

SALIENT ISSUES IN ARBITRATION FROM AN ARAB MIDDLE EASTERN PERSPECTIVE

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I. Arbitration in the Middle East: A New Era?

In Arab countries, the increasing interest in arbitration as a viable form of alternative dispute resolution has accelerated to an unprecedented degree over the last five years, and today “businesses operating in the Middle East are increasingly turning to arbitration over litigation in

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resolving disputes”.² The Arab Middle East has seen an unprecedented growth in the number of arbitrations with an estimated 750 arbitrations a year in the UAE alone,³ and an increasing number of investment arbitration disputes following the Arab Spring.⁴ Thus it is clear that the Middle East is well on its way to becoming an international arbitration hub with parties engaged in arbitral proceedings more commonly choosing an Arab country as the seat of arbitration and the law of an Arab country as the applicable substantive law in the proceedings.

International Chamber of Commerce (ICC) statistics demonstrate that, in 2011, Arab countries were chosen as the seat of arbitration in 79% of cases involving the Middle East, with the applicable law of an Arab country being favored in 60-65% of cases consistently over the last three years.⁵

In order to accommodate the new wave of enthusiasm for arbitration as the preferred mechanism of dispute resolution for cross-border transactions, along with the establishment of new arbitral rules and institutions in the Middle East, many states in the region have also taken large legislative steps towards becoming more “arbitration friendly”. This lecture seeks first to outline the new and emerging legislation for arbitration in Arab Middle Eastern countries and the confluent flourishing of arbitration centers in the region as clear indications of the growing

² “More opt for arbitration to settle commercial disputes in MidEast”, *Saudi Gazette*, (July 3 2013), <http://www.saudigazette.com.sa/index.cfm?method=home.regcon&contentid=20130703172138> (quoting Chau Ee Lee, Reed Smith’s Dubai Office Managing partner).

³ Douglas Thomson, *Arbitrating in the Middle East*, GAR (June 2013) (quoting Alec Emmerson).

⁴ For example, the percentage of registered ICSID cases for the Middle East and North Africa is 14% in 2013 (Tunisia: 1, Egypt: 3, Algeria: 2), 10% in 2012 (Tunisia: 1, Egypt: 2, Algeria: 2) and 9% in 2011. The ICSID Caseload- Statistics, ICSID 2013, <https://icsid.worldbank.org/ICSID/FrontServlet?requestType=ICSIDDocRH&actionVal=CaseLoadStatistics>.

⁵ Particularly, ICC statistics show the following: In Western Asia (Qatar, Bahrain, Yemen, Lebanon, Syria, UAE, Jordan, Oman, Saudi Arabia etc.), the number of disputes has increased from 0.9% in 2003 to 3.9% in 2010, followed by smaller rate of increase in the following years: 3.3% in 2011, 2.6% in 2012 and 2.4% in 2013. Moreover, in 2010 and 2011, Arab countries were chosen as the seat of arbitration in 79% of the cases involving the Middle East, whereas the applicable law of an Arab country was chosen in 65% of the cases in 2010 and 63% of those in 2011, with a slight increase in 2012 to 64%. It is also worth mentioning that in 57% of these cases the seat of arbitration and the applicable law was the same.

inclination in the Arab Middle East to turn to arbitration as an effective medium for dispute resolution. Second, this lecture seeks to highlight some of those salient issues in arbitration particular to arbitral practice in the Middle East including, *inter alia*, the influence of Islamic *Sharia* Law, allocation of interests, and unforeseen events on Arbitration in an Arab Middle Eastern context.

II. Consolidation, Harmonization, and Modernization: the New Middle Eastern Approach to Arbitration

In the spirit of modernizing and harmonizing national arbitration laws, many states in the region have embraced, to varying degrees, the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration 1985 (“the Model Law”) as a basis for sound reform in keeping with best international arbitral practice. For example, Oman⁶ and Bahrain⁷ have both adopted the UNCITRAL Model Law almost word for word. Alternatively other jurisdictions in the region including Egypt,⁸ Jordan⁹ and Tunisia,¹⁰ have drawn heavily on this Model Law in drafting their respective national arbitration legislations. Other jurisdictions, such as Lebanon, have

⁶ The Sultanate of Oman has recently adopted a new Arbitration Law, which was promulgated on 27 July 1997 (published in Official Gazette No. 602) which is inspired by the 1994 Egyptian Arbitration Law, itself modeled on the UNCITRAL Model Law. See Abdul Hamid El Ahdab, “La nouvelle loi sur l’arbitrage du sultanat d’Oman”, *Rev. Arb.* 4, 527-534 (1997)..

⁷ Decree No. 9/1994 of 16 August 1994, which adopts verbatim the provisions of the UNICTRAL Model Law. See Philippe Fouchard, *Bahrein se dote d’une legislation sur l’arbitrage*, *Rev. Arb.*,4, 790 (1994).

⁸ The new Egyptian Arbitration Law of 1994 is, to a large extent, inspired by the UNCITRAL Model Law from which it draws the majority of its provisions, albeit it with a certain number of variations. See Bernard Fillion-Dufouleur and Philippe Leboulanger, *Le nouveau droit égyptien de l’arbitrage*, *Rev. Arb.* 4, 665-682 (1994).

⁹ Jordan’s new Arbitration Law which was passed in 2001 draws on the 1994 Egyptian Arbitration Law which, as noted above, is inspired to a great extent by the UNCITRAL Model Law. See O. Taher, *The Jordanian Law of Arbitration No.33 of 2001 (A Critique of a Judicial Precedent)*, 2 DIAC special edition 1, 25 (October 2006-June 2007).

¹⁰ Tunisian Arbitration Legislation is inspired to a large extent by the UNCITRAL Model Law. See Kalthoum Meziou and Ali Mezghani, *Le Code tunisien de l’arbitrage*, *Rev. Arb.*, 4, 521-542 (1993).

shaped their arbitration legislation in accordance with French law.¹¹ Those countries which have most recently reformed their arbitration legislation, including Morocco and Syria (2008), Saudi Arabia (2012) and Iraq (currently in the process of reforming its arbitration legislation) can be seen to be drawing on a variety of sources in the drafting of their new arbitration laws and these syntheses might be classified into one of three categories: (i) UNCTIRAL Model Law & French law (the new Moroccan Arbitration Law),¹² (ii) UNCITRAL Model Law and Egyptian law (the new Syrian Arbitration Law),¹³ (iii) UNCITRAL Model Law and Islamic *Sharia* (the new Saudi Arabian Arbitration Law).¹⁴

A brief overview of the region's most recently promulgated arbitration legislation will be followed by an outline of the active role played by the emerging array of arbitral institutions in the Arab Middle Eastern region in consolidating existing arbitration legislation and maintaining an "arbitration friendly" environment thereby giving the wider region a more competitive edge in the international arbitration arena.

