

# ARBITRATION SPECIALISTS



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## HOW THE UAE BECAME A HUB FOR **MARITIME LAW**

Professional insights into resolving  
maritime and property disputes

HAMDAN ALSHAMSI LAWYERS &amp; LEGAL CONSULTANTS

# INTERIM MEASURES IN ARBITRATION



## What is an interim measure?

Interim measure covers a wide variety of orders, and most are granted at an early stage of the proceedings to preserve the status quo or prevent the dissipation of assets before an award is made in the arbitration by the arbitral tribunal.

They are often awarded without notice and on a provisional basis to preserve evidence and can be granted by an arbitral tribunal or by a court.

## Which measure to use and when?

There are a range of interim measures that are available to parties in international arbitration, and each are appropriate depending upon the circumstances of the case.

There are various factors that must be considered when deciding whether or not to make an application for an interim measure, for example:

- (i) Is there a risk that, having successfully defended a claim, you are unable to recover your costs from the opponent?
- (ii) Is there a risk that your opponent may damage, destroy or hide evidence or property that is relevant to the subject matter of dispute?
- (iii) Is an interim payment order required because it would be unfair to deprive you of your money pending the outcome of the arbitration?
- (iv) Is there a risk that your opponent may hide or dissipate its assets?
- (v) Is there a risk of your opponent's conduct causing irreparable harm?

In the above circumstances, an interim measure can potentially remedy the situation. By way of example, in the last example (v), in a trademark infringement claim, a claimant's commercial reputation may be irreparably harmed by the infringement and if the defendant is allowed to continue with its conduct during the arbitration, it may not be possible to compensate the claimant for the harm caused and therefore an interim injunction may be able to remedy the situation.



**Hamdan Alshamsi**, Senior Partner, Hamdan Alshamsi Lawyers & Legal Consultants

In the other examples mentioned above, the tribunal may have the power to make provisional awards or to order interim measures to assist either of the parties.

Interim and Conservatory Measures or interim remedies are the interim and precautionary measures that are granted by the Arbitration Tribunal before the merits of any dispute are considered. Under the UAE Arbitration Law the interim and conservatory measures are granted by an Arbitration Tri-

## Interim and Conservatory Measures

bunal in order to (a) preserve evidence that is material for resolution of the dispute; (b) for preserving the goods which constitute part of the subject-matter of the dispute. This includes making an order to deposit goods with a third party or to sale of perishable goods; (c) for preserving both fixed and movable assets out of which a subsequent award may be satisfied; (d) for maintaining the status quo pending determination of the dispute; (e) in order to prevent an action that may cause prejudice to the arbitration process itself. Additionally, under the provision of the UAE Arbitration Law, a party seeking an interim and precautionary measure can file an application directly before chief justice of the Court of seat and seek an interim or conservatory measures in relation to an existing or potential arbitral proceeding. In the event, the court of seat awards the interim and precautionary measure it must be followed by filing of a substantive arbitration case of merits, for determination of the disputes between the Parties. From our practice we note that generally, the parties seek interim and precautionary measure to save the assets of the Respondent from the risk of dissipation. ■



**Robert Whitehead**, Senior Associate, Hamdan Alshamsi Lawyers & Legal Consultants



**Nandini Tiwari**, Senior Associate, Hamdan Alshamsi Lawyers & Legal Consultants

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# HAMDAN ALSHAMSI

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# ARBITRATING MARITIME DISPUTES

● How the UAE has become a hub for import and export-related resolutions

**PETER FEELY,**  
Senior editor

**H**amdan Alshamsi, Founder and Senior Partner, Hamdan Alshamsi Lawyers & Legal Consultants, says that the UAE's place in world trade routes has allowed it become a leading centre in the region for maritime arbitration. "The UAE's location geographically makes it easier for international parties to settle disputes in arbitration. It is a convenient and well-equipped country for parties to conduct their arbitration hearings, with a reliable judicial system, ensuring the arbitration process is effective," he says.

He believes that the UAE has been dynamic in adapting its legislation. "The country's maritime industry is very active in adopting the leading industry standards, which provides many maritime experts and institutions assistance in the arbitration process. Having an active maritime industry also means that many of the disputes that occur in the territory of the UAE or otherwise allow the arbitration to be closer to the disputes' location or parties' location, making it more convenient."

Alshamsi says that the UAE also accommodates claimants through its use of technology. "The maritime arbitration sector in recent times has evolved to offer a more convenient way to arbitrate through the increased use of video conferencing to conduct arbitrations, using electronic means in disputes.

