I. **INTRODUCTION**

As an alternative method for the final and binding determination of disputes, arbitration consists of combined contractual and judicial elements. The contractual element of arbitration stems from the mutual agreement of the parties to refer their dispute to a third party – an arbitrator. It is the parties' agreement that defines the scope and limits of the arbitrator's jurisdiction. The parties are free to agree, among other, on the identity of the arbitrator, on the method of his appointment, on the way their dispute will be decided, on the procedure that will be followed during the process and on the applicable rules that will apply to the resolution of their dispute. The judicial element of arbitration is characterized by the judicial role that the arbitrator assumes – deciding the dispute submitted to him by way of a final and binding award.

By entering into an arbitration agreement, the parties express their intention that their dispute will be referred to the determination of an arbitrator and not to any competent state court. However, the parties' freedom to tailor the arbitration process to their needs is not unlimited. It is subject to the limitations set by the legal system that governs the arbitration. Thus, the parties' choice to have their dispute resolved in arbitration does not detach the arbitration from the legal system or from the courts. Arbitration is not an isolated method for resolving disputes, and it does not have an existence of its own, unrelated to any legal system. The legal system, or more precisely, the relevant statutes that regulate arbitration, give it its legitimacy and define its scope and limits, and the competent courts empowered by the legal system exercise supportive and supervisory control over it. Hence, arbitration, although a private method of dispute resolution, is not detached from public courts. There is a constant interaction between arbitration and the courts, which comes into play throughout the various stages of the arbitral process.

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process. The interaction begins at the pre-arbitration stage, where courts may be asked to enforce the parties' agreement to refer their dispute to the decision of an arbitrator, or to refrain from enforcing it. During the arbitration process, the courts may exercise various supportive and supervisory roles over the arbitrator and assist in the conduct of the arbitral process. At the post-award stage, the courts' power focus on their supervisory role over the award rendered by the arbitrator and on their supportive role in recognizing and enforcing it. The courts may confirm and enforce arbitration awards, but they may also set them aside or refuse to enforce them.

The inter-relationship between courts and arbitration, and the supervisory role that the courts assume in arbitration, is explained by the mere presumption that as a consensual method of dispute resolution, arbitration should have a control system. As Prof. W. Michael Reisman wrote, with a control mechanism arbitration "remains a delegated and restricted power. Without controls it becomes absolute. Thereafter, the arbitrator, like the Roman emperor, may be tempted to say "quod vuluit arbiter havet vigorem legis": "whatever the arbitrator wants is the law." Since arbitration is a creature of contract, the arbitrator's authority is derived from the parties' agreement. Systems of controls are necessary in order to prevent the arbitrator from acting contrary to the parties' agreement. However, systems of control over arbitration are also necessary to ensure that the arbitrator does not act or make decisions contrary to the basic notions of the legal system.

Control mechanisms are an integral part of the public court system. The hierarchical pyramid of public courts ensures that decisions of lower courts are supervised and controlled by courts that are higher in the hierarchy. The need for control mechanisms in arbitration can be explained by the fact that as private judges, arbitrators compete in the market for services and are not subject to any internal control system. Their incentives and constraints are different from those of public judges. While public judges are usually randomly assigned to hear cases and receive a secure income regardless of these assignments and irrespective of the number of cases they hear, in arbitration, parties generally select arbitrators, and

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arbitrators receive compensation from these parties only after their appointment.3 Thus, from an economic perspective, according to which both judges and arbitrators are considered as rational utility-maximizers,4 unlike judges who remain shielded from market pressures, arbitrators compete in the arbitration market for business.5 As private actors, they know that their income generally depends on their selection by parties. Accordingly, since market information can affect their selection and reselection to arbitration tribunals and hence can impact their judicial behavior.6 Since arbitrators act in a competitive market, these market forces may lead them to behave in a way different than that of public judges, who are not subject to market constraints. Hence, the need of control mechanism.