A. Recent Legislation in Arbitration:

1. Morocco:

As mentioned above, the new Moroccan Law, "*Law No. 05.08 Relating to Arbitration and Mediation Agreements*", promulgated in 2008, is inspired by the UNCITRAL Model Law and encompasses elements of French Law.¹⁵ This law first abrogated and then replaced arbitration provision in chapter VIII title V of the Code of Civil Procedure

¹¹ Decree Law no. 73/90 (Code of Civil Procedure) (Lebanon), *amended by* by Law No. 440 (July 1 2002).

¹² No. 05.08, Relating to Arbitration and Mediation Agreements (ma.) 2 J. Arab Arb. (2009) [hereinafter *Morocco Arbitration Law*]

¹³ The Syrian Arbitration Act Law No. 4, Sayad & Sayad Attorneys at Law Translation (2008) *available at* <http://www.sayedlaw.com/The%20New%20Syrian%20Arbitration%20Act%20No.%204%20of%202008.pdf> [hereinafter *Syrian Arbitration Act*].

¹⁴ The New Saudi Arbitration Law enacted by virtue of Royal Decree No. M/34 dated 24/5/1433H-16/4/2012, the Kingdom of Saudi Arabia [hereinafter *KSA Arbitration Law*].

¹⁵ Abdel Rahman Mesbahi, *The New Moroccan Law, No. 05.08, Relating to Arbitration and Mediation Agreements*, *International Journal of Arab Arbitration*, 1 Int'l J. Arab Arb. 2, 11–26 (2009); *Relating to Arbitration and Conventional Mediation*, 1 Int'l. J. Arab Arb. 2, 467 – 484 (2009).

with a new Chapter VIII entitled “*arbitration and conventional mediation*”. This chapter is divided into four sections making a clear distinction between domestic arbitration (section 1: Articles 306 to 327[38]) and international arbitration (section 2: Articles 327 [39-54]). The new law explicitly recognizes the supremacy of international treaties ratified by the Kingdom of Morocco¹⁶ and defines international arbitration in a way that synthesizes aspects of French law¹⁷ and elements drawn from the UNCITRAL Model Law Article 327(40). This article reads “...is considered international within the meaning of this section, the arbitration that involves interests of international trade, and where one of the parties has its domicile or seat abroad” followed by a list of criteria under which a given arbitration would be considered international.¹⁸ Finally, Article 327 (55-67) of the new Moroccan law states that arbitration agreements concluded before the new law went into effect, as well as ongoing proceedings, will continue to be governed by the provisions of the old Chapter VIII of title V of the Moroccan Code of Civil procedure.

2. Syria:

Syria¹⁹ enacted its new Arbitration Law on March 25 2008, which came into force on May 1 2008, thus replacing the out-dated articles (506-534) of the Code of Civil Procedure of September 28 1953, which

¹⁶ Moroccan Arbitration Law, *supra* note 11 at art. 327-39 (“This section applies to international arbitration without prejudice to the provisions of the international treaties ratified by the Kingdom of Morocco and published in the “official Gazette”).

¹⁷ Code de procédure civile [C.P.C.] art. 1504 (fr.) (“is considered international the arbitration that involves interests of international trade”).

¹⁸ Moroccan Arbitration Law, *supra* note 11 at art. 327-40 (“[...] Arbitration is international if: (1) the parties to the arbitration agreement have, at the time of the conclusion of the said agreement, places of business in different states; or; 2) one of the places mentioned herein below is outside the state where the place of business is located: (a) The seat of arbitration, if stipulated or determined in the arbitration agreement, (b) any place where a substantial part of the obligations arising from the commercial relationship shall be executed, or the place that has the closest link to the subject-matter of the dispute; or (3) the parties have expressly agreed that the subject-matter of the arbitration agreement is linked to more than one country. For the application of the provisions of the 2nd paragraph of the present article (a) If a party has more than one place of business, the place of business that has the closest link to the arbitration agreement should be taken into consideration (b) If a party does not have a place of business, it shall be replaced by its usual place of residence”).

¹⁹ Syrian Arbitration Act, *supra* note 2.

itself had been, to a large extent, inspired by the Egyptian code of 1949. The new Syrian law draws on elements from the Egyptian Arbitration Law (1994), the UNCITRAL Model Law, and for some of its provisions (specifically those related to disputes brought before the Court of Appeal) from French law,²⁰ and does not make the distinction between domestic and international arbitration. Although still somewhat restrictive vis-à-vis administrative contracts related to the public sector, one of the more significant reforms of the new Syrian law is the codification of the principle of the *separability* of the arbitration agreement (Article 11) and the restriction of actions that might be brought against the arbitral award to the “action for setting-aside,” thus excluding the action of appeal which was allowed for under the old rules. It is interesting to note that the new law introduced a section related to the establishment of arbitration centers in Syria.²¹ Finally, similar to the new Moroccan law, Article 65 explains the provisions of the new Syrian law are only applicable to arbitration agreements concluded after its entry into force (i.e. May 1 2008).

3. Saudi Arabia:

Following the trend of arbitration legislation reform, Saudi Arabia enacted a New Arbitration Law in 2012,²² which largely draws on elements of the UNCITRAL Model Law with the aim of attracting international trade in the Arabian Peninsula by constructing a flexible commercial arbitration framework and enacting new provisions compatible with the requirements of the wider international arbitration

²⁰ Jacques El-Hakim, *Loi syrienne sur l'arbitrage du 25 mars 2008*, Rev. Arb., 4, 659-76, 851-67 (2008); Jacques El-Hakim, ;*The New Law on Arbitration in Syria*., 375-85, (Liber Amicorum Bernardo Cremades, Fernández-Ballesteros, and Arias eds. Kluwer 2010).

²¹ *Syrian Arbitration Act*, supra note 11 at art. 57.

