

## PREFACE

The idea behind *Arbitration in the MENA* is simple: to create a comprehensive text in the English language on arbitration in the leading jurisdictions of the Middle East and North Africa that allows quick and accurate reference for practitioners and academics alike. As I know only too well from my own experience, it is extremely difficult to access reliable sources on the practice and procedure of domestic and international arbitration in the MENA region that are published in English and usable by the wider English-speaking community of arbitration specialists without knowledge of Arabic as the dominating language in the Middle East and North Africa.

*Arbitration in the MENA* is a unique compilation of contributions from authoritative academics and scholar-practitioners on the practice and procedure of arbitration in the Middle East and North Africa. The publication aims to guide the reader through the arbitration process in jurisdictions that are mostly unfamiliar to an international arbitration community and provide insights into the common practice of arbitration in those jurisdictions. The various country chapters are self-contained and can be consulted individually on questions of interest to the reader. This first edition contains contributions on Egypt, Jordan, Lebanon, Oman, Saudi Arabia, Tunisia, Turkey and the United Arab Emirates. Given the loose-leaf format of this work, coverage will grow to comprise all jurisdictions in the Middle East and North Africa over years to come. Updates are anticipated annually.

I am hopeful that this publication will appeal to all those who have been seeking, to no avail, guidance on the practice and procedure of arbitration in the MENA region in English. I am, of course, aware of texts that have been published in the past with a similar aim in mind.<sup>1</sup> Despite apparent similarities, this text is different in that (i) rather than a monograph, it constitutes an anthology with contributions from specialists in the field who are amply qualified to contribute on the local idiosyncracies of the various MENA jurisdictions and (ii) it is published in a loose leaf format that will allow updates of the content in real time over years to come.

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<sup>1</sup> Best known amongst which, *see, e.g.*, ABDUL HAMID EL AHDAB & JALAL EL AHDAB, *ARBITRATION WITH THE ARAB COUNTRIES* (2011); and SAMIR SALEH, *COMMERCIAL ARBITRATION IN THE ARAB MIDDLE EAST* (second edition, 2012), this latter covering Jordan, Kuwait, Bahrain and Saudi Arabia only. As a further alternative, *see also* PRACTITIONER'S GUIDE TO ARBITRATION IN THE MIDDLE EAST AND NORTH AFRICA (Essam Al Tamimi ed., 2009).

The reader will note that this first edition launches with a minimum number of jurisdictions only. Annual updates are intended to ensure that before long, this publication will grow into a comprehensive guide on the practice and procedure of arbitration in all MENA jurisdictions, comprising a total of more than twenty countries.<sup>2</sup> Importantly, each contributor has been given liberty to structure his or her contribution as best suits the individual jurisdiction concerned. It was not my intention to create a format that would be slavishly comparative in nature. To the contrary, it was the primary objective to make each chapter as reader-friendly as possible by safeguarding a structure that would be authentic for the presented jurisdiction. This said, each jurisdiction covers, of course, the main ground of arbitration from a local and regional perspective, including the formation of the arbitration tribunal, the conduct of the proceedings and the issuance and enforcement of arbitral awards. In order to make relevant primary source material easily accessible, the work includes a CD-Rom containing arbitration law of each jurisdiction in its full text in English translation. The reader will also notice that chapters may vary significantly in length. This is simply because some arbitration jurisdictions in the Middle East are much more developed than others and therefore warrant more detailed assessment.

Future editions are intended to benefit from additional chapters of a more specialist nature, including, in particular, chapters on investment arbitration, construction arbitration and oil and gas arbitration in the MENA. These more specialist fields of arbitration are of particular importance in the MENA region and therefore deserve, in my view, separate treatment in self-contained chapters. Investment arbitration in particular has become increasingly important through the developments of the Arab Spring that has left Egypt, Jordan and Libya as popular targets for investment treaty claims from foreign investors.

I am, of course, painfully aware that no publication is perfect and that it is ultimately the editor that bears responsibility for any shortcomings and infelicities. This work is no exception: Together with the in-house editors of *Juris*, I have endeavoured to prune the text linguistically as best I could without losing the authenticity of each author's style. This will hopefully have made the text more reader-friendly across chapters without jeopardizing conceptual accuracy. With this in mind, I am particularly grateful to Joelle Perez, Head Legal Content Editor of *Juris*, for her professional assistance throughout.

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<sup>2</sup> Including Algeria, Bahrain, Egypt, Iran, Iraq, Jordan, Kuwait, Lebanon, Yemen, United Arab Emirates, Libya, Morocco, Oman, Palestine, Israel, Qatar, Saudi Arabia, Syria and Tunisia.