One of the main purposes of arbitration is to provide for a method for resolving disputes by way of a final award without undue cost and delay. In order to ensure efficiency and finality of the arbitral process, a balanced approach of a control mechanism should ensure the respect of the parties’ freedom to tailor the resolution of their dispute, and the need to ensure that justice is done. At the post-award stage, there is a tension between the main purposes of arbitration – respect of the parties’ agreement, finality and justice. This is where the rule of law comes into play.

As one of the building blocks of modern society, the rule of law has no single accepted definition. As such, the term raises intriguing questions with regard to its scope and nature. While its core can be clearly defined, its borders are not easily drawn. The more one moves away from its center, the more its boundaries become blurry.

Differing terminologies and approaches contribute to the ambiguity of the term. Nonetheless, two main approaches to the Rule of Law can be identified – the

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5 See Cooter, supra note Error! Bookmark not defined., at 107 (“[P]rivate judges have to attract business, so they are exposed to the same market pressures as anyone who sells a service.”).

6 Franck, supra note Error! Bookmark not defined., at 516; Carole Silver, Models of Quality for Third Parties in Alternative Dispute Resolution, 12 OHIO ST. J. ON DISP. RESOL. 37, 83 (1996).
procedural and the substantive. The procedural approach focuses on the domination of the law and on the legality of the authority exercising it. According to this approach, the law has various formal characteristics, among other, it should be publicly declared, have a prospective application, apply equally and provide certainty. The procedural aspect of the Rule of Law ignores any requirement regarding the content of the law itself and centers only on the manner the law is enacted and on its status. By contrast, the substantive approach to the Rule of Law, focuses on the content of the law itself. At the core of this approach lies the basic premise that the law must entail the protection of individual rights and reflect basic notions of fairness, equality and justice. While the two approaches to the Rule of Law can be distinguished, they are not separate but rather intertwined. Accordingly, the Rule of Law resembles a structure, whereas at its base lies the rule of law in its substantive aspect, founded on the idea of protection of the rights of the individual, and higher up lies its procedural or formal aspect, founded on basic notions of procedural fairness. Only a law that combines both the substantive and the procedural aspects conforms to the principle of the Rule of Law.

Attention should be given in this respect to the notion of public policy, the unruly horse, which aims at reflecting legal, political, social, cultural and economic values and principles. These principles which aim at safeguarding justice, fairness, morality, values and traditions of society are reflected in the principle of the rule of law.

As an informal process, which is tailor made by the parties, and in which an arbitrator, a private judge decides a dispute, by rendering an award in a more informal way than court proceedings, there may be a basic concern whether arbitration appropriately protects individual rights and conforms to principles of the rule of law. This concern is especially apparent after the award has been rendered by the arbitrator. Since the award settles the dispute between the parties, and is binding on them, a concern may arise with regards to its conformity with the parties' agreement, with basic notions of justice and with the rule of law.

Post award remedies include both procedural and substantive elements. Therefore they can be best described as reflecting the rule of law. In this respect, there needs to be a balance between the following elements: efficiency, finality, justice and respect of the parties' agreement. Their aim is to ensure that the arbitration award is made in accordance with the parties' agreement, following a fair procedure and

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within the jurisdiction conferred to them by the parties, and in accordance with basic notions of the rule of law. Thus, there is a tension between the respecting the parties’ wishes for efficiency and finality on the one hand and ensuring that justice must be done on the other hand. By acknowledging the need for finality and efficiency, post award remedies aim at ensuring minimum standards of substantive and procedural fairness. These standards are kept by acknowledging the need of control mechanisms to ensure respect of the basic notion of the rule of law.

Unlike court litigation, arbitration is usually perceived as a one-stop system of dispute resolution. Arbitration awards are usually final and binding upon the parties and cannot be subject to appeal or revision. In this sense the finality of the award is connected with one of the underlying principles of arbitration, namely efficiency. However, an award does not have a life of its own. In order to be enforced it has to be confirmed by the court. Courts are empowered to apply control mechanisms over the awards. Generally these control mechanisms are limited to a review of the manner in which justice was rendered, as opposed to the content of the award.

