The COVID-19 Pandemic and Arbitration in the UAE: A Tale of Challenges and Opportunities

Emad Hussein

The coronavirus pandemic, unprecedented in its scale, reach, and economic impact in the history of the modern world, has caused disruptions across all sectors in the world including the legal disputes resolution industry. Nevertheless, arbitration, by virtue of being a system of private adjudication that is both flexible and unconventional, has shown commendable resilience through procedural innovation and adaptability. This Article focuses on the response of the United Arab Emirates’ arbitration community to the changes brought about by the pandemic, and

1 *Dr. Emad Eddien Hussein (dremad.arbitrator@gmail.com) is a Fellow of the Chartered Institute of Arbitrators (FCI Arb), an Accredited Mediator by the Centre for Effective Dispute Resolution (CEDR), and an independent practitioner, arbitrator, and mediator based in Abu Dhabi, UAE. He has been appointed as chairman and sole arbitrator in various domestic, regional, and international arbitrations. He is a listed arbitrator at the panels of world leading arbitral institutions such as the ICC, DIAC, ADCCAC, CRCICA, DIFC, Tahkeem and IDSC. Dr. Hussein is a member of the CIArb Committee, UAE branch, ICCA, ICC Institute of World Business Law & BAE. He is also a Researcher in international commercial arbitration at SOAS University of London.*
thereby essays the shift from traditional in-person arbitration proceedings to virtual arbitration proceedings. In this context, it first examines the practical and legal concerns that may stem from virtual arbitration. It then conducts a careful analysis of the best practices that have been developed by leading arbitral institutions and jurisdictions around the world in response to such concerns. In doing so, the Article suggests methods for the arbitration community in the United Arab Emirates to best adapt to the ‘new normal’ of virtual arbitration so that it can continue to deliver legally enforceable arbitral awards through fair and efficient conduct of proceedings. The author concludes by ideating some of the opportunities that the pandemic will create for the arbitration industry of the United Arab Emirates to chart the best course of action in capitalising on the silver lining to this otherwise poignant situation.
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Introduction

The coronavirus (COVID-19) pandemic,\textsuperscript{2} unprecedented in its scale, reach, and economic impact in the history of the modern world, has thrown the entire global order into a tailspin. The pandemic has caused disruptions across all sectors, including the legal industry. Despite these harsh repercussions of the pandemic, dispute resolution mechanisms, especially arbitration, have shown resilience through procedural innovation and adaptability. The present Article is an attempt to study the impact of the pandemic on the procedures and practice of international commercial arbitration in the United Arab Emirates (UAE). Accordingly, the Article analyses the measures adopted by the government and the arbitral community of the UAE that allowed arbitration to adapt to and deal with the ‘new normal’. The Article also ideates the opportunities that the pandemic has created for the development of arbitration in the UAE and charts the best course of action for capitalising on the silver lining to this otherwise poignant situation.

For the aforementioned purposes, the Article will be divided into six parts. Firstly, it discusses the measures and initiatives taken by the UAE government and its legal sector to counter the impact of COVID-19, and how these have either affected or have the potential to affect international commercial arbitration in the UAE. Secondly, the Article outlines the international and regional developments in relation to the

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transition of ‘in-person’ arbitral proceedings to virtual arbitration proceedings. Thirdly, it addresses the practical considerations pertaining to the feasibility of conducting full-fledged virtual arbitral proceedings. Fourthly, the Article expatiates on the legal issues and challenges that may arise out of virtual arbitrations in the UAE, focusing on those issues concerning due process norms and the enforceability of the arbitral awards. Fifthly, it analyses the best practices that have been developed by the leading arbitral institutions and jurisdictions around the world to facilitate arbitration proceedings during COVID-19 and assesses their applicability within the UAE. The Article will conclude by highlighting the opportunities that the current situation grants to the UAE and suggesting methods for the renovation of the arbitration industry in the UAE to rise to the challenge and become the trailblazer in the landscape of international commercial arbitration in the post-COVID-19 world.

I. The UAE Pre- and During COVID-19- Measures on Legal Technology and Arbitration

As the world began to recognise the magnitude of the COVID-19 pandemic and the resulting health and economic crises, many countries began to take precautionary measures in the form of travel bans and lockdowns of varying degrees to avoid the spread of the infectious disease. Accordingly, the UAE government also introduced measures to address these

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unprecedented challenges, and to support the safety and well-being of its people amidst the pandemic.

In this regard, it is worth mentioning that the UAE has been commended by the Organisation for Economic Cooperation and Development for its efforts in the fight against COVID-19. Indeed, as of June 2020, the UAE had one of the highest per-capita testing rates in the world. In addition to active testing, the government issued travel bans on Emirati nationals as early as in February 2020, and announced

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lockdowns in all seven emirates of the UAE as part of its National Disinfection Programme attempting to flatten the curve. Moreover, in order to offset the economic slowdown and to boost the activities of the business community, the UAE swiftly and generously introduced several economic packages for its citizens.

However, despite such timely initiatives, the COVID-19 pandemic has brought about a meteoric rise in the number of legal disputes in the UAE, especially those involving force majeure and Material Adverse Change clauses, and those arising out of the disruption of supply chains. Key business


sectors of the UAE such as construction, banking and insurance, intellectual property, oil and gas, and project

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financing\textsuperscript{14} have thus been witnessing a noticeable surge in the number of cross-border dispute claims. The legal sector of the UAE and its arbitration industry, specifically, were responsive to this surge, taking active steps to effectively handle these disputes.

As precautionary measures began to be enforced worldwide, it became evident that participants were increasingly unable to attend the different stages of arbitral proceedings in person. Therefore, the UAE is providing its users of arbitration with the opportunity to avail themselves of the advantages of virtual arbitration for all or selected stages of the proceedings. Consequently, the existing dispute resolution mechanisms – and the underlying legal frameworks – are being reviewed to accommodate for remote working conditions amidst lockdown and mandatory social-distancing norms, and their frequent changes.\textsuperscript{15} Further, considerate of the myriad difficulties in accessing physical copies of documents, and


holding client-counsel meetings during the subsistence of the various types of preventive measures, procedural timetables are being altered, and proceedings made paperless for those arbitral proceedings that had already commenced before the COVID-19 pandemic.\textsuperscript{16} On the other hand, for those arbitral proceedings that are yet to commence, parties have been encouraged to submit their documents and hold hearings online in order to completely dispense with the need of convening for any purposes.\textsuperscript{17}

At the same time, it is pertinent to note that the efficacy of the arbitral process is ultimately dependent upon the courts’ preparedness to assist the arbitration, to issue necessary interim reliefs when requested, and to enforce the final arbitral award.\textsuperscript{18} The mutually supportive relationship between the courts and arbitration has often been described as one of


\textsuperscript{18} Muhammad Tahir Abdullah, ‘Role of UAE Courts in International Commercial Arbitration’ (DPhil Thesis, University of Bedfordshire 2013).
'maximum support' and 'minimum interference'. In this context, the initiatives adopted by the UAE courts to deal with the pandemic have become quintessential in appraising the ‘new normal’ of virtual arbitration in the territory. Over the past few years, the UAE court procedures have been resorting to technology by amending the concerned rules and legislations. In 2017, the President of the UAE, His Highness Shaikh Khalifa Bin Zayed Al Nahyan, issued a decree reforming the Civil Procedures Law, and introducing smart communication technologies, known as “e-Trials”, for the conduct of remote civil proceedings in the UAE. As a result, the Dubai Courts experienced the advent of a Skype-assisted virtual hearing method named ‘Zhara’ for civil cases. This e-Trial Federal Law was then supplemented by the Ministerial Decision Nos. 259 and 260 of 2019 regulating the details of civil

20 The most recent example is the Cabinet Decision No (33) of 2020 Amending Certain Provisions of Cabinet Decision No (57) of 2018 on the Regulations of the Federal Law No (11) of 1992 on the Civil Procedure Act (30 April 2020).
and criminal litigation procedures. The e-Trial Federal Law together with the Ministerial Decisions govern, *inter alia*, electronic summons and the notification of parties, the virtual attendance of the litigants and their representatives, the submission and validation of evidence in virtual hearings, the digital judgements with the digital signatures of the competent authorities and the electronic issuance of writs of execution.