I also express my gratitude to Dr. Habib Al Mulla, who has kindly accepted to serve as Consultant Editor and who over my years in the Middle East has been supportive of my own endeavours to learn the *local* trade of arbitration. Finally, my genuine thanks are due to all the individual contributors, who have given generously of their time and knowledge to contribute to this publication.

*Dr. Gordon Blanke*  
20 June 2015  
Dubai, United Arab Emirates



## **PREFACE TO RELEASE 1**

I am delighted at the prospect of publishing the first annual release 2017. Readers will be aware that this publication has been intended for annual updates in the form of periodical revisions of the existing content and the addition of new country chapters in the hope that it will grow into a leading comprehensive reference work on the practice and procedure of arbitration in the MENA region over time. I am pleased to say that the work appears to have received a warm welcome by both the professional and academic arbitration community since its original launch in March 2016. I am also aware that the work has provided a helpful basis as course material for the increasing number of specialist arbitration modules taught at universities in the region. It is indeed encouraging to see that arbitration finds favour as a subject of study with the younger generations across the region and as such seems to be maturing into a more and more credible form of dispute resolution as an alternative to the courts. It is equally a source of great satisfaction to see that this work facilitates the transfer of accumulated knowledge of the practice and procedure of arbitration in the MENA to future generations.

This first annual release 2017 introduces two new countries, Israel and Libya. I am proud to say that each is contributed by one of the foremost experts in their respective jurisdictions, Dr. Daphna Kapeliuk and Mr. Kamal Sefrioui. I hope that readers will find these chapters a valuable contribution to the existing collection of country chapters, especially given that reliable guidance in English on these two jurisdictions is particularly difficult to find. In this first annual release 2017, I have also decided to provide a revised version of the chapter on the United Arab Emirates: This has proven necessary given the many developments that arbitration in the UAE has seen over the past couple of years, adding various arbitration institutions and a further arbitration free zone in the form of the Abu Dhabi Global Market (ADGM) over and above the existing DIFC and given the creation and initial case law precedent of the Dubai-DIFC Joint Judicial Tribunal, which is believed to have compromised to some extent the DIFC Courts' role as a conduit jurisdiction. For the avoidance of doubt, I have been reassured by the remaining contributors that no updates of their respective chapters were necessary at the time of writing.

Looking ahead, the next release is likely to feature a country chapter on Iran, which is presently under preparation, and a couple of further chapters that have been short-listed. Until then, I hope that this first annual release 2017 will prove useful to the majority of readers.

Needless to say that all end matter has been updated in relevant part, including most importantly all indexes, in order to reflect the new and revised material introduced by this first annual release 2017. Equally, the enclosed CD Rom containing relevant arbitration legislation has also been updated.

*Dr. Gordon Blanke,*  
18 February 2018,  
Dubai, United Arab Emirates

## PREFACE TO RELEASE 2

After publication of the first annual release in 2018,<sup>1</sup> I am now pleased to oversee publication of the second annual release of *Arbitration in the MENA*. Apologies are no doubt due to our readership, which – in accordance with previous announcements – rightfully anticipates publication of fresh releases on a strictly annual basis. To my own disappointment, despite my editorial commitment to provide regular, annual updates of this publication, this has proven difficult for a number of reasons, in particular the natural gestation of quality material that is at the command of a precious few qualified experts in the Middle Eastern arbitration arena. As a result, contributions inevitably take much longer to source than for a more streamlined work. In order to retain some historical continuity in the updates of this publication for generations to come, it has been decided in consultation with the editorial team at Juris to issue the present release as Release 2 (2018/2019). That said, I am hopeful that Release 3 (2020) will follow shortly, so that moving forward, future annual releases will publish contributions and material of the corresponding year of the relevant release in real time.

I am delighted that this Release 2 (2018/2019) adds two entirely novel chapters to the publication, starting with a country chapter on Iraq, which I hope will assist both novices but also the seasoned practitioner to navigate the arbitration practice and procedure in a country that exhibits difficulties of accessibility at a number of levels, including – most importantly for present purposes – the resolution of disputes through arbitration. Our eminently qualified team of authors, Noor Kadhim and Leonardo Carpentieri, ably introduce the reader to the vagaries of arbitration in Iraq, including a useful overview of the investment arbitration regime available to foreign investors. We also make available relevant source material that is of relevance to arbitration in Iraq and otherwise difficult to obtain in a language other than Arabic, in English translation<sup>2</sup>. In a second, newly added chapter, Professor Nathalie Najjar, one of the foremost scholar-practitioners in the Middle East, who will be known to our readership for her lifelong contribution to the evolution of the modern practice of arbitration in the Middle East, shares her insights into the role of the Islamic Shari’a in arbitrations in the MENA.