The following chapters will analyze post award remedies in two jurisdictions in the Middle East – Israel and the United Arab Emirates. The analysis will evaluate whether the remedies provide safety mechanisms that ensure the conformity of the arbitral process with the rule of law.

II. **ISRAEL**

The Arbitration Law, 1968, is the governing statutory framework for arbitration in Israel. The Law repealed the Arbitration Ordinance of 1926, enacted by the British Mandatory authorities in Palestine. While the Arbitration Ordinance mirrored the English Arbitration Act of 1889, it did not incorporate further changes that had been implemented in English arbitration law in 1934 and 1950.

The Arbitration Law was amended twice. In 1974, the Law incorporated specific provisions relating to the enforcement of foreign arbitration agreements and awards, and in 2008, the Law expanded the control of courts over arbitration awards (which was until then limited to setting aside awards on limited specific grounds) by enabling parties to agree that the award will be subject to appeal before two
alternative fora – an arbitrator or the court. When the parties agree on an appeal before an arbitrator, the court's supervisory role over the award on the appeal is very limited. When the parties agree on an appeal before the court, the appeal is not as of right. The court has discretion to grant a leave for appeal, if it deems that there is a fundamental legal mistake in the award, which may cause miscarriage of justice.

There are no separate legislative frameworks for domestic and international arbitrations in Israel. However, the Arbitration Law includes specific provisions relating to the recognition and enforcement of international arbitration agreements and awards, which differ from the provisions regarding domestic arbitration agreements and awards. While the Arbitration Law does not define the term “international arbitration”, Section 1 of the Law defines the term “foreign arbitration award” as an award which was made outside the State of Israel. Thus, a proper interpretation of the definition, would be that an arbitration the seat of which is outside of the State of Israel is to be considered international.

THE ARBITRATION AWARD

A final award must decide all the claims were submitted to the arbitrator. While the default rule is that the award be reasoned, the parties are free to agree that the arbitrator need not give reasons to his award. When the parties agree that the arbitrator shall state the reasons for his decision in the award, and he does not do so, the court may decide to remit the award to the arbitrator so that he provides the reasons for the award or to set it aside.

Typically a final award concludes the arbitration proceedings by deciding the claims submitted to the arbitrator. In the spirit of finality and respect of the parties' agreement to refer their dispute to the final decision of an arbitrator, Article 21 of the Arbitration Law provides that the award has a res judicata effect, unless the parties have agreed otherwise. Thus, the general rule is that once rendered, the award binds the parties. However, the parties may agree otherwise.

1.1 POST AWARD REMEDIES RENDERED BY THE ARBITRATOR
Once the award is rendered, the arbitrator becomes *functus officio*, however, for efficiency purposes, Article 22 of the Arbitration Law provides that the arbitrator may correct or complete the award upon an application of a party on specific limited grounds: (1) The award contains a clerical error, a *lapsus calami*, an omission, an error in the description of any person or property or in the date, number, calculation or the like. (2) The award is defective as to a matter not relevant to the substance of the dispute. (3) The award contains no provision as to the payment of interest. (4) The award contains no provision as to the expenses of the parties, including attorney fees.

The arbitrator's authority to correct the awards covers these limited grounds only and does not extend to other grounds, such as a correction of the award as a result of an afterthought or a correction of a substantive mistake in the award. While the arbitrator may decide to correct the award, he must do so following the basic principle of due process. Therefore, before deciding on an application of a party to correct the award the arbitrator has to give the other parties the opportunity to state their case with respect to the application.

Additionally, while upon rendering the award the arbitrator becomes *functus officio*. The arbitrator is no longer entitled to add to the award or to delete anything from it, even he is convinced that he made a mistake in the award. The parties, however, may request the arbitrator to interpret an ambiguous or vague expression in the award. The arbitrator’s interpretation does not constitute a new award, but rather it forms an integral part of the original award.