Along similar lines, in 2018, the Abu Dhabi Global Markets (ADGM) courts created a virtual e-Courts Platform – the world’s first fully digital courtroom – which allows cases to be registered, managed, and settled virtually from any corner of the world. The Small Claims Tribunal of the Dubai International Financial Centre (DIFC) Courts has also been functioning as a ‘paperless organisation’ delivering justice

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digitally for quite some time now. More importantly, the websites of the Dubai Courts and the Dubai Court of Appeal provide e-filing services for the submission of ‘court petitions’ for confirmation and enforcement of arbitral awards directly online. Therefore, it is understood that the extant infrastructure of the legal industry of the UAE will not require major restructuring to adapt to the ‘new normal’ of dispute resolution as the UAE has been a pioneer in the digitalisation of such infrastructure.

By virtue of the availability of this advanced digital infrastructure, the Federal Courts of the UAE were able to maintain the conduct of hearings remotely in the wake of the COVID-19 pandemic without requiring physical presence of the participants involved. Moreover, other onshore Dubai courts postponed all judicial hearings for just about a month (from 22nd March 2020 to 16th April 2020) through Resolution

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No. (30) of 2020, activating a phased trial remote working system utilising the Microsoft Teams software. Similarly, while the offices of the offshore courts, such as the DIFC Courts, were closed until 26th April 2020, the hearings for most of the matters took place with the help of either video- or teleconferencing as participants continued to ‘work-from-home’. The DIFC Court Rules further advised practitioners to use its ‘e-Registry’ services to “file claims, pay fees and progress cases” online. The Abu Dhabi Judicial Department (ADJD) also started providing several digital services relevant to commercial and civil cases, including video communication technologies. As a result, the Abu Dhabi Court of Appeal was

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30 Dubai Courts Resolution No (30) of 17 March 2020 Concerning the adjournment of judicial hearings and working remotely.


able to issue nearly 500 rulings in various cases between March 2020 and April 2020 alone.\(^3^5\)

It has thus become evident that the proactive approach of the government of the UAE and its legal sector managed not only to significantly stymie the impact of COVID-19 on the dispute resolution processes but the employment of advanced legal technology in such processes also laid the right foundations for the arbitration community in the UAE to adapt to the ‘new normal’ of virtual arbitration.

II. The ‘New Normal’ of Arbitration Proceedings

Even though, as elaborated above, the reforms to incorporate virtual hearings in the UAE court procedures and legislation were underway before the COVID-19 pandemic, the progress had been rather slow in the context until the outbreak.\(^3^6\) Therefore, participants in on-going international arbitrations initially feared suspension of their arbitral proceedings due to restrictions on travel and gatherings.\(^3^7\) However, the majority


of international and regional arbitration institutions led an unanticipated and expedited shift to virtual proceedings in lieu of traditional in-person hearings to maintain continuity of the proceedings, thereby implementing the ‘new normal’ of arbitration. The following Section will explore the developments that took place both internationally, and within the UAE arbitration landscape in relation to this ‘new normal’.

A. International Developments

Over the last decade, the procedural rules of key arbitral institutions across the globe have been revised in light of technological advancements. For instance, Article 19.2 of the amended 2014 London Court of International Arbitration (LCIA) Rules provides that a hearing can “take place by video or telephone conference or in person (or a combination of all three)" at the discretion of the arbitral tribunal. Likewise, Clauses 7 and 8 of Schedule 1 of the 2016 amendment to the Singapore International Arbitration Centre (SIAC) Arbitration Rules empower an emergency arbitrator to consider the application for emergency interim relief by directing the conduct of “proceedings by telephone or video conference”. At the same time, while the international arbitration community is not unfamiliar with the process of virtual hearings, the prospect of conducting full-fledged virtual arbitration, i.e., where all the stages of the arbitral process are held on-line, is certainly a new


challenge which demands a different level and intensity of innovative legal technology.

In the wake of the challenges presented by the COVID-19 pandemic, several arbitral institutions combined their resources to create the first ‘cross-institutional initiative’ in the history of international commercial arbitration. For instance, arbitration institutions including the International Court of Arbitration (ICA), SIAC, American Arbitration Association-International Centre for Dispute Resolution (AAA-ICDR), and the International Centre for Settlement of Investment Disputes (ICSID) issued a joint statement to invite arbitral tribunals and the parties to “use the full extent of (...) respective institutional rules and any case management techniques”. Similarly, three major international arbitration hearing centres, namely the Maxwell Chambers in Singapore, the International Dispute Resolution Centre in London, and the Arbitration Place in Toronto and Ottawa formed the ‘International Arbitration Centre Alliance’ offering “global hybrid hearings through a combination of physical and virtual attendance methods so that all parties, counsel, arbitrators, arbitral secretaries, witnesses, arbitral institutions, court reporters and translators can participate fully and easily, no matter where in the world they are located”.

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41 International Arbitration Centre Alliance, ‘Leading ADR-service rivals from England, Singapore, and Canada launch
like ICSID, the Hong Kong International Arbitration Centre (HKIAC), and the Arbitration Institute of the Stockholm Chamber of Commerce also began to offer integrated virtual hearing services, providing facilities such as video/audio conferencing, electronic bundles, electronic presentation of evidence, irrespective of whether the institution ultimately administers the specific arbitration. These instances reflect how arbitral institutions across the world are ready to foster meaningful collaborations to support international arbitration through the use of technology in the current pandemic-induced state.

This was arguably motivated by the fact that most of the abovementioned arbitral institutions were forced to close their offices in compliance with their national government


directives.\textsuperscript{45} Nevertheless, most of them decided to function remotely with the aim to facilitate efficient conduct of businesses.\textsuperscript{46} At the same time, depending on the nature of the lockdown, some still allowed a few staff to be in the physical offices on specific days in a week to enable the delivery of physical copies of documents, and the use of specific services.\textsuperscript{47} Overall, nearly all arbitral institutions have been consistently encouraging electronic filings and electronic means of communications in place of hard copies and courier or post.\textsuperscript{48}


\textsuperscript{48} ibid; London Court of International Arbitration, ‘LCIA Services Update: COVID-19’ (LCIA, 18 March 2020)
Moreover, the shift to this ‘new normal’ of virtual arbitration has been accompanied by the issuance of sundry guidance
notes and protocols by arbitral institutions on the use of technology in conducting arbitral proceedings.

