (the UAE Civil Procedure Law) deals with the effective date of the process service. It states that process service shall be considered as having produced its effects from the date of receipt of a copy thereof in accordance with the provisions of articles 9 and 10 of this Law; from the date of refusal of the addressee in person to receive the notice; from the date of arrival of

the fax; from the date of sending the email or SMS; or from the date of the audio or video recorded call.

36. What is the procedure for service of extrajudicial and judicial documents to a defendant outside your jurisdiction? Is it necessary to serve these documents together with a translation in the language of this jurisdiction? Is your jurisdiction a party to the 1965 Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the Hague Service Convention)? Is your jurisdiction a party to other treaties on the same subject matter? When is a document considered to be served to the opposite party?

United Arab Emirates

The UAE is not a party to the Hague Service Convention or other such treaties. Since the UAE is not a signatory to the Hague Service Convention, process of service abroad is effected through diplomatic channels, unless agreed otherwise by the parties under article 9 of the amendment to the Civil Procedure Code as contained in UAE Federal Law No. 10 of 2014.

Article 11(2) of the UAE Civil Procedure Law states that the process of service shall be considered as having produced its effects after the lapse of 21 working days, starting from the date of serving the concerned diplomatic mission in the state, with the letter from the Ministry of Foreign Affairs and International Cooperation containing the notification.

Identification of assets

37. Are there any databases or publicly available registers allowing the identification of an award debtor's assets within your jurisdiction? Are there any databases or publicly available registers providing information on award debtors' interests in other companies?

United Arab Emirates

There are no databases that are publicly available to a creditor to locate the assets of a debtor. Both the DIFC and the ADGM have company registers, but these contain only limited information. There are no databases or publicly available registers providing information on award debtors' interests in other companies.

38. Are there any proceedings allowing for the disclosure of information about an award debtor within your jurisdiction?

United Arab Emirates

Article 18 of Federal Law No. 10 of 1992 on Evidence in Civil and Commercial Transactions permits a litigant to apply for a court order compelling its opponent to disclose information.

Rule 25.1 of the DIFC Court Rules and Rule 71.1 of the ADGM Court Regulations allow a party to apply for a court order directing a party to provide information about the location of property or assets, or to provide information in relation thereto.

Enforcement proceedings

39. What kinds of assets can be attached within your jurisdiction?

United Arab Emirates

The attachment of movable, immovable or tangible assets, including, but not limited to, bank accounts, stocks, bonds, revenues and shares, are possible under all UAE jurisdictions.

40. Are interim measures against assets available in your jurisdiction? Is it possible to apply for interim measures under an arbitral award before requesting recognition? Under what conditions?

United Arab Emirates

Interim measures against assets are provided for under UAE federal law, in particular Chapter 8 of Cabinet Decision No. 57/2018. Certain limitations on the use of interim measures against sovereign state assets apply. Article 106(1) provides that public funds of the UAE or of its emirates (including waqf funds) cannot be attached. Article 106(10) prohibits attachment of the funds of foreign embassies and diplomatic bodies enjoying diplomatic immunity under the condition of reciprocity.

Interim measures are also available under Part 25 of the DIFC Court Rules and Part 10 of the ADGM Court Procedure Rules. These include injunctions, declarations and orders (including freezing orders).

Although there is currently no precedent from the ADGM courts suggesting that interim measures against assets owned by a sovereign state may be enforced, there

is at least one judgment by the DIFC Court in which it was held that a properly drafted sovereign immunity waiver clause will be upheld (see *Pearl Petroleum Company Limited & Others v The Kurdistan Regional Government of Iraq* [2017] DIFC ARB 003).

Article 21 of the UAE Federal Arbitration Law states that the party for whom an order to take an interim measure has been issued after obtaining written permission from the arbitral tribunal may request the competent court to order the enforcement of the order issued by the arbitral tribunal or any part thereof within 15 days of the date of receipt of the request. Interim and partial awards are enforceable in the UAE (Federal Arbitration Law, article 39). A party seeking to enforce an interim or partial award must apply to the chief justice of the competent court of appeal (or anyone he or she delegates). The court will follow a procedure of authentication or recognition that is similar to the one adopted for the final award before the enforcement of an arbitral award for the interim measure.