²² *KSA Arbitration Law*, supra note 13; Mohammed Al-Hosban, *The New Saudi Arbitration Law on Arbitration: Presentation and Commentary*, 4 Int'l. J. Arab Arb. 3, 5-13 (2012); Jean-Pierre Harb and Alexander G. Leventhal, *The New Saudi Arbitration Law: Modernization to the Tune of Shari'a*, 20 J. Int'l. Arb. 2, 113-30 (2013); Abdul Raihman Baamir and Ilias Banteckas, *Saudi Law as Lex Arbitri: Evaluation of Saudi Arbitration Law and Judicial Practice*, 25 Arb. Int'l. 2, 239-69 (2009); Minas Khatchadourian, *la nouvelle loi Saoudienne sur l'arbitrage*, Rev. Arb. 3, 683-90 (2012); Saleh Al Hejailan, *The New Saudi Arbitration Act: A Comprehensive and Article-by-Article Review*, 4 Int'l. J. Arab Arb. 3, 15-48 (2012); Khalid Alnowaiser, *the New Arbitration Law and its impact on investment in Saudi Arabia*, 29 J. Int'l. Arb. 6, 723-25 (2012).

community. The new Arbitration Law in Saudi Arabia has been specifically designed to create an “arbitration-friendly” environment thereby attracting investors, both at home and abroad, and encouraging the flow of investment into the country. While the new Arbitration Law contains some innovative provisions inspired by the UNCITRAL Model Law, constituting an important step towards modernization. This step, however, to a greater or lesser extent, is mitigated by those more restrictive provisions governed by the pre-eminence of the Islamic *Sharia* in Saudi legislation. For example, the law explicitly states that, at all times, arbitration proceedings shall be in compliance with the principles of Islamic *Sharia*. Arbitrators, who should hold a university degree in the *Sharia* or the Islamic legal sciences (*fiqh*), must ensure the application of the law to the merits of the dispute and the procedural rules does not contravene the principles of the Islamic *Sharia*.²³ Nonetheless, the new Saudi Arbitration Law, which distinguishes between domestic and international arbitration according to geographic criteria, is hailed for making a significant contribution in its reducing the discretionary powers of the Board of Grievances with respect to the enforcing of arbitral awards, thereby rendering arbitration a more favorable model for resolving commercial disputes. Moreover, Saudi Arabia being a signatory to the New York Convention²⁴ for the Recognition and Enforcement of Foreign Arbitral Awards and the Washington Convention on the Settlement of Investment Disputes,²⁵ further highlights the growing Saudi inclination to foster an arbitration-friendly environment within its borders.

4. Iraq:

Iraq is currently engaged in a similar process of reform of its arbitration legislation, which, as it stands, is governed by provisions of the 1969 Iraqi Civil Procedure Code. Existing arbitration legislation in Iraq suffers from a tangible deficit of provisions regarding the recognition and enforcement of arbitral awards rendered abroad, due, in large part,

²³ Saudi Arbitration Law, *supra* note 13, art. 13.

²⁴ See Saudi Arabia Royal Decree No. M/11, 16 Rajab 1414 A.H. (Dec. 13, 1993) (ratifying the New York Convention for the recognition and enforcement of foreign arbitral awards).

²⁵ See Saudi Arabia Council of Ministers Resolution No. 372, 15/3/1394 A.H.; Saudi Arabia Royal Decree No. M/8, 22/3/1394 A.H. (ratifying the Washington Convention on the Settlement of Investment Disputes).

to the fact that Iraq is not, at time of writing, a signatory to the aforementioned New York Convention.

More recently, however, the Iraqi government has commissioned a new committee charged with drafting a new Arbitration Law incorporating elements drawn from the 1994 Egyptian Arbitration Law and the 1985 UNCITRAL Model Law on International Arbitration and its amendments, as adopted in July 2006. Thus the efforts of the Iraqi legislature to reform its arbitration provisions can be seen in the context of a region-wide trend to put in place a modern framework which honors the fundamental principles of arbitration law and allows for specific provision to safeguard the enforceability and subsequent enforcement of arbitral awards.

B. Proliferation of Arbitral Institutions in the Middle East

Along with the reformation of existing arbitration legislation, the Middle East has also witnessed the establishment of a plethora of new arbitral institutions and the publication of each center's institutional rules. In May 2007, the Dubai International Arbitration Centre (DIAC) issued its Arbitration Rules with Decree No. 11 2007.²⁶ This was followed by the commissioning of the BCDR-AAA²⁷ by the Kingdom of Bahrain, in partnership with the American Arbitration Association (AAA) in January 2010, and the formation in Qatar of the Qatar International Centre for Conciliation and Arbitration (QICCA).²⁸ Each of these institutions recently issued their own sets of institutional arbitration rules,²⁹ the latter inspired specifically by the UNCITRAL Arbitration Rules issued in 1976 and as revised in 2010. Similarly, the Cairo Regional Centre for International Commercial Arbitration (CRCICA) based its new

²⁶ Dubai International Arbitration Centre, *DIAC Arbitration Rules 2007*, <http://www.diac.ae/idias/rules/> (last visited Sept. 17, 2013).

²⁷ See Royal Decree No. 30, 6 Rajab 1430 Ah.H. (June 29, 2009) (establishing the BCDR-AAA). To date, 27 cases have been filed with BCDR-AAA, 13 of which were filed in 2010, worth a total of half a billion US dollars, <http://www.bcdr-aaa.org/>.

²⁸ See generally Qatar Chamber, *The Qatar International Center for Conciliation and Arbitration*, <http://www.qatarchamber.com/arbitration-2/arbitration/> (last updated 2013) (detailing the formation of the QICCA).

²⁹ See Dubai International Arbitration Centre, *supra* note 25, at 7 (instituting new DIAC arbitration rules effective May 7, 2007); BCDR-AAA, *BCDR-AAA Arbitration Rules*, <http://www.bcdr-aaa.org/en/rules-regulations/bcdr-aaa-arbitration-rulesenglish.html> (2011) (detailing the BCDR-AAA rules for arbitration); Qatar Chamber, *supra* note 27, at 7 (detailing the QICCA rules for arbitration).

Arbitration Rules (2011) on the 2010 UNCITRAL Arbitration Rules, with slight amendments made to accommodate the Centre's role as both an arbitration institution and an appointing authority.³⁰ Most recently, the Abu Dhabi Centre for Conciliation and Commercial Arbitration, based at the Abu Dhabi Chamber of Commerce and Industry, has promulgated its new arbitration rules, effective as of September 1 2013, which, in abrogating those outdated provisions pertaining to arbitration,³¹ can be seen to foster a more welcoming arbitration environment. The new rules allow for a more efficient conduct of arbitral proceedings, with the provision of clear rules for the service of notices, the appointment and fees of the tribunal, the requirement of a detailed request, response and counterclaim, and the reference to a fixed time limit. Moreover, the new rules include provisions on the power of the tribunal to order provisional and precautionary measures.³² Finally, the new rules safeguard the enforceability of arbitral awards by providing an article on the waiver of the right to object,³³ which is designed to circumvent those dilatory tactics that might be deployed by counsel and might threaten the enforceability of a given award.