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These developments have been further supported by various judgments of courts across the world. For instance, national and international courts 51 have supported video-communication technologies where witnesses and other participants were prevented from attending in-person hearings either due to logistical difficulties, 52 or medical reasons. 53 The courts have also endorsed documents-only hearings in some commercial cases. 54 For example, in a recent case, an English Deputy High Court Judge refused to adjourn a trial in the wake of the COVID-19 pandemic. 55 Instead, he conducted a remote trial using video technology and electronic document handling software. 56 The judge noted that courts are expected to “continue to function so far as they are able to do safely by means of the increased use of technology to facilitate remote trials”. 57

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51 Bachmeer Capital Limited v Ong Chih Ching [2018] SGHC(I) 01.
54 Re One Blackfriars Ltd (in liquidation) [2020] EWHC 845 (Ch); Gestmin SGPS SA v Credit Suisse (UK) Ltd [2013] EWHC 3560 (Comm) [15–23]; UBS AG (London Branch) v Kommunale Wasserwerke Leipzig GmbH [2014] EWHC 3615 (Comm) [70].
55 Re One Blackfriars (n 53).
56 ibid.
57 ibid.
Therefore, as the COVID-19 pandemic continues to disrupt the normal dispute resolution process, both courts and arbitration institutions across the world are increasingly resorting to the use of technology to adapt to the ‘new normal’.

B. Developments in the UAE

The UAE has always been receptive and responsive to global developments, which is reflected in its ranking and recognition in various reports, including but not limited to the latest World Bank’s Doing Business Report 2020 which awarded it a score of 1.5 out of 2 in arbitration-related criteria. Given its progressive stance towards arbitration, it is not surprising to note that the use of technology in the legal landscape of the UAE predates the COVID-19 pandemic.

Indeed, the most prominent development in the context of virtual arbitration in the UAE had already taken shape in the

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61 See Section I.
form of Federal Law No. (6) of 2018 On Arbitration (the UAE Federal Arbitration Law). This federal law, which is largely based on the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration (UNCITRAL Model Law), has led the way towards virtual arbitration by envisaging the use of digital technology at different stages of the arbitral process. For instance, Article 33(3) of the UAE Federal Arbitration Law gives parties the right to a hearing, and states that “hearings may be held through modern means of communication without the physical presence of the Parties at the hearings”. Similarly, Article 28(2)(b) allows the tribunal, subject to the agreement of the parties, to hold virtual hearings using “modern means of communication and electronic technology”.

Against this background, the COVID-19 pandemic has only served as a catalyst for furthering procedural innovation and promoting a wider use of technology within the arbitral processes of various arbitral institutions. For instance, the key arbitration institutions in the UAE, such as the Dubai International Arbitration Centre (DIAC) and the Sharjah International Commercial Arbitration Centre (Tahkeem), encouraged parties to submit their requests for arbitration, as well as their responses to the claims through online portals. Similarly, the DIFC London Court of International Arbitration (DIFC-LCIA) remained “fully operational,” with its staff

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64 DIAC Announcement (n 16).
working remotely by virtue of its arbitral rules.\textsuperscript{65} Accordingly, Article 19 of the DIFC-LCIA Rules authorised tribunals to conduct oral hearings “by video or telephone conference or in person (or a combination of all three),”\textsuperscript{66} and encouraged that the filing of applications for either the expedited formation of the tribunal,\textsuperscript{67} or for the appointment of an emergency arbitrator\textsuperscript{68} were done “preferably” using electronic means. The 2017 Version 2 of the Rules of Tahkeem also allowed for witness examination,\textsuperscript{69} and for the communication between the tribunal/institution and the parties to take place through electronic means.\textsuperscript{70} Additionally, while the ADGM Arbitration Centre (ADGMAC) remained closed for hearings, it endeavoured to provide online services such as a “Panel of Arbitrators” to assist parties in arbitrator selection in the midst of the pandemic.\textsuperscript{71}


\textsuperscript{66} DIFC-LCIA Arbitration Rules 2016, art 19 (2).

\textsuperscript{67} ibid art 9 (2).

\textsuperscript{68} ibid art 9 (5).

\textsuperscript{69} Rules of Arbitration Sharjah International Commercial Arbitration Centre (Tahkeem) 2017, v 2, art 27 (5) (Tahkeem Rules).

\textsuperscript{70} ibid art 3 (2).

At this juncture, it may also be noted that the new DIAC Arbitration Rules, which were proposed in 2017 and still await approval in the form of a decree to the date of writing,\textsuperscript{72} provided for a greater use of technology.\textsuperscript{73} Indeed, they expressly permitted examination of witnesses, and the arbitrators to sign awards outside of the UAE via teleconference.\textsuperscript{74}

These examples demonstrate that over the past few years, the UAE has made and continues to make definite strides towards the digital transformation of its arbitral rules and legislations. These can all be utilised in carrying out full-fledged virtual proceedings for the resolution of disputes through arbitration, both during and after the COVID-19 pandemic as it will be explained in Sections V and VI below.

III. Practical Challenges Arising out of the ‘New Normal’

The arbitral rules of most arbitral institutions in the UAE provide for witness hearings over videoconferencing.\textsuperscript{75}


\textsuperscript{74} ibid.

\textsuperscript{75} See Section II B.
However, practical issues are bound to arise while conducting entire proceedings in this way. These issues may, for example, stem from difficulties in coordinating between a large number of participants situated in different geographical locations with diverse time-zones, or in assuring good, stable internet connection and appropriate bandwidths for a smooth audio-video conferencing and transfer of documents amongst the participants. If the participants of a virtual arbitration proceeding face prejudice because of such issues, the arbitral award so rendered may be challenged on grounds of violation of the right of a party to properly present their case. Therefore, there are certain practical risks and challenges associated with the use of technology that deserve the attention of the users before the parties opt for a full-fledged virtual arbitration, which will be considered in this Section.

The first challenge is choosing the appropriate online arbitration service-provider that caters to the peculiar demands of the dispute, and ensures the sanctity of the proceedings as well as of the arbitral award. An ideal service-

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provider of virtual arbitration must entail robust audio-video conferencing features along with the possibility of managing and transferring documents, 79 conducting caucuses, and break-out meetings. 80 Additionally, auxiliary services for the use of electronic bundles, transcription, and interpretation shall be available. At the same time, the service-provider must address and resolve the plausible challenges associated with the use of their technology and services. For instance, confidentiality and privacy concerns may arise, and arbitration stakeholders should be confident that these are duly managed. In this regard, the CEO of one of the most popular virtual platforms, Zoom, stated that the platform did not offer end-to-end encryption on calls for free users, as they wished to cooperate with law enforcement. 81 This may be a cause of concern for the users of virtual arbitration, including witnesses who engage in exchange of sensitive information at

different stages of arbitral proceedings. Therefore, online platforms must guarantee maximum security and encryption levels in order to minimise the risk of inadvertent or unauthorised access to such information.\(^8^2\)

Another major challenge concerns the capability of both parties and tribunals to adapt to the use of technology. As per an arbitration survey conducted by the School of International Arbitration at Queen Mary University of London in 2018, 78% arbitrators stated that they had ‘never’ or ‘rarely’ been part of virtual hearings.\(^8^3\) On the other hand, the respondents admitted to having had prior experience with videoconferencing and cloud-based document sharing.\(^8^4\) Another survey, conducted by Allen & Overy on Asian-Pacific jurisdictions, highlighted that a ‘full-blown hearing’ via video or teleconference requires ‘a significant amount of planning and coordination’, which may dissuade parties from participating because of “a lack of confidence in a multiparty video


\(^8^4\) ibid; See Walker (n 75).
This is, however, more of a psychological barrier which can be overcome through a recalibration of the participants’ expectations regarding virtual arbitral processes. Therefore, it is advisable to conduct a basic training exercise and a test conference prior to the scheduled date of hearing when participants are unfamiliar with the software employed for the conduct of virtual arbitral proceedings, so that they can familiarise themselves with the features of the software.