41. What is the procedure for obtaining interim measures against assets in your jurisdiction?

United Arab Emirates

Articles 18 and 21 of the Federal Arbitration Law authorise courts and tribunals to apply interim measures against assets under the cover of the general rules governing this matter provided for in Cabinet Decision No. 57/2018. These measures are *ex parte* if applied by a court (in accordance with Article 18) but adversarial if applied by a tribunal (under article 21) as it would take place during the arbitration.

Part 25 of the DIFC Rules provides that interim measures may be issued prior to and following issue of a claim form. Applications can be made with or without notice. Applications with notice must state the order sought and the time and location of the hearing (which cannot be less than three days), in addition to providing evidence and a draft of the proposed order itself. Urgent applications are made without notice and must provide evidence justifying why notice has not been provided.

Rule 72 of the ADGM Court Regulations provides that an interim measure application may be made before a claim has been brought, but only when it is urgent or if it is in the interests of justice to do so. Rule 64 requires an applicant to file an application notice, witness statement and a draft of the order sought. If made before a claim is issued, the application must be accompanied by an undertaking to the court to the effect that it will submit a claim within two days of the application notice being filed. Applications without notice may be made if permitted by a rule, practice direction or the court.

42. What is the procedure for implementing interim measures against assets in your jurisdiction?

United Arab Emirates

Article 113 of Cabinet Decision No. 57/2018 governs interim measures (ie, seizures) against immovable property. To obtain an interim measure, the applicant must submit an official copy of the title deed of the property to be seized with its petition and comply with the requirements provided under article 111.

Part 46 of the DIFC Court Rules provides specific procedures for obtaining charge orders in relation to securities and funds in court, while Part 47 allows for the attachment of future assets, including money in court and future earnings. Part 25 of the DIFC Rules provides that a petitioner may apply for interim relief on either an ex parte basis or by giving notice to the other side. The application notice must state the order sought and the date, time and place of the hearing. The application notice and supporting evidence must be served as soon as practicable after issue and, in any event, not less than three days before the court is due to hear the application.

Part 32 of the ADGM Court Regulations provides that charging orders may be obtained on interests in trusts, stock, securities and other intangible interests held by the court.

43. What is the procedure for requesting attachment against assets in your jurisdiction? Who are the stakeholders in the process?

United Arab Emirates

Article 111 of Cabinet Decision No. 57/2018 provides that a UAE court can issue a provisional seizure of assets and property if a creditor can show that, inter alia:

- the debtor does not have a stable residence in the jurisdiction;
- the creditor fears, on the basis of firm evidence, that the debtor might flee, or smuggle or conceal his or her funds; and
- the debt securities are at risk of being lost.

Before issuing an order for seizure, the court may request any statements, evidence or affidavits, and conduct any necessary investigations with the assistance of the competent administrative authorities, when it is deemed necessary.

Article 113 provides that if the debtor does not hold any writ of execution or if the debt is not of a specified amount, the judge may order a provisional seizure and temporarily estimate the debt owed based on the creditor's petition.

If a seizure is ordered by a magistrate of summary justice, the creditor must file an action for the establishment of right within eight days of the issuance date of the seizure order. In response, the debtor can file a grievance against the seizure order.

Article 109 of Cabinet Decision No. 57/2018 provides that the debtor can have the attachment released by depositing with the court's treasury a sum approximately equal to the sum owed.

Part 48 of the DIFC Rules governs enforcement against a debtor's assets. Following issuance of an order for seizure, an enforcement officer shall deliver to the debtor, or leave at each place where execution is levied, a notice informing the debtor of the execution. Orders issued by courts in the DIFC are generally enforceable onshore in light of a reciprocal enforcement protocol (Dubai Law No. 12 of 2004 (as amended by Dubai Law No. 16 of 2011)).

Part 32 of the ADGM Court Regulations allows a party to apply for a charging order against a debtor's assets. If issued by the court, an interim charging order must be served on the debtor and a hearing will be scheduled to determine whether a final charging order should be issued. The creditor, having obtained the final charge order, can then request the court to order the sale of the property.

The executor, bailiffs or representatives of the court of execution, and the executor may also appoint a judicial receiver for the seized items, if so required.