In addition, the region has witnessed the inauguration of arbitration "free-zones" in Dubai and Qatar, with the establishment of an arbitration center housed by the Dubai International Financial Centre (DIFC),³⁴ in collaboration with the London Court of International Arbitration (LCIA) and the Qatar Financial Centre.³⁵ Not only do these arbitration centers offer potential parties a degree of familiarity, since their institutional rules are modeled on well-known and well-received international rules, (for example DIFC Arbitration Law No. (1) of 2008 is based upon the UNCITRAL Model Arbitration Law and the 1996 Arbitration Act of

³⁰ CRCICA, *CRCICA Arbitration Rules (2011)*, available at http://www.crcica.org/en/arbitration_rules.html (last visited Sept. 24, 2013).

³¹ The previous rules were issued by the Executive Board of Directors by resolution No. (7) of 3/1/1993.

³² See Abu Dhabi Centre for Conciliation and Commercial Arbitration Charter art. 25, available at <http://www.abudhabichamber.ae/English/AboutUs/Sectors/CCAC/Charter/Pages/Part-Two.aspx> (granting the arbitral tribunal power to revise the reports presented by the parties and adopt fresh solutions).

³³ *Id.* at art. 26.

³⁴ See DIFC LCIA Arbitration Centre, available at <http://www.difc-lcia.org/> (last updated 2008) (establishing the DIFC-LCIA).

³⁵ See Qatar Financial Centre Regulation No. 8 of 2005 (enacting the QFC arbitration regulations pursuant to Article 9 of Law No. (7) of 2005).

England, Wales and Northern Ireland), but it is also important to note also that these so-called “free-zones” provide a level of jurisdiction and legal certainty in regards to the enforceability of arbitral awards, assuring parties of the finality of an arbitral award with a minimum of court intervention.

With the proliferation of new arbitration centers and their accompanying sets of institutional rules, there has been a confluent and growing awareness of those salient ethical issues that govern arbitral proceedings in an Arab Middle Eastern context. Many Middle Eastern arbitral institutions have been active in this regard; CRCICA, for its part, has been proactive in its promulgation of a Code of Ethics providing guidance and support for how arbitrators in a Middle Eastern context might take salient ethical issues into account when making their rulings.³⁶ This is a valuable initiative, indicative of a wider inclination across the Arab Middle East to preserve the legitimacy and integrity of the international arbitration process, in promoting procedural fairness, encouraging an atmosphere of cooperation, reducing costs and expediting arbitral proceedings in the region.³⁷

Through the drafting of new “arbitration friendly” legislation and the flourishing network of arbitration centers, Arab Middle Eastern countries can be seen as positioning themselves as an up-and-coming regional hub for arbitration at the heart of the international arena. However, despite those aforementioned visible harmonizing and modernizing tendencies, the fact remains that certain salient issues pertaining to cultural or local legislative specificities must be borne in mind when considering arbitral procedure in an Arab Middle Eastern context.

III. Salient Issues with regard to conducting arbitration proceedings in the Middle East

This section will focus on those salient issues to be taken into account when conducting arbitration proceedings in an Arab Middle Eastern context, with particular analysis of the requirements of the applicable procedural and substantive law. While some of these issues

³⁶ See CRCICA, *Code of Ethics*, available at http://www.crcica.org.eg/code_ethics.html (2007).

³⁷ See Mohamed Abdel Raouf, *The Call for Ethical Guidelines for Counsel in International Arbitration*, IBA Conference Dubai (2011); R. Karrar-Lewley, *Revolution in Bahrain- Decree No.30 of 2009 and the World's First Arbitration Freezone*, 14 Int'l A.L.R. 3, 80-89 (2011).

are purely practical in that they deal with specific exigencies of Middle Eastern countries in regard to arbitral procedures, there are also some more theoretical issues that arise from fundamental legal and cultural considerations in the Middle Eastern region, which should not be overlooked.

Historically, Islamic *Sharia* Law has formed the basis of the legislation of many countries in the Arab Middle Eastern region. The early twentieth century saw the emergence of Middle Eastern legislations built on the fundamental basis of a civil law system, inspired, to a great extent, by the Egyptian Civil Code and incorporating, in some instances, certain principles of the Islamic *Sharia*. Indeed, the legislation of some countries in the Middle East expressly refers to *Sharia* law as the prevailing authority in those particular areas of legislations not covered by civil law.³⁸ Although the scope of the influence of *Sharia* Law remains limited and plays little more than a subsidiary role nonetheless, it remains a preeminent source of guidance for the interpretation of the law in many Middle Eastern jurisdictions. This is undoubtedly a salient cultural issue that has both theoretical and practical ramifications for arbitral proceedings in a Middle Eastern context and the eventual enforceability of any award rendered in violation of mandatory requirements under the applicable substantive law.

In some Arab countries, notably Qatar and Dubai, arbitration is still perceived as a “departure from the usual modes of litigation along with the guarantees they provide.”³⁹ As such “an exceptional mode of dispute resolution and should therefore be expressly agreed upon”.⁴⁰ For this reason, arbitration practitioners in Arab Middle Eastern countries ought to bear in mind those practical issues related to specific exigencies of arbitral proceedings in the region to which Local Courts can be

³⁸ Law No. 13 of 1990 (Code of Civil and Commercial Procedure), art. 1 par. 2 (Qatar) (stating “*in the absence of a legislative text, the judge will rule according to the principle of Islamic Sharia, alternatively by reference to custom or otherwise in justice*”); Law No. 43 of 1976 (Civil Code), 1 Jan. 1977, art. 2 (Jordan) (explaining “*In the absence of a text in the law, the court will rule according to the rulings of Islamic doctrine which are the most consistent with the texts of this law, otherwise in accordance with the principles of Islamic Sharia*”).

³⁹ Qatar Court of Cassation 87/2010 (65) (explaining “arbitration... is an exceptional mode of dispute resolution between the parties, based on a departure from the usual modes of litigation along with the guarantees they provide”).

⁴⁰ Dubai Court of Cassation, Petition No.51/92 (stating “arbitration is an exceptional mode of dispute resolution and should therefore be expressly agreed upon”).

particularly sensitive and failure to note this might call into question the eventual enforcement or recognition of an arbitral award.