Moreover, it is advisable for the tribunal to conduct telephonic case-management hearings to discuss beforehand any anticipated logistical and procedural issues that might arise during the conduct of virtual arbitral proceedings. Through such preliminary case-management hearings, the tribunal and


87 Seoul Protocol (n 49) Art 6.

the parties must strive to achieve consensus on key issues including the selection of a particular online platform, the time allotted to each party, the order of presentation of the oral arguments, and the method to be adopted for taking evidence and raising objections. The participants must also look into minor issues, such as reverberation on microphones and slight delays between the audio and video (known as “lags”) that may interrupt smooth conduct of virtual proceedings. Further, it is crucial to arrange for an alternative means of communication in case the virtual proceedings are impeded by technical glitches.\footnote{Seoul Protocol (n 49) art 6.2.} Upon agreeing on these preliminary matters, the decision of the tribunal should be transmitted as Procedural Order No. 1, which may also include minimum technical specifications\footnote{ICC Guidance Note (n 48); Seoul Protocol (n 49).} regarding internet connections, upload/download speeds, bandwidth, microphone requirements, etc.\footnote{The Australian Centre for International Commercial Arbitration, ‘Draft Procedural Order for the Use of Online Dispute Resolution Technologies’ (Australian Centre Draft Procedural Order, 2020); International Institute for Conflict Prevention & Resolution, ‘CPR’s Annotated Model Procedural Order for Remote Video Arbitration Proceedings’ (CPR’s Annotated Model Procedural Order 2020); AAA-ICDR, ‘Model Order and Procedures for a Virtual Hearing via Videoconference’ (AAA-ICDR Model Procedural Order 2020); Stephanie Cohen, ‘Draft Zoom Hearing Procedural Order’ (Transnational Dispute Management, April 2020).} Ultimately, these practical challenges can be redressed if all the participants manage to get accustomed to the shift from in-person hearings to virtual hearings, and work jointly towards acclimatisation to the ‘new normal’ of virtual arbitration.
IV. Legal Concerns Arising out of the ‘New Normal’

As mentioned earlier, a remarkable feature of the UAE Federal Arbitration Law is that, given its recent enactment, it contains provisions that expressly support the use of technology and the conduct of virtual hearings, making it extremely convenient during the current pandemic. At the same time, apart from the practical and technological issues associated with virtual hearings, there are important legal concerns which challenge the validity and enforceability of arbitral awards rendered through such non-conventional methods. These concerns will be discussed in this Section.

A. Due Process Concerns

The due process norms governing arbitration in the UAE are enshrined in Articles 26 and 53(1)(d) of the UAE Federal Arbitration Law. Accordingly, Article 26, mirroring the language of Article 18 of the UNCITRAL Model Law, states that parties “shall be treated with equality and each party shall be given a full opportunity to present its case”. Article 53(1)(d) provides that an arbitral award may be set aside if the party challenging the award proves that they were not allowed to present their case either because they were “not given proper notice of the appointment of an Arbitrator or of the arbitral proceedings, or because the Arbitral Tribunal breached due process or for any other reason beyond [their] control”. Thus, in this given scheme, it becomes pertinent to examine whether virtual hearings carry the risk of giving rise to challenges to arbitral awards on the grounds of violation of due process norms.

A careful examination of Article 28 of the UAE Federal Arbitration Law reveals that the discretion of a tribunal to order a virtual hearing is only limited by the eventuality of the parties agreeing otherwise. More importantly, Article 23(2)
empowers the tribunal to decide on the procedures to be followed in conducting the proceedings when the parties fail to reach an agreement on specific procedures. Moreover, even in those cases where both the parties object to the tribunal’s decision to conduct a virtual hearing, the tribunal may still conduct the arbitration virtually. Indeed, Article 12 of the UAE Federal Arbitration Law provides that “questions of procedure may be decided by a presiding Arbitrator” if the other members of the tribunal so authorise. In this case, the tribunal must endeavour to provide justifications for its decision in the preliminary procedural order as the arbitral award would be even more vulnerable to a challenge on the grounds of ‘due process’ violations since the method was chosen against the participants’ will, thereby exacerbating their scepticism.

Irrespective of such scepticism, it would not be an overstatement to say that virtual hearings, replete with appropriate procedural safeguards, are usually capable of providing both parties with a full opportunity to present their respective cases as effectively as any traditional in-person hearing.


Two scenarios may be envisaged in a virtual arbitration that may lead to the violation(s) of the right of the parties to be heard and/or to properly present their case: *first*, as mentioned above, where one party faces technological breakdown in the middle of the proceedings preventing them from participating in the hearings, 94 and *second*, where the tribunal fails to provide a party with a recording or a transcript of the hearing, thereby hindering them from preparing an effective response. 95 These scenarios may ultimately result in the arbitral award being set aside. Therefore, the tribunal must ensure that both parties have equal and effective access to the requisite technology to present their case properly in the virtual proceedings.96 In other words, it is paramount that the tribunal enforces the right to equal treatment.

In this regard, it is appropriate to underline that the right to equal treatment does not imply that both parties must be treated identically.97 Rather its essence lies in the requirement

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that neither party must be put at a disadvantage by the conduct of the proceedings via technological means. On this basis, the parties may, in fact, cite technological inequalities as a dilatory tactic to disrupt the effective resolution of a dispute. Accordingly, if a legitimate technological imbalance or a complete breakdown of technology does occur during the course of the proceedings, the parties must state their objections before the tribunal within the time limits stipulated in the UAE Federal Arbitration Law. Upon receipt of such valid objections, the tribunal must endeavour to pause the hearing until the affected party is able to restore their connection or otherwise, reschedule it for another day. Conversely, a party’s failure to raise such objections may be construed as a deemed waiver of the right to object.

Another due process concern that is peculiar to the pandemic is the plausibility of a situation where just a few participants are able to meet in-person, owing to the varied nature of travel restrictions in their respective jurisdictions. This is particularly onerous for international arbitrations as it may give rise to aspersions of inequality and breaches of due process norms. Theoretically, if all the procedural safeguards are followed, those participants who are taking part in the proceedings remotely will not be at a disadvantage.

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99 UAE Federal Arbitration Law (n 61) art 25.
100 ibid.
101 ibid.
However, in practice, to mitigate the risk of a due process challenge at a later stage, it has been recommended that “in the interests of equality, it is preferable that if one party must appear to the tribunal remotely, both parties should do so” unless the parties agree otherwise.\textsuperscript{104}

Overall, as mentioned above, even though there are diverse due process concerns, these can all be resolved by following the relevant procedural safeguard and enforcing the principle of equal treatment of the parties.

**B. Arbitral Award Enforcement Concerns**

While the UAE Federal Arbitration Law does not impose or stipulate any express duty on the arbitral tribunals to deliver an enforceable award, the rules of certain arbitration institutions based in the UAE do provide for such duty. For instance, Article 32.2 (General Rules) of the DIFC-LCIA states that the tribunal “shall make every reasonable effort to ensure that any award is legally recognised and enforceable at the arbitral seat”.\textsuperscript{105} Similarly, Article 43 (General Rules) of the DIAC Arbitration Rules mandates the tribunal to attain an award which is enforceable at law.\textsuperscript{106} Moreover, irrespective of whether the arbitration rules of a particular institution include this duty, the tribunal is bound to deliver an enforceable award in accordance with the principles of Article V of the

\begin{footnotesize}
\textsuperscript{104} CIArb Guidance Note (n 48) para 1.6.
\textsuperscript{105} DIFC-LCIA Arbitration Rules 2016, art 32.2.
\textsuperscript{106} DIAC Arbitration Rules 2007, art 43.
\end{footnotesize}
New York Convention, which the UAE ratified in 2006.\textsuperscript{107} Article V provides the grounds on which recognition and enforcement of an arbitral award may be refused.\textsuperscript{108} Clause (1)(b) states that the inability of a party to present their case properly is a ground for refusing recognition and enforcement of a foreign award.\textsuperscript{109} Additionally, the recognition and enforcement of the award can be refused if the “\textit{arbitral procedure was not in accordance with the agreement of the parties}”,\textsuperscript{110} or if it is “\textit{contrary to the public policy}” of the country where enforcement is sought.\textsuperscript{111} Therefore, the procedural prerequisites, especially with respect to due process and witness examinations, need to be strictly adhered to by tribunals to avoid the annulment of the award at the enforcement stage.