"Using electronic means offers parties convenience in resolv-



**Hamdan Alshamsi,**  
Founder and Senior Partner,  
Hamdan Alshamsi Lawyers &  
Legal Consultants



**Deepa Rajan,**  
Head-Common Law &  
Arbitration, Ahmad Anwahi  
Advocates & Legal Consultancy



**Ghazi Bahajaj,**  
Head of Arbitration - Arabic  
& Arbitrator, Al Safar &  
Partners Advocates and Legal  
Consultants

ing their disputes and therefore more transparency.

"The maritime industry in the UAE has also seen many new international companies set-up operations in the country, whether directly in the maritime industry, or indirectly dealing with the maritime industry, in particular such as trade financiers - again adding to the wealth of experience the country has in dealing with maritime arbitration."

Deepa Rajan, Head - Common Law & Arbitration, Ahmad Anwahi Advocates & Legal Consultancy, agrees that the UAE's status as a global trading hub has accelerated its position in maritime arbitration. "As we all know, the UAE is strategically located with lot of competitive advantages and has emerged as a global hub and an international port connecting the East and the West. Our maritime industry contributes to around 60 per cent of the total maritime sector in the entire GCC.

Rajan says that this has resulted in a significant growth in maritime arbitration cases. "This industry has been growing rapidly over the last couple of decades and we have emerged as a global leader in the sector. Naturally, the need for effective dispute redressal mechanisms, administered under common law and in the English language, in comparison to the local court system that followed Sharia law, strengthened the status of the region.

This need for a maritime-specialised alternative dispute resolution was addressed by the leadership of this country in 2016 with the introduction of Emirates Maritime Arbitration



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Head - Common Law & Arbitration, Ahmad  
Anwahi Advocates & Legal Consultancy

Center (EMAC) by Emiri Decree No.14/2016. EMAC is the only maritime Arbitration centre in the MENA and offers high quality services to resolve maritime disputes through arbitration, mediation and other mechanisms.

"The centre is based in Dubai International Financial Centre (DIFC), a financial free zone hub, but it has a totally separate legal entity and has its own rules based on UNCITRAL arbitration standards."

### A challenging specialty

Ghazi Bahajaj, Head of Arbitration - Arabic & Arbitrator, Al Safar & Partners Advocates and Legal Consultants, says that maritime arbitration is often challenging and complex. "The arbitrator is sometimes facing parties that won't cooperate as they do not show sufficient patience and percep-

tion by neglecting the principal and fundamental duties of their case by prolonging the process of arbitration either by not attending the meeting or by not providing the required documents and evidence for the case. Sometimes the parties' behaviour may go to the extreme whereas the arbitrator is removed without apparent reason, which can delay procedures.

These are the main challenges in general, but for the cases related to maritime issues, the task is more difficult and challenges are greater due to the nature of the dispute.

Maritime subjects are divided and spread in many books, international treaties, conventions, quarterly magazines - many of them unavailable to the public - which represents an obstacle and challenge to the arbitrator seeing the case. ■

### UAE ARBITRATION

**Robert Whitehead,** Senior Associate, Hamdan Alshamsi Lawyers & Legal Consultants, says that the UAE is a reliable destination for arbitration, based on the country's willingness to accept different internationally-recognised standards. "Arbitration has become a popular method of dispute resolution and Dubai is a popular seat of arbitration, which has been assisted by the presence of two key arbitration institutions; the Dubai International Arbitration Centre (DIAC); and the DIFC London Court of International Arbitration (DIFC-LCIA). The other key arbitral institutions in the UAE are the Emirates Maritime Arbitration Centre, the Abu Dhabi Conciliation and Arbitration Centre, the Sharjah International Commercial Arbitration Centre and the Ras Al-Khaimah Centre for Reconciliation and Commercial Arbitration.



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# Negotiating property arbitration in the UAE

- How to successfully litigate investment disputes in the current climate

**PETER FEELY,**  
*Senior editor*

**T**he UAE property market is dynamic but it can also lead to disputes, particularly with the delivery of off-plan properties. Nandini Tiwari, Senior Associate, Hamdan Alshamsi Lawyers & Legal Consultants, says that such issues can be related to contracts. “We often see construction disputes as the construction project involves several parties such as developers, contractors, various sub-contractors, engineers, several suppliers and project managers, for instance. Either breach of the

main contract, by an employer (developer) or contractor, does not just lead to a dispute between these two parties, but also other parties that are connected with the specific project.

