

A Welcome Development for Arbitration in the UAE

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After much anticipation within the arbitration community, 2018 closed on a positive note for UAE arbitration with the federal government of the UAE amending Article 257 of the UAE Penal Code ("**Article 257**"). As a consequence, Article 257 no longer exposes arbitrators to criminal sanctions for failing to maintain integrity and impartiality in the discharge of their duties.

The amendment was effected through Federal Decree No. 24 of 2018 which came into force on 8 October 2018 (the "**New Law**"). This is a welcome amendment to the previous Article 257 which introduced the potential for criminal liability when it was amended by Federal Law No. 7 of 2016 (the "**Old Law**").

We set out in this briefing a comparison between the Old Law and the New Law and what this means for arbitrators and practitioners in the UAE.

The Old Law

The Old Law provided that:

"Any person who, while acting in the capacity of an arbitrator, expert, translator or investigator appointed by an administrative or judicial authority or elected by the parties, issues a decision, gives an opinion, presents a report or a case or establishes a fact in favour or against a person, contrary to the duty of objectivity and integrity, shall be punished by temporary imprisonment." [unofficial translation].

Since the words 'integrity' and 'impartiality' are not defined in the UAE criminal law, this created uncertainty for arbitrators who risked sanctions including confiscation of their passport and potential imprisonment whilst any allegations of misconduct under the Old Law (which could have been made as tactic to disrupt proceedings) were investigated.

Accordingly, not only did the Old Law lead to some respected arbitrators declining appointments in the UAE, a number of sitting arbitrators also resigned. This had a negative impact on the perception of Dubai as a modern and sophisticated jurisdiction in which to resolve disputes through arbitration.

The amendment via the New Law

However, hot off the heels of the New Arbitration Law (see our previous [briefing](#) which highlighted the key changes introduced), the New Law has removed arbitrators from the scope of application of Article 257.

Specifically, the New Law provides that:

“Any person who, while acting in the capacity of an expert, translator or investigator appointed by a judicial authority in a civil or criminal case, or appointed by an administrative authority, confirms a matter contrary to what is true and misrepresents that matter while knowing the truth about it, shall be sentenced to imprisonment for a minimum term of a year and a maximum term of five years.

The punishment shall be temporary imprisonment if the mentioned individuals were assigned to mandate in relation to a felony.” [unofficial translation].

Whilst experts, translators and investigators are still included within the scope of the New Law, such individuals should draw some comfort from the application of this law seemingly being limited to those “*appointed by a judicial authority in a civil or criminal case or appointed by an administrative authority*”. Although it remains to be seen how this provision will be applied in practice, it is therefore hoped that experts, translators and investigators appointed by parties in the context of an arbitration, would not be caught by the sanctions contained within the revised Article 257.

Conclusion

In summary, the New Law has been welcomed by the global arbitration community as an extremely positive development. Not only should this amendment alleviate the reluctance amongst arbitrators (and experts) to accept appointments in the UAE and therefore increase the number of UAE-seated arbitrations, it should also ensure that Dubai continues to be seen as one of the leading arbitration jurisdictions in the world.

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