As discussed in Subsection A, the arbitral tribunals in the UAE are implicitly empowered to conduct virtual arbitrations even without the parties’ agreement.\textsuperscript{112} Therefore, the parties to a dispute in the UAE may not be able to set the arbitral award aside on the basis of resort to virtual arbitration alone. On the other hand, with regards to the ground of public policy for refusal of enforcement of an arbitral award, it must be noted that it is incumbent upon the stakeholders in the concerned arbitration to check whether virtual hearings would be against

\textsuperscript{107} Federal Decree No (43) of 13 June 2006 Regarding The United Arab Emirates Joining the Convention of New York on Recognition and Enforcement of Foreign Arbitral Awards.

\textsuperscript{108} United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention, 10 June 1958) art V.

\textsuperscript{109} ibid, art V (1) (b).

\textsuperscript{110} ibid, art V (1) (d).

\textsuperscript{111} ibid, art V (2) (b).

\textsuperscript{112} Born (n 96) 2150.
the public policy of the country where they would ultimately want to enforce the award. Therefore, again, it rarely constitutes a viable basis for annulment.

Another important concern regarding the enforcement of arbitral awards derives from the form and content requirements which make an award ‘valid’ within a specific jurisdiction. For instance, Article 55 of the UAE Federal Arbitration Law, whose language and type of obligations recall those of the New York Convention, places the onus to provide “the original award or a duly certified copy thereof” at the time of applying for enforcement on the award creditor. Moreover, it requires that translated Arabic copies are submitted for non-Arabic awards, which must be duly certified by a ‘duly recognized entity’. Additionally, Article 41 of the UAE Federal Arbitration Law states that the award “shall be made in writing” and that the “arbitrators shall sign the award”. Therefore, an award which is delivered and signed through electronic means may fail to fulfil one or more of these enforcement prerequisites.

However, these concerns have been satisfactorily addressed by the reformed UAE Federal Arbitration Law which has simplified the overly formalistic requirements for arbitral awards. Accordingly, the UAE Federal Law states that the award “shall be considered issued in the place of arbitration


114 New York Convention (n 107) art IV (1) (a).
according to Article 28 (...) even if it is signed by the members of the Arbitral Tribunal outside the place of arbitration,” and in the absence of other members of the tribunal by using electronic signatures.\textsuperscript{115} Similarly, the DIAC Rules accept electronically signed awards for onward electronic notification to the parties,\textsuperscript{116} and the DIFC-LCIA Rules allow transmission of the authenticated award to the parties through electronic means.\textsuperscript{117} Moreover, the UAE e-Commerce Transactions Law states that “if a rule of law requires a statement, document, record, transaction or evidence to be in writing or provides for certain consequences if it is not, an Electronic Document or Record satisfies the requirement,” so long as the electronic record is accurate with the source, the destination, and the date and time of sending and receiving are identifiable.\textsuperscript{118}

On a conjoint reading of these provisions, one can reach the conclusion that there is no real bar to the enforcement of electronic awards in the UAE. This is buttressed by the recently enacted Government Resolution No (33) of 2020 Concerning Remote Litigation Procedures and Continuity of Court Services that allowed UAE courts to issue enforceable electronic judgments.

C. Witness Examination Concerns

Witness testimony is a crucial aspect of arbitral proceedings as the final decision sometimes rests heavily on it.\textsuperscript{119} While the

\textsuperscript{115} ibid, art 41 (6).
\textsuperscript{116} DIAC Arbitration Rules 2007, art 37.8.
\textsuperscript{117} DIFC-LCIA Arbitration Rules 2016, art 26 (7).
\textsuperscript{118} Federal Law No (1) of 2006 Concerning Electronic Commerce and Transactions, art 7.
\textsuperscript{119} Kaj Hober and Howard S. Sussman, ‘The Role of Cross-Examination in International Arbitration’, (Oxford University
UAE Federal Arbitration Law vests the arbitral tribunal with the power to examine witness “by the modern means of communication which do not require them to appear in person at the hearing,” disputes, the outcome of which solely depends on the credibility of a witness, are generally considered unsuitable for virtual arbitration. Indeed, virtual witness examinations raise concerns regarding the ability of the arbitrators to closely examine the body language, the voice and the tone of the witnesses, which are all important facets of assessing their demeanour and credibility. At the same time, it is arguable that a skilful cross-examiner can easily gauge witness behaviour including their evasiveness, arrogance and/or discomfort virtually, so long as the technology used is effective.

Although the above-mentioned concerns related to virtual witness examination are universal, some practitioners based

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120 UAE Federal Arbitration Law (n 61) art 35.
124 Campaign Master (UK) Ltd v Forty Two International Pty Ltd (No 3) [2009] FCA 1306 [78]; State of Maharashtra v. Praful B. Desai
in the UAE have shared their experiences and challenges with such practice which are worth discussing in the present context. Reza Mohtashami QC narrated that a witness, who allowed to be examined at his place of residence through electronic means given the COVID-19 pandemic, logged out of the Zoom hearing sessions in the middle of the virtual cross-examination. Another incident was recounted by Adrian Tan, where the witness, upon each and every question, was looking towards his left before answering the questions, suggesting the possibility that they were being coached off-camera to the detriment of maintaining the fairness in the proceedings.

An award may be challenged in the UAE if the arbitral proceedings were tainted with the similar irregularities. Therefore, to allay such concerns, tribunals need to be extremely mindful of the use of tele-prompters for witness coaching during virtual witness examinations. Ideally, a tribunal should administer oaths to the witnesses affirming that no directions are being given to them by anyone vis-à-vis

(Dr.) [2003] 4 SCC 601; Capic v. Ford Motor Company of Australia Ltd (Adjournment) [2020] FCA 486 (n 95); Bachmeer (n 50).


127 UAE Federal Arbitration Law (n 61) art 53 (1) (g).

their testimonies. Alternatively, the tribunal may also specify requirements with respect to the placement of the camera in the witness’ examination room so that the entire room is visible on screen, defeating any doubts regarding the presence of a tele-prompter or a coach near the witness.

D. Time Limit concerns

The UAE Federal Arbitration Law provides that the time limit for the issuance of the final award can be agreed upon by the parties themselves. However, if the parties have not reached such an agreement, the tribunal must issue the final award within 6 months from the date of the first hearing. At the same time, this provision is rather flexible as the time-frame is extendable for an additional 6 months, or an even longer period as agreed upon by the parties. This framework is important because an award may be challenged under the UAE Federal Arbitration Law if it is not issued within the specified time.

Even though the tribunal can take a simple and effective precautionary measure in this regard viz. it can order the parties to mutually agree to extend the time to a suitable date, the conduct of virtual arbitration can be rather helpful as it would alleviate the reasonably inevitable delays in the conduct of arbitral proceedings due to the pandemic. Accordingly, if the parties fail to reach a consensus even then,

129 Hogan Lovells Protocol (n 49) paras 3.1 (b) and 3.3; Africa Arbitration Academy Protocol (n 49) paras 3.2.3-3.2.4.
130 UAE Federal Arbitration Law (n 61) art 42.
131 ibid.
132 ibid, art 53 (1) (g).
the tribunal shall be prepared to conduct virtual proceedings to deliver the award within the statutory time limits.