The fundamental legal considerations that ought to be taken into account include:

A. The requirement of a Special Power of Attorney to submit disputes to arbitration

In many Middle Eastern jurisdictions, including Kuwait,⁴¹ Dubai,⁴² Bahrain,⁴³ Lebanon,⁴⁴ Egypt,⁴⁵ Jordan,⁴⁶ Qatar,⁴⁷ and Syria⁴⁸ the principle of the *separability* of the arbitration clause is recognized. Therefore, any potential signatory to an arbitration agreement must be in possession of a “Special Power of Attorney,” which explicitly entitles him to agree to an arbitration clause.⁴⁹ Indeed, failure to comply with this requirement may lead to any given arbitral award being subject to annulment. In fact, Article 203(4) of the UAE Civil procedure Code states, “*it shall not be possible to arbitrate in matters which are not capable of being settled between the parties and it shall not be valid to agree upon arbitration except by those who have the authority to dispose of the right in dispute;*” with Article 58(2) stating, “*it is not valid, without explicit authorisation, to dispose of, settle, or renounce to a claim, or to arbitrate*

⁴¹ See Kuwaiti Civil Code art. 702 (requiring that each party to an arbitration clause obtain a special power of attorney that explicitly entitles the party to agree to the clause).

⁴² Law No. 11 of 1992 (Code of Civil Procedure), art. 203(4) (United Arab Emirates) (providing “*It shall not be permissible to arbitrate in matters that are not arbitrable. An agreement to arbitrate shall not be valid unless made by persons having the legal capacity to make a disposition over the right of the subject matter of the dispute*”).

⁴³ See Bahraini Civil and Commercial Procedure Act art. 43 (requiring special authorization in order for a party to act as a signatory to an arbitration agreement).

⁴⁴ Decree Law 90 of 16 Sept. 1983, art. 381 (Code of Civil Procedure) (Leb.).

⁴⁵ Law No. 131 of 1948 (Civil Code), *Al Jarida Al-Rasmiyya*, 29 July 1948, art. 702 (Egypt).

⁴⁶ Law No. 43 of 1976 (Civil Code), 1 Jan. 1977, art. 838 (Jordan).

⁴⁷ Article 721 of the Qatari Code of Civil and Commercial Procedure provides “*a special Power of Attorney is required for each act which is not an act of management [an administrative act], particularly sales, conciliations, mortgages, admissions and arbitration and also in directing the oath and pleading before the court*”. Law No. 13 of 1990 (Code of Civil and Commercial Procedure), art. 721 (Qatar).

⁴⁸ Law No. 84 of 1949 (Civil Code), 18 May 1949, art. 668 (Syria)..

⁴⁹ Dubai Court of Cassation, Decision no.191/2009 dated 09/13/2009.

a dispute". A similar provision can be found in the Qatari Commercial and Civil Procedure Code, which states "*the arbitration shall be valid for only those who have the capacity to dispose of their rights*" (Article 190) and that "*any act other than administrative acts shall require a special agency, particularly for gifts, sale, reconciliation, mortgage, acknowledgement, arbitration putting to oath and pleading before the courts of law.*"⁵⁰

Therefore, in order to validly sign an arbitration agreement, the signatory must have a notarised special power of attorney⁵¹ or must be entitled to dispose of, settle, or renounce the right to pursue a claim on behalf of a given company.⁵² While the managing director is presumed to have the authority to sign an arbitration agreement,⁵³ practitioners should be aware that the following persons are not presumed to have the authority to sign an arbitration agreement *a priori*:⁵⁴ (i) contract managers, business support directors, legal division managers, procurement services division managers (even those with internal authorisation to sign contracts in general) (ii) agents acting on behalf of the principal without express authority to agree arbitration,⁵⁵ and (iii) persons authorised in general terms to enter into agreements without specific mention of the authority to agree to arbitration.⁵⁶

In light of the above, the requirement of a special power of attorney is essential in order to bind a party to arbitration and to secure the enforceability of any arbitral awards, thus avoiding a potential invalidation of

⁵⁰ Law No. 13 of 1990, Code of Civil and Commercial Procedure, arts. 190, 721(1) (Qatar).

⁵¹ Federal Law No. 11 of 1992 (Civil Procedure Code), arts. 58(2), 203(4) (United Arab Emirates).

⁵² Dubai Court of Cassation, Petition No.220/2004; Law No. 113 of 1990, Code of Civil and Commercial Procedure, art.190 (Qatar).

⁵³ Dubai Court of Cassation, Petition No.220/2004;

⁵⁴ Richard Bell, "Running a Successful Arbitration-How to Get it Right From the Start", 2013 Arbitration Roadshow, Abu Dhabi, (1 October 2013); Nassif BouMalhab, "The Authority to Agree Arbitration Under Qatari Law", Arbitration Roadshow, Qatar, (30 September 2013); Nassif BouMalhab, "The Authority to Agree Arbitration under Qatari law", Arbitration Roadshow, Dubai, (2 October 2013).

⁵⁵ Federal Law No. 11 of 1992 (Civil Procedure Code), art. 928 (United Arab Emirates); Law No. 13 of 1990 (Code of Civil and Commercial Procedure), art. 721(1) (Qatar); Dubai Court of Cassation, Petition No. 209/2004).

⁵⁶ Federal Law No. 11 of 1992 (Civil Procedure Code), arts. 58(2), 203(4) (United Arab Emirates); Law No. 13 of 1990 (Code of Civil and Commercial Procedure), art. 721(1) (Qatar).

the arbitration agreement or the annulment of the arbitral awards by the courts.

B. Salient practical or formalistic issues pertaining to the rendering of a given arbitral award

More recently there has been a trend in some Middle Eastern jurisdictions to adopt a highly formalistic approach regarding the practical exigencies for the issuance of arbitral awards. The UAE, in particular, has been at the forefront of this trend requiring that, when seat of arbitration is in the UAE, the arbitrator, as per Article 205(2) of the Civil Procedure Code⁵⁷ and precedents issued from the Court of Cassation,⁵⁸ sign every page of the award when the reasoning and the ultimate relief granted are provided on separate pages. Failure to do so could result in the award being subject to annulment. In the event that the reasoning and the final relief granted are given on consecutive pages, the signature on the page of the relief is sufficient and deemed to cover the reasoning preceding it. It is also required under UAE legislation⁵⁹ that the arbitrator be physically present at the seat of arbitration to sign the award when that seat is in Dubai or risk the potential annulment of the award. Similar requirements are applicable in Qatar. Finally, several Middle Eastern jurisdictions require witnesses to swear the oath while providing

⁵⁷ Article 212(5) of the UAE Civil Procedure Code provides as follows: “*The arbitrators’ award shall be passed by a majority and shall be made in writing and accompanied by the dissenting vote. In particular, the award shall contain a copy of the arbitration agreement, a summary of the statements of the parties, their documents, the grounds and context of the award, the date and place of issue and the signatures of the arbitrators. Should one or more arbitrators refuse to sign the award, such refusal shall be stated in the award; provided, however, that the award shall be valid if signed by a majority of the arbitrators.*” Federal Law No. 11 of 1992 (United Arab Emirates).