Professor Najjar’s chapter features in a new section on Specialist Sectors and Themes, which I anticipated in my Preface to the first edition<sup>3</sup> and

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<sup>1</sup> Release 1 (2017).

<sup>2</sup> By courtesy of and thanks to Hashim Kadhim.

<sup>3</sup> Release 1 (2017), at x.

which I am now proud to introduce in this Release. This new section will assist in expanding the subject-matter scope of this publication beyond country reports to take account of the specialist (sector-specific) developments of arbitration in the MENA region.

The country chapter on Iran, which I anticipated in my Preface to Release 1 (2017)<sup>4</sup> would be ready for publication in this Release, is presently still under preparation. I am confident though and have been reassured by our eminent contributor that it will be completed and ready for publication in the forthcoming 2020 release. I should also note that my own chapter on the practice and procedure of arbitration in the UAE has been overtaken by latest developments, most notably the adoption and entry into force of (i) UAE Federal Law No. 6 of 2018 on Arbitration, also commonly known as the UAE Federal Arbitration Law, and (ii) Executive Council Decision 57 of 2018. The UAE Federal Arbitration Law read together with the Executive Council Decision repeals the provisions of the former UAE Arbitration Chapter<sup>5</sup> and as such requires a fundamental review of the UAE country chapter. I am aiming to provide a fully revised chapter for the benefit of our readership in one of the forthcoming releases.

For the avoidance of doubt, not all end matter has been updated, despite the new material introduced by this second annual release 2018/2019. This includes indexes, which will be fully updated in a future release. That said, the Appendices located on [www.arbitrationlaw.com](http://www.arbitrationlaw.com) containing relevant arbitration legislation have been updated.

Finally, apart from the contributors who give so generously of their time to keep this publication of relevance to our readership, I take this opportunity to thank Kristen Standfast of Juris Publishing for her tireless editorial support in processing the instant Release with impressive expediency.

*Dr. Gordon Blanke,*  
26 June 2020,  
Dubai, United Arab Emirates

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<sup>4</sup> Release 1 (2017), xiii.

<sup>5</sup> *I.e.* Arts 203-218 and 235-238 of the UAE Civil Procedures Code.



## PREFACE TO RELEASE 3

Following publication of the first two annual releases over the past couple of years,<sup>1</sup> I am now delighted to announce publication of the third annual release of *Arbitration in the MENA*.<sup>2</sup> This release focuses on the addition of a single chapter that provides a masterful chronicle of oil and gas dispute resolution in the Middle East in the twentieth and twenty-first century. This contribution is unique in nature and scope, there being no comparable treatment of the subject. It is, to the best of my knowledge, the most comprehensive treatment on the subject published to date. I take this opportunity to thank Tim Martin, the author, for having taken the time to share his unrivalled experience and expertise in the field. Needless to say that the MENA is one of the leading oil and gas producers in the world, so dispute resolution and in particular arbitration are of central importance to the subject.

The country chapter on Iran, which I anticipated would be ready for publication in this release remains under preparation as I write and will hopefully be published, together with a full revision of the UAE chapter, in the next or the next but one release.

For the avoidance of doubt, given the contribution of one new chapter only, it has been decided not to proceed with an update of the all end material on this occasion.

*Dr. Gordon Blanke,*  
9 May 2021,  
Dubai, United Arab Emirates

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<sup>1</sup> Release 1 (2017) and Release 2 (2018/2019).

<sup>2</sup> Release 3 (2020).



## PREFACE TO RELEASE 4

The *unruly horse* of public policy<sup>1</sup> has long been a vexed topic in the field of international commercial arbitration. This is as much the case in the Middle East as it is in other jurisdictions. I am therefore extremely grateful to Prof. Dr. Martin Lau for his most recent contribution on the public policy exception and how it works in arbitration in the MENA region. The importance of this topic, no doubt, justifies the decision to dedicate a stand-alone release to it.<sup>2</sup> Regular readers will be aware that this chapter is preceded by and as such complements the contribution by Prof. Nathalie Najjar on the role of Islamic Shari'a in MENA arbitration.<sup>3</sup>

The country chapter on Iran, which was envisaged to be published in the present release, currently remains on hold and is as such awaiting publication in one of our future releases.

Needless to say, given the steady growth of this publication, the end material remains in need of updating and will, I hope, be fully revised in good time for publication of next year's release.

*Dr. Gordon Blanke,*  
13 March 2022,  
Dubai, United Arab Emirates

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<sup>1</sup> *Richardson v. Mellish* (1842) 2 Bing. 229.

<sup>2</sup> Release no. 4-2021 (2022).

<sup>3</sup> Release no. 2-2018/2019 (2020).