E. Confidentiality and Data Protection Concerns

The UAE Federal Arbitration Law expressly mandates confidentiality of arbitral hearings and awards.\(^{133}\) However, it is particularly difficult to ensure such confidentiality and data protection in virtual arbitrations as parties may indulge in the unauthorised recording and sharing of sensitive information, or even in an inadvertent leakage of sensitive data by sharing devices with family members, or other people. International arbitration conducted virtually would be subject to the compliance requirements posed by supranational legal frameworks such as the EU’s General Data Protection Regulation.\(^{134}\) To address these issues, the ICCA-NYC Bar-CPR Cybersecurity Protocol\(^ {135}\) has suggested that tribunals inform and discuss with the participants specific measures to protect information and their ability to do so. It is also

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\(^{135}\) ICCA-NYC Bar-CPR Cybersecurity Protocol for International Arbitration (n 81) principle 10.
advisable for a tribunal to instruct participants to refrain from recording the proceedings at the very outset of the hearings.\textsuperscript{136}

\section*{F. Costs Concerns}

Article 46 of the UAE Federal Arbitration Law empowers a tribunal to assess and allocate a part or the whole of the costs incurred in the proceedings to one of the parties to the arbitration.\textsuperscript{137} Against this background, it is important to recognise that virtual arbitrations may give rise to circumstances where a party objects to the choice of the technology proposed on account of it being too costly and thus, burdensome.\textsuperscript{138} A tribunal, by virtue of its discretion in procedural matters, may either refuse the concerned party’s demand for employing such expensive technology\textsuperscript{139} on the basis of a cost-benefit analysis, or order that party to foot the bill for the added costs.\textsuperscript{140} In any case, the tribunal must apply the proportionality principle when assessing the value and complexity of the dispute to ensure that the recommended technical specifications and related equipment do not impose costs that are disproportionate to the economic value at stake.\textsuperscript{141}

Overall, all these legal concerns can arguably be resolved as it has been demonstrated in the Subsections above (A-F).

\begin{flushleft}
\textsuperscript{136} Hogan Lovells Protocol (n 49) art 2 (6) (c).
\textsuperscript{137} UAE Federal Arbitration Law (n 61) art 46.
\textsuperscript{139} ibid 6.
\textsuperscript{140} Seoul Protocol (n 49) art 9(1).
\textsuperscript{141} UNCITRAL, \textit{The UNCITRAL Technical Notes on Online Dispute Resolution} (2017) principle 9.
\end{flushleft}
Therefore, these concerns do not undermine the advantages of virtual arbitration but just emphasise that such practice shall be adopted cautiously and properly.

V. Learning from the International Best Practices

The international arbitration community has been very prompt in developing novel working methods to ensure a fair, efficient, and timely resolution of the suspended hearings as well as of potential disputes, in the midst of the COVID-19 pandemic. Understanding the best industry practices and standards thereby developed will considerably help the UAE in navigating towards safe harbours in the uncharted waters of COVID-19 and leverage its position as a preferred arbitration seat in the post-COVID-19 world.

The most remarkable measure taken by the international arbitral community has been the issuance of guidance notes by arbitral institutions142 and bodies.143 These notes expound on the utility of institutional rules and/or protocols for conducting virtual hearings and dispel the multitude of their inherent ambiguities given the absence of any prior clarifications and precedents. At the same time, certain institutional rules still give discretion to the tribunal in the conduct of virtual proceedings, favouring efficiency, and a


143 ICC Guidance Note (n 48).
timely resolution of the disputes in those situations where either one or both parties object to such hearings.  

An illustration of this can be found in the International Chamber of Commerce (ICC) Guidance Note (Note) which suggests parties, counsel, and tribunals certain possible measures “to mitigate the adverse effects of the COVID-19 pandemic”. By applying the Note to Article 25(2) of the 2017 ICC Rules, stating that the tribunal “shall hear the parties together in person if any of them so requests,” it can be established that the term ‘in person’ hearing implies holding “a live, adversarial exchange” and as such, even a virtual conduct of hearings would be considered ‘in person’ in this context.

The Note further recommends the tribunals to conduct virtual hearings even “without party agreement, or over party objection” as the postponement of in-person hearings due to the COVID-19 pandemic may cause a prejudicial delay in the completion of the arbitral proceedings. The Note also suggests the inclusion of clauses which deal with the organisation of virtual arbitration (technical specifications, confidentiality, privacy and security issues, presentation of evidence, and witness examination in the context of virtual arbitration) in procedural orders and cyber protocols.

Similarly, Delos, an independent arbitral institution, has created a checklist “of matters to consider in deciding whether to maintain the date of the hearing, and preparing, conducting and

144 See Section II B.
145 ICC Guidance Note (n 48) para 1.
146 ibid, para 23.
147 ibid, Annexes I and II.
following up on the hearing in light of COVID-19”.\textsuperscript{148} It also provides a non-exhaustive list of considerations for when deliberating on whether to postpone a hearing, and further stresses on creating a ‘dialogue’ between the tribunal and the parties to discuss the questions raised in the checklist.\textsuperscript{149}

Those issues that are unique to remote video arbitration proceedings can be addressed under model procedural orders suggested by a few arbitral institutions. Such as the AAA-ICDR’s Model order and Procedures for a Virtual Hearing via Videoconference,\textsuperscript{150} the Australian Centre for International Commercial Arbitration’s Draft Procedural Order for Use of Online Dispute Resolution Technologies,\textsuperscript{151} ICC’s Procedural Orders Dealing with the Organisation of Virtual Hearings\textsuperscript{152} and International Institute for Conflict Prevention and Resolution’s Annotated Model Procedural Order for Remote Video Arbitration Proceedings.\textsuperscript{153}

In one of its most outstanding responses, the Africa Arbitration Academy has also formulated a context-specific and custom made protocol on virtual arbitral hearings in Africa.\textsuperscript{154} The protocol recognises how far behind the continent lags in accessing reliable technology, highlighting the

\cite{149} ibid.
\cite{150} AAA-ICDR Model Procedural Order (n 90).
\cite{151} Australian Centre Draft Procedural Order (n 90).
\cite{152} ICC Guidance Note (n 48) Annex II.
\cite{153} CPR’s Annotated Model Procedural Order (n 90).
\cite{154} Africa Arbitration Academy Protocol (n 49).
challenges peculiar to the African arbitration community holding virtual hearings amidst the pandemic. Apropos of this realisation, it ultimately encourages governments and institutions to explicitly mention ‘virtual hearings’ in their relevant arbitration rules and contractual clauses.

Another internationally lauded response came from the Egyptian arbitrator Mohamed S Abdel Wahab, who mapped a pathway for dealing with a situation where one or all the parties object to virtual hearings. He drafted a guide in the form of a hierarchy of questions that the parties, the counsels, or the tribunal need to ask themselves before deciding for or against holding a virtual hearing. In particular, it envisages the interplay between the applicable laws and the governing procedural rules in four different ways. In the author’s view, arbitral tribunals seated in the UAE should carefully apply Wahab’s valuable analysis when applicable.