44. What is the procedure for implementing attachment orders against assets in your jurisdiction?

United Arab Emirates

Articles 149 to 169 of Cabinet Decision No. 57/2018 set out the procedure for attachment of real estate. If the execution judge is satisfied with the seizure petition, he or she will communicate the seizure to the competent department. The debtor will then be notified of the seizure within seven days and, provided he or she does not object, the sale of the property will be ordered. The execution judge, before selling the property via auction, should notify the debtor to pay the debt within a month. In two limited circumstances, the debtor may request an extension of this deadline. In any event, the debtor's residence cannot be attached unless the debt arises from a mortgage on the property (article 106).

The DIFC Court Rules and the ADGM Court Regulations do not provide for any specific provisions governing immovable property.

45. Are there specific rules applicable to the attachments against sums in bank accounts or other assets deposited with banks?

United Arab Emirates

In all UAE jurisdictions, like other assets of a debtor, it is possible to attach the bank accounts opened within a branch or subsidiary of a foreign bank located in the UAE;

however, it is not possible to attach bank accounts opened in branches or subsidiaries located outside the UAE of either foreign or domestic banks.

46. May a creditor of an award rendered against a private debtor attach assets held by another person on the grounds of piercing the corporate veil or alter ego? What are the criteria, and how may a party demonstrate that they are met?

United Arab Emirates

Generally, the concepts of piercing the corporate veil or alter ego may not be practically enforceable owing to several factors, such as the nature or type of formation of a company; however, recently, the UAE courts have determined that the creditors of a limited liability company may have the right to pursue its shareholders' personal assets and hold them personally liable towards the company's debts if it is possible to prove their involvement in the exploitation of the company's financial status through fraudulent acts.

Recognition and enforcement against foreign states

47. Are there any rules in your jurisdiction that specifically govern recognition and enforcement of arbitral awards against foreign states?

United Arab Emirates

There are no specific rules that govern recognition and enforcement of arbitral awards against property owned by foreign states in the UAE. Although the DIFC and ADGM rules and regulations govern the enforcement of foreign awards, these do not set out specific provisions for recognition and enforcement of awards against foreign states.

48. What is the procedure for service of extrajudicial and judicial documents to a foreign state?

United Arab Emirates

Article 7(6) of Cabinet Decision No. 57 of 2018 sets out the procedure for the service of documents on persons who have a known domicile abroad. This procedure involves a copy of the notification being delivered to the Ministry of Justice, which in turn refers it to the Ministry of Foreign Affairs, which communicates the notification through diplomatic channels; however, alternative mandatory

means of service may be applicable under international agreements to which the UAE is a party.

The procedures governing the service of documents pursuant to these international agreements also apply to DIFC and ADGM proceedings.

Chapter 1 of Cabinet Decision No. 57/2018 further provides (article 5(3)) that if the official language of the defendant is not Arabic, the plaintiff shall be bound to attach to the notice a certified translation in English, unless there is an earlier agreement between the parties to attach the translation in another language. In other offshore jurisdictions, the official language is English, and any correspondence in another language should be translated into English or other relevant language of the foreign state.

With regard to persons who are abroad and cannot be notified by technological means or through private companies or offices or as agreed by the parties, the copy shall be delivered to the Ministry of Justice for referral to the Ministry of Foreign Affairs, and the latter shall communicate it to those persons by diplomatic means, unless the notice-serving methods in that case are regulated under special agreements.

49. May a foreign state invoke sovereign immunity (immunity from jurisdiction) to object to the recognition or enforcement of arbitral awards?

United Arab Emirates

UAE law does not expressly grant state immunity from claims. DIFC law is silent on the issue of state immunity and does not provide additional protection to a foreign state against recognition or enforcement of arbitral awards.

The question of whether DIFC law recognises sovereign immunity was discussed in *Pearl Petroleum Company Limited & Others v The Kurdistan Regional Government of Iraq* [2017] DIFC ARB 003) wherein the defendant applied to set aside an order of the DIFC Court of First Instance recognising and enforcing arbitration awards issued against the defendant on the basis of sovereign or state immunity; however, the Court was convinced that the defendant had waived any claim to immunity for itself and its assets. Consequently, if a foreign state waives its immunity in a contract, the court may not accept the claim of sovereign immunity to object to the recognition or enforcement of arbitral awards.