⁵⁸ Dubai Court of Cassation Decision No. #, dated 17 November 2009, cited in Suzanne Abdallah, Al-Tamimi and Co., “Arbitration in the UAE: the Formalities of an Arbitration Award”, (March 1 2011); M. Lawry-White, “Key Developments in Relation to Arbitration in Dubai”, *Kluwer Arbitration Blog*, Jan. 13) 2012).

⁵⁹ Article 212(4) of the UAE Code of Civil Procedure provides: “*the arbitrators’ award shall be issued within the United Arab Emirates; otherwise, the rules applicable to arbitration awards passed in foreign countries shall apply thereto.*” Federal Law No. 11 of 1992 (United Arab Emirates).

their oral testimony during a hearing; in the UAE,⁶⁰ Syria,⁶¹ Qatar⁶² and Jordan⁶³ this is a requirement as set out in their respective codes of civil procedure or arbitration laws. The Dubai Court of Cassation in the *Bechtel* case refused to enforce a \$25 million award rendered in an arbitration seated in Dubai because the arbitrator failed to swear in the witness using the formula prescribed for Dubai court hearings.⁶⁴

C. Salient Issues Pertaining to the Observance of Public Policy

The issue of public policy in an Arab Middle Eastern context is of particular significance since failure to comply with the exigencies of public policy legislation can adversely affect the enforceability of arbitral awards. Public policy legislation and the extent to which matters related to what is deemed as public policy are considered *inadmissible* differs from country to country within the region. Below, a range of different public policy approaches and emerging trends in this regard are outlined with reference to recent court decisions in Lebanon, Egypt, the UAE and Jordan.

1. **Lebanon:** commercial representation matters are considered related to public policy and are thus considered *inadmissible*. It has been ruled that local courts have exclusive jurisdiction to hear cases related to commercial representation and that any arbitration clause contained within the contractual agreements between the parties is to be considered null and void.⁶⁵ Lebanese Courts, however, in drawing a distinction between the arbitration clause and the submission agreement, consider that arbitration is permissible in commercial representation disputes in the event

⁶⁰ Federal Law No. 11 of 1992 (Code of Civil Procedure), art. 211 (United Arab Emirates).

⁶¹ Law No. 4 of 2008 (Arbitration Law), art. 32(2) (Syria) *reprinted in* 1 Int'l J. Arab Arb., 473-92 (2009).

⁶² Law No. 13 of 1990 (Code of Civil and Commercial Procedure), art. 200 (Qatar).

⁶³ Law No. 31 of 2001 (Arbitration Law), 15 Aug. 2001, art. 32(d) (Jordan), *reprinted in* Kluwer Law Int'l, 954-68 (2011).

⁶⁴ *Bechtel v. the Department of Civil Aviation of the Government of Dubai*, Dubai Court of Cassation, Petition No. 503/2003, (May 15 2005).

⁶⁵ Beirut Court of Cassation, Fourth Chamber, Decision No. 6/1998 dated 19/3/1998 (unpublished).

that the parties have agreed to resort to arbitration by signing a submission agreement.⁶⁶

2. **Egypt:** Egyptian Courts have adopted a more liberal approach regarding public policy requirements. We might, however, highlight the following examples in which the Egyptian courts have set aside an award for violation of public policy:⁶⁷
 1. A Cairo Court of Appeal decision dated 5 June 2002 ruled that an award was “contrary to public order” on the basis that the Arbitral Tribunal joined a third party to the dispute and subsequently ruled against it on the basis of the absence of an arbitration clause.⁶⁸
 2. A Cairo Court of Appeal decision dated 5 December 2001 ruled that an award violated public policy on the grounds that the Arbitral Tribunal had failed to amend the names of the parties to the dispute by including the name of the liquidator.⁶⁹
 3. Several other court decisions have also annulled arbitral awards regarding the validity and execution of the act of disposal of real estate on the basis that they contravened public policy for non-compliance with the mandatory provisions to register and publish real estate transactions.⁷⁰

⁶⁶ Beirut Court of Cassation, Fifth Chamber, Decision No. 4 dated 11/1/2005, *Majallat al-Adl*, No. 2, 285 (2005) (Leb).

⁶⁷ The definition of public policy by Egyptian courts is as follows: “*public policy includes the rules that seek to achieve public interest of the country on a political, economical and social level and relates to the material and moral situation of an organised community which supersedes the personal interests of individuals*”. It also ruled that “*Regulations are either mandatory or suppletive/interpretative. The mandatory rules are divided into rules related to public policy which violation results in an absolute annulment by the force of law without any exception. Any interested party can raise it and or the court on its own motion*.” (Cairo Court of Appeal, 8/3/2005)

⁶⁸ Cairo Court of Appeal, commercial circuit (62), decision rendered in the hearing dated 5/06/2002, *cited in* Dr. Mohamed Abdel Raouf, *dirasat tahliliya lil-Qada' el-masri fi da'awa boutlan ahkam*, 21 *J. Arab Arb.*, 134 (2008).

⁶⁹ Cairo Court of Appeal, commercial circuit (62), decision rendered in the hearing dated 5/12/2001, *cited in* Dr. Mohamed Abdel Raouf, *dirasat tahliliya lil-Qada' el-masri fi da'awa boutlan ahkam*”21 *J. Arab Arb.*, 134 (2008) p

⁷⁰ *Id.*

4. In addition, it is worth mentioning that the enactment of a recent decree (Decree 8310 of 2008 amended by decree no. 6570/2009)⁷¹ is currently blocking, to a greater or lesser extent, the enforcement of arbitration awards. This decree mandates a “technical office” within the ministry, without hearing any party, to make the final decision on the *deposability* or enforceability of awards. This decree inevitably undermines the arbitration process in Egypt.
3. **UAE:** In Dubai and Abu Dhabi, a new trend is emerging in the increasing inclination to raise matters to the level of “public policy”.⁷² This tendency has resulted in considering cases related to real estate as public policy matters, which can only be heard before UAE Courts, This renders any arbitral proceedings outside of the federal courts null and void.
4. **Jordan:** The Court of Cassation, in its decision No. 201/2006 dated August 21, 2006, held that “the law related to taxes and fees are part of the State Mandatory Laws as it relates to public policy”. Therefore, the arbitrators should abide by it, and particularly article 49 (b) of the Arbitration Law, otherwise awards rendered might be annulled for contravening public policy. Indeed, the Jordanian Court of Cassation annulled an arbitral award for contravening article 10 of the law regulating public policy stamp fees.
5. **Qatar:** The Qatar Court of Appeal⁷³ annulled an arbitral award on public policy ground for not being rendered in the name of the Emir of Qatar pursuant to Articles 69, 198 and 207 of the Qatar Code of Civil and Commercial Procedure. The award was sent back to the arbitrators to make the necessary corrections pursuant to Article 209(2) of the Qatar Code of Civil and Commercial Procedure.