155 ibid 4.
159 ibid.
At this juncture, it is important to note that the rules of most arbitral institutions in the UAE fail to directly consider whether entire arbitral proceedings can take place virtually; and whether the tribunal is sufficiently competent to make any procedural order for such virtual hearings. Therefore, it is suggested that referring to the institutional arbitral rules of the DIFC-LCIA, which contain an express provision allowing for virtual arbitration hearings, the arbitral rules of other institutions in the UAE (for example, the DIAC and the Tahkeem) shall also provide for the conduct of full-fledged virtual arbitration as opposed to envisioning the use of technology for only witness examinations, or communications between the parties.

The arbitral institutions in the UAE also fail to provide any model clauses that account for virtual hearings for the reference of the parties and of the tribunal, respectively in the arbitration agreement or any model procedural orders. Therefore, the author is of the opinion that these institutions should release guidance notes/checklists for the parties, the counsel, and the arbitrators to plan efficient organisation of virtual proceedings. To this end, the arbitral tribunals seated in the UAE could refer to the aforementioned guidance notes, protocols, and model procedural orders so that the pervading confusion regarding the legitimacy and viability of virtual arbitration can be resolved effectively.

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161 Takheem Rules (n 68) art 26.
VI. Opportunities Presented by the ‘New Normal’ and the Way Forward for Arbitration in the UAE

_In a crisis, be aware of the danger, but recognise the opportunity._
- John F. Kennedy

It is globally recognised that the COVID-19 pandemic will not subside anytime soon.162 While efforts in developing a vaccine are underway, even the most optimistic experts have arrived at the bleak conclusion that it will not come before the end of 2020.163 Moreover, even once a vaccine has been developed successfully, it might take years for it to reach every corner of the world.164 Thus, the winds of change initiated by this dreaded virus are clearly going to affect our understanding of the norm, and direct it towards what is being popularly termed as the ‘new normal’.165


164 WHO Director-General’s Opening Remarks (n 161).

The ‘new normal’ of dispute resolution is going to be characterised by online client meetings, hearings, witness and expert examinations, online filing of claims, contactless payments, and tribunal deliberations over video conferencing. It will effectively abolish hard copies, as well as the necessity to physically travel to the place of hearing.

However, the wheels of the bandwagon of the ‘new normal’ need technology to keep them well-oiled. The message is clear: the better the technology and the faster the dispute resolution industry of a jurisdiction adapts to this ‘new normal’, the better are its odds of becoming the preferred dispute resolution choice in the coming future.

In the past few years, much ink has been spilled on the topic of saving time and reducing costs in international arbitration, yet little has come out of it, as ‘costs’ remain the worst feature of arbitration. In this regard, virtual hearings come as a breath of fresh air since they truly have the potential to save a considerable amount of time and money. Indeed,

167 QMUL International Arbitration Survey 2018 (n 82) 2.
168 Chawla (n 14) 2.
online hearings significantly reduce the costs associated with travelling to the destination of hearing, printing bundles of documents, as well as the money spent on accommodation of the participants, all of which are borne by the parties.\(^{169}\) This also presents an opportunity for the dispute resolution industry to reduce its carbon footprint and become more environment-friendly.\(^{170}\) A survey conducted by the Law Society of England and Wales in May 2020 reflects that dispute resolution, among other legal fields, remains an area which requires a change in its normal way of functioning to adapt to the ‘new normal’.\(^{171}\) Thus, in these times of adversity,


The UAE is already a recognised global leader in the use of cutting-edge technology.\footnote{173 Charles Laubach, 'Insight on the UAE' in LexisNexis (eds), COVID-19 Middle East Resource Kit (LexisNexis Middle East, 31 March 2020) <https://www.lexisnexis.com/pdf/COVID-19_Middle_East_Resource_Kit_2.pdf> accessed 16 August 2020.} By way of illustration, the ADGMAC in the UAE has been hailed internationally for the state-of-art facilities that it provides for conducting virtual hearings, and for facilitating remote participation of parties, counsels and expert and fact witnesses.\footnote{174 BouMalhab (n 70).} Moreover, the UAE Federal Arbitration Law contains provisions that expressly support the use of technology in arbitral processes in the UAE. Therefore, it finds itself in an advantageous position when it comes to implementing this ‘new normal’ of arbitration.

Against this background, it is important to note that, despite having emerged as one of the commercial capitals of the world,\footnote{175 BBC, ‘United Arab Emirates country profile’ BBC News (14 May 2018) <https://www.bbc.com/news/world-middle-east-14703998> accessed 17 June 2020.} and its employment of advanced technology in the resolution of legal disputes,\footnote{176 See Section II.B.} the UAE is yet to become a
globally preferred destination for international arbitrations. “Sweet are the uses of adversity which, like the toad, ugly and venomous, wears yet a precious jewel in his head,” said Duke Senior in the popular Shakespearean play As You Like It. It is thus the author’s belief that the grey clouds of this global pandemic that have cast their gloomy shadow over the entire world present a silver lining for the aspiration of the UAE in becoming a globally recognised seat of arbitration.

The UAE shall learn from the innovative measures taken by the courts and governments of global seats of arbitration like Singapore, boosting the use of international arbitration in its territory. For example, in April 2020, the Singapore Government enacted the COVID-19 (Temporary Measures) Act, 2020 (the COVID-19 Act), providing temporary relief to the parties involved in certain commercial transactions and disputes amidst the pandemic. A remarkable provision in the Act is the imposition of a 6-month moratorium on domestic arbitral proceedings and enforcement proceedings for domestic awards. This measure helps local entities, who are

178 William Shakespeare, As You Like It (1623), Act 2, Scene II.
180 ibid, s 5(3).
181 ibid.
embroiled in legal disputes for their failure to fulfil their contractual obligations due to the pandemic, by giving them sufficient time to recuperate financially. Moreover, it fosters the parties’ confidence and faith in the government, and in the conduct of the arbitral process in Singapore. At the same time, the COVID-19 Regulations do not apply to those international commercial arbitrations that formed 87% of the SIAC caseload in 2019. Accordingly, it is submitted that the UAE should follow the approach adopted by Singapore and bring it further by extending it to prior case-law and making it even more effective.

The UAE may also consider establishing a UAE International Commercial Court (UICC) at par with the Singapore International Commercial Court (SICC) to demonstrate its pro-arbitration stance. The model of the SICC becomes extremely relevant with the pandemic as it has directed the attention of the international arbitration community towards the venue of arbitration. In this way, it addressed the long-standing key concerns of arbitration users which are twofold: (1) certainty and predictability in the procedures of arbitration, and (2) speedy enforcement of the foreign arbitral awards. Therefore, the UAE also needs to tackle both of these concerns.

For instance, the courts of the UAE have designated Arabic as the official language for court proceedings, and require, as mentioned above, ‘attested translations’ of all the relevant documents (including the arbitral award) by ‘competent

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authorities’ for enforcement proceedings. Further, UAE courts have rendered conflicting judgments on arbitration in the past. For instance, the Court of Cassation of the Dubai recently nullified an arbitral award on the grounds of lack of signature by the arbitrators on each page of the arbitration award despite there being no such requirements under the UAE Federal Arbitration Law. The court based its decision on the repealed provisions of the Civil Procedure Code of the UAE. This clearly denotes that the UAE laws may have the undesirable traits of uncertainty and unpredictability. This has long constituted one of the many challenges for the international arbitration community in the UAE as has also been reflected in the Delos Guide to Arbitration Place that has accorded ‘yellow’ colour to the UAE in the criterion of judiciary to indicate that arbitrators, practitioners, and arbitration users must exercise caution in approaching the courts of the UAE.