50. May award creditors apply interim measures against assets owned by a sovereign state?

United Arab Emirates

There is currently no precedent from the UAE courts suggesting that creditors may apply interim measures against assets owned by a sovereign state; however, the DIFC Court decided in a judgment that a properly drafted sovereign immunity waiver clause will be upheld (see *Pearl Petroleum Company Limited & Others v The Kurdistan Regional Government of Iraq* [2017] DIFC ARB 003). The Court found that the defendant had expressly waived any claim to immunity for itself and its assets (which was held to mean a waiver of immunity from suit and execution). The Court was in no doubt that this ‘clear and unequivocal waiver’ was effective.

Consequently, an award creditor may apply for interim measures against the assets owned by a sovereign state if the sovereign state has waived its immunity in a contract. It is, however, pertinent to mention that enforcement under the Riyadh Arab Agreement for Judicial Cooperation (for the recognition and enforcement of court judgments and arbitral awards) does not apply to awards against government bodies.

51. Are assets belonging to a foreign state immune from enforcement in your jurisdiction?

United Arab Emirates

Generally, a party may enforce judgments against the assets of foreign states in the territory, subject to any treaty between the UAE and the foreign state relating to enforcement. In practice, the process of filing a case against a state entity may be comparatively lengthy and complex without certainty of its enforcement; however, in *Pearl Petroleum Company Limited & Others v. The Kurdistan Regional Government of Iraq* [2017] DIFC ARB 003, the DIFC Court stated that it would recognise properly drafted waivers of sovereign immunity.

52. Is it possible for a foreign state to waive immunity from enforcement in your jurisdiction? What are the requirements of waiver?

United Arab Emirates

There is no waiver of sovereign immunity under UAE law as domestic law does not provide foreign states with immunity from enforcement; however, the DIFC Court has recognised waiver of sovereign immunity by a state under English law (see *Pearl Petroleum Company Limited & Others v The Kurdistan Regional Government of Iraq* [2017] DIFC ARB 003).

53. Is it possible for a creditor of an award rendered against a foreign state to attach the assets held by an alter ego of the foreign state within your jurisdiction?

United Arab Emirates

Domestic law does not provide foreign states with immunity from enforcement, and an award creditor may execute an award against assets of a foreign state.

An award creditor may encounter difficulties in enforcing an award against a sovereign state through its assets held by alter ego. The reason is that the principle of alter ego may not be applied by a court to permit enforcement of an arbitral award against a third party who is not an award debtor.

What an award creditor would be required to prove, and how it should be proved before a court, are opaque tasks without much judicial guidance; however, any fraud or such other criminal acts (to be determined by the concerned court) committed by an award debtor, particularly to impede the execution of an award against it, or its assets through its alter ego, could trigger piercing of the corporate veil and may allow an award creditor to find recourse for enforcement of its award.

In the UAE jurisdictions, once an award has been issued by an arbitral tribunal in an arbitration case, a court has no power to amend or vary the award; therefore, an award creditor, who intends to impose liability on a third party under the principle of alter ego and to overcome the expected hindrances, should do so, if allowed under the relevant arbitration agreement or applicable laws, during the proceedings before the foreign tribunal.

In the UAE, the concepts of piercing the corporate veil or alter ego may be implemented if elements of fraudulent activities by the shareholders of the company are found, as established by the UAE court in Dubai Court of Cassation Case No. 402/2001.

Given the complexity involved in the enforcement of an arbitral award against the assets of a foreign state, it would, however, be a comparatively challenging process to enforce an attachment of the assets held by an alter ego in the territory.

54. May property belonging to persons subject to national or international sanctions be attached? Under what conditions? Is there a specific procedure?

United Arab Emirates

As a member state of the United Nations, the UAE is required to implement sanctions imposed by the United Nations against any individual or company that is placed on the UN sanctions list. The property belonging to persons subject to national or international sanctions may be attached. The property may include the

cash directly held by the sanctioned person or business, stocks, shares and other assets, whether tangible or intangible.

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