She also says that legal issues can be caused by delays to projects. “By way of example, if a specific project goes into a delay for any reasons such as lack of access, delayed payment or failure of an engineer in providing approvals, along with the main contractor, other parties working on the project get adversely affected. In those circumstances, the main contractor initiates proceedings against the developer and the sub-contractors

or supplier to impede the main contractor. The story does not end there necessarily though. If the project isn’t completed by the sunset date, the plaintive tends to initiate proceedings against the developer for the cancellation of the SPA, and refund of the payment made. In this way, there could be a number of cases in relation to the same project.”

Tiwari says that the UAE has established laws that ensure investors have legal support to address their concerns without unnecessary delay. “It is worth noting that in 2017, the DIFC Courts established the Technology and Construction Division with spe-



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**Nandini Tiwari,**  
Senior Associate, Hamdan  
Alshamsi Lawyers & Legal  
Consultants



**Deepa Rajan,**  
Head-Common Law &  
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Advocates & Legal Consultancy

changes to property law afford more protection to investors. “The UAE real estate sector has seen consistent performance in commercial, hospitality, residential and retail sectors and has always been a favourite avenue for global investors. However there has been a significant upsurge in the percentage of disputes registered in the UAE pertaining to the real estate sector in the last few years.

The recent developments in real estate legislations and regulations have instilled more confidence in the minds of investors and the players in the industry. The new UAE Arbitration Law No. 6 of (2018) based on UNCITRAL Model Law is another significant landmark legislation in this direction.

There are a wide range of dispute resolution forums in this country other than the local litigation courts, including, but not limited to: (1) Dubai Land Department Amicable Settlement Center (DLD-ASC), (2) Dubai Legal Affairs Department Mediation forum (3) Cancelled project committees for liquidation (CPC) (4) Real Estate Regulatory Agency (RERA) (5) Judicial Committee for returned cheques (6) Rental Dispute Settlement Committee (RDSC) (7) Arbitration before Dubai International Arbitration Centre (DIAC).

If the sale and purchase agreement signed by the parties refer to a dispute resolution clause through arbitration, the parties must resolve the matter through arbitration by offering their consent in writing. The process of arbitration is less time consuming than potential litigation in real estate matters.

cialist judges and a set of rules specific to the construction and technology industry to fast-track the resolution of disputes.

“The constitution of an arbitration tribunal could be a time consuming process, especially where the arbitration agreement provides for the constitution of a three-member tribunal. If a party requires urgent interim relief, a precautionary attachment or freezing injunctions (due to the risk of dissipation of the disputed property or funds owned by the defendant), waiting for the appointment

of tribunal could be detrimental. In these circumstances, under Article 18 (2) Arbitration Law and Article 22 of UAE Civil Procedures Code of the UAE Laws, a party can seek urgent relief directly by filing an application to the Chief justice of the Court of seat of Arbitration. The aforementioned provision of law assists the parties to get a relief on an urgent basis.”

**Supporting investors**

Deepa Rajan, Head - Common Law & Arbitration, Ahmad Anwahi Advocates & Legal Consultancy, says that

**UAE: A CENTRE FOR DISPUTE RESOLUTION**

**Pratheesh Nair**, Managing Partner, Ahmad Anwahi Advocates & Legal Consultancy, says that the UAE has become a centre for resolving property disputes. “In less than a decade, arbitration has become a popular and well-accepted mode of dispute resolution for commercial disputes in both the UAE and the Middle East. The UAE, being an abode to expatriates from more than 200 nations and being the commercial hub of the Middle East, has become the most vibrant and bustling economic market place.



The growth of arbitration as a dispute redressal forum in the UAE is evidenced by the existence of several institutions such as DIFC-LCIA, DIA, ADCCAC, EMAC, Takheem and Ras Al Khaima Centre for Reconciliation and Commercial Arbitration to administer commercial arbitrations in the region.

It is a well-known fact that United Arab Emirates is regarded as a jurisdiction well suited for arbitration, similar to Singapore, considering the minimal interference of the local courts and streamlined processes and ease to enforce domestic arbitral awards. The introduction of Arbitration Law (UAE Federal Law No.6/2018) and the recent amendments in the UAE Civil Procedure Code have reinforced the enforceability and application of foreign arbitral awards, which has made this jurisdiction even more attractive for effective resolution in commercial disputes.

**MITIGATING RISK**

**Kavitha S. Panicker**, Managing Partner of Al Safar and Partners, says that residents and investors should be aware of their rights, particularly concerning contractual breaches of property handovers. “We can often help clients terminate SPAs on contractual grounds, especially when the delivery of property is delayed. First we would need to review the SPA. If it stipulates the date of handover for a property and the extension period but if there was no notice issued to confirm a further extension of handover date, you have the right to request the court to terminate the SPA and ask for full refund and compensation thereof.”

