

~FOREWORD~

Gary Born*

It is a distinct honor to contribute this Foreword to *The MENA Leading Arbitrators' Guide*, ably edited by Dr. Gordon Blanke and Ms. Soraya Corm-Bakhos. This excellent volume contains the works of a number of highly-experienced arbitration practitioners and scholars on a wide range of issues involving international arbitration, particularly in the MENA region but also with wider application.

Over the past decade, international arbitration in the MENA region has witnessed significant development, with the region becoming increasingly attractive as a forum for dispute resolution by transnational businesses from around the globe. Dr. Blanke and Ms. Corm-Bakhos' work provides invaluable guidance, in a single place, for arbitration practitioners and others with an interest in international dispute resolution. Indeed, it is fair to say that *The MENA Leading Arbitrators' Guide* will become an essential, and likely the standard, guide for international arbitration with a connection to the MENA region.

The success of international arbitration in the MENA region, as elsewhere, has been principally based on a number of distinguishing characteristics, sometimes called the "Six E's": **E**xpeditious dispute resolution, **E**fficient procedural mechanisms, **E**xpertise of the tribunal, **E**venhandedness as compared to national courts, **E**nforceability of agreements and awards as compared to forum selection clauses and national court judgments, and (post-pandemic) enhanced use of **E**lectronic and other technological innovations. With respect to each of these criteria, developments in the MENA region in recent years have significantly facilitated the growth and development of international arbitration.

The growth of international arbitration in the MENA region has been facilitated by the progressive development of an effective legal framework for enforceability of international arbitration agreements and arbitral awards. The vast majority of the MENA states have ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and some were among the first Contracting Parties to the Convention. In addition to the New York Convention, regional conventions also facilitate the enforcement of arbitral awards in the MENA region, including the 1983 Riyadh Arab

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Agreement for Judicial Co-operation and the 1996 GCC Convention for the Execution of Judgments, Delegations and Judicial Notifications.

The growth in international arbitration in the MENA region is also in part a result of the progressive enactment of ambitious national arbitration legislation in a number of the MENA states, with most such statutes now having been modernized in line with the UNCITRAL Model Law on International Commercial Arbitration. These national arbitration statutes include provisions which guarantee the enforceability of both international arbitration agreements and arbitral awards, and ensure the autonomy of arbitral tribunals with respect to procedural matters. These statutes also limit judicial intervention in the arbitral process, including by facilitating the arbitral tribunal's ability to utilize essential procedural tools, such as interim measures. These arbitration statutes contribute significantly to the expedition and efficiency of the arbitral process, while also ensuring the independence, impartiality and expertise of arbitral tribunals, by permitting parties, tribunals and arbitral institutions to adopt flexible procedures tailored to the exigencies of particular cases and to select arbitrators with specialized expertise in those cases.

A related example of legislative efforts of this character can be found in the two free zones established in the UAE, (the Dubai International Financial Center and the Abu Dhabi Global Market) which offer independent and autonomous legal and judicial frameworks in support of international arbitration. Both free zones have robust arbitration laws based on the UNCITRAL Model Law, providing international standards for arbitral procedure—again, seeking to facilitate the expeditious, efficient and expert resolution of international commercial disputes.

This development of the legal framework for international arbitration in the MENA region has also resulted in a substantial growth of international arbitration centers, such as the Abu Dhabi Commercial Conciliation and Arbitration Center, Bahrain Chamber for Dispute Resolution, Cairo Regional Centre for International Commercial Arbitration, Dubai International Arbitration Centre, Qatar International Centre for Conciliation and Arbitration, and more recently the Saudi Center for Commercial Arbitration and its regional office in Dubai International Financial Center. This development of new arbitration centers in the MENA region has not been without hurdles and is an ongoing enterprise. It nonetheless confirms the continuing commitment to international arbitration in the region, as well as the continuing efforts to establish institutions that are capable of satisfying market demands by selecting arbitral tribunals that are independent and impartial, with the expertise desired by commercial parties. In addition to the expansion of regional institutions, arbitration has also been promoted by the presence and growth of the International Chamber of Commerce in the MENA region through the establishment of its office in the Abu Dhabi Global Market.

The attractiveness of international arbitration as a means to resolve international commercial and investment disputes is also rooted in its capability to reinvent, enhance and improve itself. Several initiatives have emerged in the past years involving new uses of technology, including the facilitation of remote or virtual hearings, which has been accommodated in the recent updates to the vast majority of institutional rules, including the arbitration rules of the arbitral institutions in the MENA region (such as the 2023 SCCA Rules and the 2022 DIAC Rules). In this respect, international arbitration in the region, as elsewhere, has become increasingly efficient and expeditious (as well as electronic).

Although modernized national arbitration statutes and institutional arbitration rules contribute to the efficient management and fairness of the arbitral process, it is essential that arbitration remains a flexible process which enables parties to tailor procedures based on the particular needs of individual disputes. This is particularly the case for more complicated disputes common to the MENA region such as oil and gas, financial and construction disputes. These types of disputes often involve technical issues that require specialized procedures for testing and presenting expert evidence, managing large volumes of documents and other data, or dealing with potential delays or rescope of project. Choosing individuals with the optimum skill sets to adjudicate these kinds of disputes is also of paramount importance.

In the construction industry, arbitration is the preferred dispute resolution mechanism in the MENA region with FIDIC terms very frequently being employed. The popularity of arbitration in construction disputes has been bolstered by the increasingly deep and sophisticated pool of local talent in the field of construction arbitration, including lawyers and engineers. This is evidenced by the growth of the construction arbitration caseload of arbitration institutions in the region, including DIAC, BCDR, ADCCAC, QFC, and CRCICA.

In the oil and gas industry, the diversity and complexity of oil and gas arbitrations in the MENA region are unique. This is because the most sophisticated businesses in the industry have major operations in the MENA region, which bring their expertise to their disputes (and their transactions) within the region. Again, the development of an increasingly sophisticated and diverse pool of local capabilities plays a central role.

In the banking and finance sector, changes in the global financial markets, as well as the continued development of the DIFC, ADGM and QFC, have encouraged greater use of international arbitration in the sector. The availability of independent, expert and impartial decision-making procedures, which are sufficiently flexible to adapt to the changing realities of the banking and financial sector, are key attractions.

Conciliation and mediation have also seen an increased role as an important mechanism for resolving commercial disputes in the region. In April 2021, the UAE adopted mediation legislation, which provides for a legal framework for

mediation. Qatar also introduced a new law in October 2021 to promote the use of mediation in civil and commercial disputes. Numerous international arbitration centers in the region offer mediation services, including BCDR, DIAC, ADCCAC and the SCCA. With commercial parties increasingly open to mediation, practitioners in the region are devoting greater attention to the subject.

The MENA region is one of the major construction and oil and gas markets in the world and has consistently been an area of interest for foreign investors; it is increasingly active in financial, intellectual property and other industries as well. Over the past several decades, the states in the MENA region have also been in the vanguard of nations active in promoting and facilitating the use of international arbitration, particularly in the context of complex commercial disputes. The MENA Leading Arbitrators' Guide provides robust theoretical and academic background, coupled with useful practical tools and advice for use of international arbitration and mediation in the MENA region. Each chapter of the book provides helpful insight into the law and procedure of international arbitration in the MENA region, and reflects the experience and expertise of leading arbitrators, counsel and scholars in the region. This book is therefore a very welcome and outstanding addition to international arbitration in the region, and will undoubtedly become an indispensable tool for international arbitration practitioners and scholars.

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