⁷¹ Decree No. 6570/2009 (amending tridents (b) and (f) of article 4 of the decision of the Minister of Justice No.8310/2008 to the following: First – The award to be deposited: (b) not related to any right in rem on an immovable, its possession, delivery, instatement of ownership, or division and that it is not related to a right in rem on an immovable of any sort – (f) not related to an arbitration on matters that cannot be settled amicably).

⁷² Abu Dhabi Court of Cassation, 4 Oct. 2013; Abu Dhabi Court of Cassation, 28 Mar. 20130.

⁷³ Court of Appeal (Qatar) no. 316/2012 (Nov. 2012).

D. Salient issue resulting from the theory of exceptional or unforeseen events / hardship

The theory of exceptional or unforeseen events is a concept derived in the Middle Eastern context from Islamic *fiqh*. This theory is an exception to the principle of *pacta sunt servanda* (the agreement is the law of the Parties) and, according to this theory, if exceptional circumstances/events, which could not have been foreseen prior to the signature of a contract, occur during the performance of the contract, the Court may, according to the circumstances and after balancing the interests of both parties, reduce the onerous contractual obligations of a party, to a reasonable extent, if so prescribed by justice.

The Middle East approach is similar to the French theory of *imprévision*, which is initially limited to administrative contracts under French law, but it is now generally applied to all contracts throughout the Middle East in the countries that make a specific reference to this theory in their legislation.

With exceptional or unforeseen events, almost all Civil Codes in Arab Middle Eastern countries contain a similar provision to Article 147(2) of the Egyptian Civil Code, which provides the following:

*“If exceptional events of a general nature occur which were not capable of being foreseen, and the occurrence of which renders performance of a contractual obligation oppressive, albeit not impossible, for the obligor as it threatens him with exorbitant loss, it shall be permissible for the judge, in accordance with the circumstances, and after weighing up the interests of the two parties, to bring the oppressive obligation back to what is reasonable, if justice so requires. Any agreement to the contrary shall be null”*⁷⁴.

Accordingly, the following three conditions must be met for the application of the theory of exceptional or unforeseen events: (i) an exceptional event must have occurred after the contract had been concluded, (ii) the event in question must have been unpredictable and (iii) the event in question must have rendered the performance of a party's

⁷⁴ Law No. 43 of 1976 (Civil Code), 1 Jan. 1977, art, 205 (Jordan); (Civil Code), art.130 (Bahrain); (Civil Code), art. 148(2) (Syria); Law No. 11 of 1992 (Code of Civil Procedure), art. 249 (United Arab Emirates); Law No. 13 of 1990 (Code of Civil and Commercial Procedure), art. 171(2) (Qatar); (Civil Code), art. 198 (Kuwait); (Civil Code), art. 147(2) (Libya); (Civil Code), art. 146(2) (Iraq).

contractual obligation so onerous that it threatens the party with exorbitant loss. If these conditions are met, the judge has discretionary power to reduce the onerous obligations of the affected party in light of *justice* as being part of Islamic moral even when it is not referred to explicitly in the provision of law.⁷⁵

To provide a few examples, the Syrian Court of Cassation applied this theory in the following cases:

(i) In a contractor's claim for compensation against its employer due to the occurrence of an event of Exceptional Circumstances, the Syrian Court of Cassation held that:

*“Though it is an established law that contracts should be respected considering them to be the law between the parties to it, such must be restricted to the requirements of justice and fairness. Thus, if, during the course of execution, circumstances that were not contemplated by the parties at the time of conclusion of the contract occur, and such circumstances cause an imbalance to the contract, then it shall be unfair to respect the contract in such circumstances. And it shall be just and fair to help or rescue the debtor from destruction and to take into consideration what was not contemplated by the parties.”*⁷⁶

(ii) In another case, the Syrian Court of Cassation held that:

*“The sudden and unforeseeable increase in the prices which threatens severe loss is a matter which requires the interference of the judge to rebalance the interests of the parties and amend the obligation to reasonable extents.”*⁷⁷

The theory of exceptional or unforeseen events is particularly salient in the Arab Middle Eastern context today in view of the delicate and changing political situation resulting in the aftermath of the Arab Spring. Countries in the Arab Middle Eastern region are currently

⁷⁵ Law No. 43 of 1976 (Civil Code), 1 Jan. 1977, art. 205 (Jordan); Law No. 11 of 1992 (Code of Civil Procedure), art. 249 of the United Arab Emirates (referring explicitly to the element of *justice*).

⁷⁶ Syrian Court of Cassation, Second Chamber, Decision No. 420, case no. 546 (April (2000)).

⁷⁷ Syrian Court of Cassation, Second Chamber, Decision No. 1825, case no. 2011 (Nov. 11 1999).

undergoing a challenging period of political transition that can be seen to be having a significant impact on their economies. This economic impact is in turn reflected in an increasing number of contracts being brought to arbitration. It is in this context that the theory of unforeseen events takes on particular salience insofar as goes some way to help restore a degree of contractual balance in the wake of a period of political and economic uncertainty.

IV. Salient issues with regard to the Allocation of Interest

Regarding the allocation of interest, there are several cultural considerations to be reckoned with in the Middle Eastern context and they vary considerably from state to state, according to the statutes as outlined in each jurisdiction's applicable law. While some Arab Middle Eastern jurisdictions totally prohibit the allocation of interest, others in the region take a more lenient approach by opting for a partial prohibition of its allocation.

A. Total Prohibition

Saudi Arabia is the only country that has not adopted regulations governing interest rates in commercial matters. This is due to the fact that interest, in whatever form, is considered *ribah* and, as such, is prohibited under the Islamic *Sharia*. It is worth noting that in the absence of a civil code, the Islamic *Sharia* takes the place of a constitutional civil code and is therefore the basis of all rules of law.⁷⁸

As a consequence, and unlike other countries in the region, which distinguish between civil and commercial law in order to render interest rules more flexible, Saudi Arabia has maintained the prohibition on usury in commercial matters, in accordance with the general principles of the Islamic *Sharia*. Courts in Saudi Arabia do not mention interest in their judgments, as it is forbidden by *Sharia*. The same applies in respect to arbitral tribunals, which disregard, in domestic cases, the allowance of interest as being contrary to the *Sharia*, the provisions of which are of public policy.⁷⁹ Therefore, an international award dealing with interest could be annulled on this ground by the Court in charge of the enforcement of arbitral awards.