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184 UAE Federal Arbitration Law (n 61) art 55.
186 UAE Federal Arbitration Law (n 61) art 41.
The proposed UICC can be an important step towards the renovation of the court system in the UAE, which can eventually help gain and sustain the confidence of the international arbitration community. The UICC will have to allow for online transmission of the authenticated award to the parties and applications for enforcement of such awards in both English and Arabic, without the need for translation. This would open the Court to foreign commercial parties, ultimately making the UAE more attractive as a seat of arbitration for international commercial arbitration. It shall also provide for the education and training of the judges who are in charge of the confirmation and enforcement of arbitral awards to make them more supportive of virtual processes and remote working options in line with the proceedings of international arbitral institutions. Such steps would greatly reduce unpredictability and uncertainty generally associated with the arbitration process and the enforcement of foreign arbitral awards in the UAE. The model of Singapore and its SICC shall thus serve as a useful model for the UAE to implement measures that can attract the international arbitral community’s attention and thereby, support its transformation into a leading global arbitration seat.

Another interesting opportunity for the renovation of arbitration in the UAE is presented by two possibilities. On the one hand, the current reduction in international travel, the disruptions in supply chains, and the paradigm of reverse-globalisation and increased self-sufficiency amongst countries and regions is likely to result in an increased preference for localised dispute resolution mechanisms. This can be a key opportunity for the UAE as it is the leader in the arbitration
sector in the Middle East and North Africa region.\textsuperscript{189} On the other hand, as the trend of opting for a particular arbitral institution merely due to the convenience of its geographical location may cease, the UAE may be able to resolve all the disputes that originate in the MENA and surrounding regions. The 2010 figures from the DIAC showed that the majority of the claimant parties belonged to the Cooperation Council of the Arab States of the Gulf (GCC), with European nationals coming in a close second, followed by Asian, North American, and African nationals.\textsuperscript{190} The 2017 and 2018 statistics of the DIFC-LCIA similarly revealed that 50 per cent of the parties that opted for arbitration in Dubai were from the UAE.\textsuperscript{191} This indicates that the arbitral institutions of the UAE were already favoured by the people of the UAE, and given the situations of lockdown and social-distancing around the world, these institutions may be able to retain an even larger share of such domestic users of international commercial arbitration. In light of these opportunities, the author believes that that the time has come for the UAE arbitration industry to bring about changes and renovations and become among the most


preferred arbitral destination in the world. A few suggestions to this end are discussed below.

In the past, arbitral institutions have capitalised on the growth of sectorial disputes by either curating industry-specific rules (for instance, the Shanghai Aviation International Court of Arbitration specializes in disputes arising in the field of civil aviation\(^\text{192}\)), or by educating businesses in that sector on the benefits of using their services for efficient dispute resolution (for example, the American Arbitration Association has been made the default institution in the dispute resolution clauses of GooglePay terms \(^\text{193}\)). Learning from this, arbitral institutions in the UAE shall capitalise on the future of cross-border disputes by providing effective virtual arbitration options to the relevant sectors. In fulfilling this role, they can tailor the arbitral processes to the peculiarities of the disputes in a given sector and provide further assistance in guiding the users on the benefits of opting for virtual arbitration over other modes of dispute resolution.

Moreover, considering the disruptions in supply chains, the workforce shortages due to precautionary quarantines and illnesses, and the closure of building sites due to COVID-19-related restrictions,\(^\text{194}\) it is inevitable that the broad impact of


\(^{193}\) Google, ‘Google Wallet - General Instructions’ (Google, 29 June 2009) \(<\text{https://sites.google.com/site/walletfaqs/gwinstructions} \text{ accessed 26 June 2020.}\>

\(^{194}\) Ministry of Human Resources and Emiratisation Resolution No (281) of 2020 On remote working in the private sector during
the pandemic will create a fertile ground for disputes within the UAE. In the given circumstances and due to increased level of complexity, technical issues, and regulatory procedures which are unique to different sectors, industry-specific rules shall be formulated by UAE-based arbitral institutions covering commonplace disputes. Inspiration can be drawn from the HKIAC’s Electronic Transaction Arbitration Rules for the eCommerce sector aimed at addressing the “special requirements of the resolution of disputes arising out of electronic transactions”\textsuperscript{195} The arbitral institutions of the UAE shall stand to gain from tailoring their processes towards particular sector as it will help its regional institutions effectively attracting disputes from all over the world, and handling their increasing caseload with enhanced efficiency. For instance, for the past five years, Dubai has remained one of the most preferred seats of arbitration for the resolution of construction disputes worldwide as it has been able to cater to the needs of the construction industry through the availability of experts and experienced arbitrators.\textsuperscript{196} In a similar vein, the resolution of financial and banking disputes can be administered by the DIFC, the commercial disputes by the DIAC, the maritime disputes by the Emirates Maritime Arbitration Centre, and so on. This would ultimately help the UAE strengthening its


\textsuperscript{196} Pinsent Masons 2019 (n 58).
position as an international arbitration hub, and emerging as an industry leader by attracting a whole gamut of disputes for resolution.

The COVID-19 pandemic overall presents the perfect segue for the arbitral institutions and other services providers in the UAE. There is a need to focus on partnership and coalition to plan and provide all the necessary support for capacity-building, in order to foster a more responsive and efficient process in the ‘new normal’ of international arbitration practice. This is particularly relevant for those arbitral institutions and professional bodies investing in technology. For example, Delos, which promotes technology-assisted arbitration, comprehensively tracked the newly released products of arbitration-based online facilitation which comprised 25 Guidelines & checklist, 3 protocols, 6 model procedures orders and more than 30 webinars about virtual and remote hearing.¹⁹⁷ This deluge of resources for virtual arbitration over the course of just 90 days, from March until June 2020, is unmatched in the history of modern arbitration. Therefore, arbitral institutions worldwide and those within the UAE have the golden opportunity to utilise these resources by setting them as benchmark to tailor their products and services for the present and future conditions.

In this regard, the UAE may also take a leaf out of the book of other established global seats of arbitration, particularly Paris, which are hosting online professional and academic events. With over a thousand participants attending these events worldwide, the seats are gaining from the promotion of their

¹⁹⁷ Delos, ‘Resources on holding remote or virtual arbitration and mediation hearings’ (Delos, 26 June 2020) <https://delosdr.org/index.php/2020/05/12/resources-on-virtual-hearings/> accessed 4 July 2020.
brands and value as efficient and effective seats of international commercial arbitration.

Finally, an interesting impact of the COVID-19 pandemic can be seen from the content of arbitration clauses, drafted in the post-COVID-19 world. Negotiating parties may bring a change in their most preferred seats of arbitration, by choosing those jurisdictions whose domestic arbitration law adequately deals with virtual conduct of proceedings; or their most preferred arbitral institution, by turning to an institution which is better equipped to conduct virtual hearings; or their most preferred governing procedural rules, by opting for those institutional rules explicitly providing for virtual hearings. Parties may also want to include supplemental wording in arbitration clauses setting out the procedural arrangements required in the present circumstances. The motive behind such supplemental wording may be to specifically provide for virtual hearings in times of a public health emergency. Therefore, the UAE must seize this opportunity and position itself as a seat with solutions to all malaise that ail the current international commercial arbitration landscape.

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Conclusion

Overall, the trajectory of success of the UAE arbitration community and its relevance at the international level will be determined by the procedural innovative ways and legal technologies it chooses to best adapt to the rapidly changing circumstances. Thus, to bring to fructification its aspirations of becoming the preferred global seat of arbitration, it is quintessential for the UAE to respond firmly to the adversities posed by the COVID-19 pandemic and instil confidence in the international arbitration community that arbitration in the UAE will prove to be a stable and reliable way of resolving international disputes in times where social-distancing and self-isolating initiatives are moulding the era of ‘new normal’ in the international arbitration landscape.
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