⁷⁸ Nayla Comair-Obeid, *Charging interest in the Arabian Peninsula*, 1 Middle E. Com. L. Rev. 3, 92, Sweet & Maxwell (May-June 1995).

⁷⁹ Leb. R. Arab Int'l Arb. No. 16,, 48..

Moreover, in arbitral awards rendered in Saudi Arabia, the official position of the Kingdom can be summarized as follows: “The *Sharia*’s Islamic law forbids usury in any form or manner whatsoever, whether or not it is gained or in secret. The defendant asserted that a position of the amount claimed by the claimant [...] is illegal. If the defendant’s contention properly invokes *Sharia* provision, then the Arbitral Tribunal must apply it since it relates to the public order of the Kingdom.”⁸⁰

B. Partial Prohibition:

Partial prohibition is based, on the one hand, on the nature of the legal relation, distinguishing between civil and commercial disputes, and, on the other hand, on the function of interest, with some systems allowing for a “moratory interest,” which provides for an integral compensation of the damage without stipulating any provisions as to compensatory interest.

The Kuwaiti legislature makes a distinction between civil and commercial matters. Thus, Article 102, subsection 1 of the Kuwaiti Commercial Code fixes the legal rate of interest at 7%, and enables contracting parties to stipulate interest rates for commercial loans; in the absence of an agreement as to the interest rate, the legal rate shall apply.⁸¹

The same distinction applies in Bahrain between civil and commercial debts, where the law similarly allows for a moratory interest in commercial matters on the following conditions: “...in no case shall the total interest payments charged by the creditor be in excess of the principal debt amount on the basis of which interest has been charged in the cases of debts the repayment period of which does not exceed seven years.”⁸² Such a ceiling is only applicable to commercial transactions in local currency and does not apply to commercial transactions in

⁸⁰ Nathalie Najjar, *L'arbitrage dans les pays arabes face aux exigences du commerce international*, LGDJ, 350 (2004).

⁸¹ (Commercial Code), art. 102(2) (Kuwait) (explaining that moreover, in banking transactions, term deposits earn interest as in all traditional banks. Furthermore, under Article 364 of the Commercial Code, a customer who is granted a credit facility will be required, not only to repay the capital, but also to pay the interest agreed upon in the contract, or failing this, the legal rate. In addition, the Central Bank has the power to regulate and set ceilings for interest rates concerning bank and credit loans.).

⁸² Legislative Decree No.7 of 1987 (Law of Commerce), art. 81(2).

foreign currency. However, moratory interest is not permissible under civil obligations.⁸³

As for compensatory interest, it is allowed under Bahraini law without distinction between civil and commercial obligations.⁸⁴

Another example of legislation providing for partial prohibition is the Code of Commercial Transactions of the UAE, promulgated by the Federal law of 7 September 1993, relating to the parties' obligations in commercial contracts. Article 76 of the aforementioned Code stipulates that the creditor is entitled to charge interest on commercial loans according to the interest agreed to in the contracts. If the rate of interest is not specified in the contract, the rate prevailing on the market at the time of the agreement will apply, on condition that it does not exceed the ceiling of 12% at the time of repayment. Article 399, paragraph 1, relating to current accounts, stipulates that interest on current accounts is not paid to customers unless otherwise agreed by the parties. The interest rate is not set, but rather it should be calculated on the basis of the prevailing price on the market, and may not exceed the rate of 12%.

In Egypt, it is standard practice that arbitral awards include an award of interest insofar as is claimed by the parties. The Court of Cassation, however, has ruled that parties may not agree to, and awards may not provide for, the payment of interest exceeding 7% (in non-banking operations) per annum.⁸⁵

⁸³ Legislative Decree No. 19 of 2001 (Civil Code), art. 228 (Bahrain) (providing that (a) "any agreement for interest in consideration of utilizing a sum of money or against delay in settlement thereof shall be void").

⁸⁴ *Id.* at 81(s)(4) (stipulating that "A creditor shall have the right to claim supplementary damages to be added to the delay interest without the need for proving that the damages in excess of such interest have been caused by the debtor's deceit or gross failure." Also Article 228 of the Bahraini Civil Code allows the Court, "when the object of an obligation is the payment of a sum of money and the debtor fails to pay after he was formally summoned whilst he is able to do so", "...to order the debtor to pay a compensation as required by the law if the creditor proves that the loss is caused to him due to such failure").

⁸⁵ This 7% cap is judicially considered a manifestation of Egyptian public policy. If the parties' have not agreed an interest rate, the legislative and customary interest rate as per the Egyptian Civil Code is 5% in commercial matters and 4% in civil matters. If the parties agree to an interest rate above 7%, it must be reduced to the 7% cap.

CONCLUSION

What we are witnessing in the Arab Middle Eastern region is a new trend: a newfound appreciation for Arbitration as a viable means of dispute resolution. The new and emerging legislation in combination with the plethora of arbitral institutions constitutes a significant step towards bringing Arab Middle Eastern legislation more in line with international arbitration practices. That many countries in the region are making efforts to synthesise existing indigenous legislation with international rules, as outlined above, indicates a willingness within the wider region to create an arbitration-friendly environment for investors and commercial entities both domestic and international. What is more, we are witnessing the willingness on the part of the region to become an international hub for arbitration reciprocated by corporate entities increasingly choosing an Arab country as the seat of arbitration and the law of an Arab country as the applicable substantive law in the proceedings. The BCDR-AAA arbitration center having its first international arbitration case this year is further proof of the international scope of activity of these emerging Arab Middle Eastern centers. In this regard, it is important to evaluate those salient issues in arbitration from an Arab Middle Eastern perspective, as outlined above in order to address what can only be described as the growing gap between the modernising legislation and the enduring local requirements which can mitigate the enforceability of arbitral awards rendered in the region. Taking these salient issues into account, we remain positive that countries in the Arab Middle Eastern region are headed towards a harmonization and modernization of their arbitration practices in line with international practice. In this regard, promising educational strides are being made by universities⁸⁶ and arbitral institutions based in the Middle East such as CRCICA, BCDR-AAA, and CIArb, which work in cooperation with the Middle Eastern states' Ministries of Justice in order to raise a more holistic awareness among local counsels of the arbitration procedure and to provide training to prospective arbitrators. These educational initiatives will definitely help to further develop the legitimacy and integrity of arbitral awards rendered in the region.

⁸⁶ The Arab League passed a resolution in 1996 to incorporate arbitration courses into university syllabi across the region, Lebanon is as yet the only country in the region in which arbitration is taught at the undergraduate level. Elsewhere in the region, arbitration courses are still only available at post-graduate or doctoral level.