1.2 COURT CONTROL OVER DOMESTIC ARBITRATION AWARDS

While the legal system acknowledges the parties' freedom to decide that their dispute will be resolved in arbitration by way of a final award, the arbitrator's decision is not immediately enforceable. The parties may execute the award at their own volition, however, when a party fails to execute the award, the support of the courts is required.

An arbitration award cannot be executed without being confirmed by the court. Article 23 of the Arbitration Law provides that the court may confirm the award upon an application of a party. Once confirmed, the award has the status of a court
decision, except as regard to appeal. When a party wishes to object to a motion to confirm the award he may do so by way of filing a motion to set aside the award.

**Setting Aside the Award**

Section 24 of the Arbitration Law provides for a closed list of grounds for setting aside the award. When a party files a motion to set aside the award, the court may set aside the award, wholly or in part, supplement it, correct it, or remit it to the arbitrator. Thus, setting aside is not the only remedy for challenging the award. In fact, setting aside the award is a remedy of last resort. The court will set aside the whole award, only when it cannot set it aside in part, supplement it, correct it or remit it to the arbitrator. The authority of the court to correct the award, supplement it or remit it to the arbitrator, is based on the idea that the court should not hurry in vacating an award which is the product of arbitral proceedings agreed by the parties. Thus, the guiding principle is that finality and efficiency should be taken into account by the courts when deciding on motions to set aside the award. When the court denies a motion to set aside the award it confirms the award. Once the award is confirmed it has the same effect as a judgment made by the court, with the exception of an appeal. A confirmed award can then be executed by the execution office.

The list of grounds for setting aside the award is set in Article 24 of the Arbitration Law is exhaustive. The parties may not extend it or limit the court's supervisory role over the award to some of the grounds. The court may set aside the award on any of the following grounds: (1) there was no valid arbitration agreement; (2) the award was made by an arbitrator not properly appointed; (3) the arbitrator acted without authority or exceeded the authority vested in him in the arbitration agreement; (4) a party was not given a suitable opportunity to state his case or to produce his evidence; (5) the arbitrator did not decide one of the matters referred to him for determination; (6) it was stipulated in the arbitration that the arbitrator shall state the reasons for the award and the arbitrator did not do so; (7) it was stipulated in the arbitration agreement that the arbitrator shall decide in accordance with the law and the arbitrator did not do so; (8) the award was made after the period for making it had expired; (9) the content of the award is contrary to public policy; (10) there is a ground on which a court would have set aside a final, non-appealable judgment.
When analysing the list of grounds for setting aside the award, one can distinguish between different categories of grounds, which all revolve around the need for the award to conform to the rule of law. These grounds can be divided into three categories, each focusing on a different aspect of the rule of law – contractual, procedural and substantive.

The contractual category consists of the grounds which relate to the parties' agreement to resolve their dispute in arbitration. Acknowledging the fact that the arbitration process and the arbitral award stem from the parties' agreement to arbitrate, grounds (1)-(3), which I term contractual aim at securing the basic notion of freedom of contract. Thus, in order to ensure conformity with contractual rule of law the arbitration law empowers the courts to set aside awards that contradict the basic notion of freedom of contract – when there was no arbitration agreement, when the arbitrator was not appointed in accordance with the parties' agreement and when the arbitrator acted without authority or exceeded its authority. These contractual grounds are inherent to the notion that arbitration is a product of contract.

The procedural category consists of those ground which relate mainly to the way the arbitral process was conducted and to the making of the award. These are the grounds listed in Article 24(4)-24(8). They relate to instances where a party was not given a suitable opportunity to state his case or to produce his evidence during the arbitration, or when the award did not decide all the matters referred to the arbitrator, when the parties agreed that the arbitrator shall render a reasoned award but he did not do so, and when the parties agreed that the arbitrator shall decide the case in accordance with the substantive law but failed to do so. The last ground is of particular interest. The default rule under the Arbitration Law is that the arbitrator is not bound by substantive law. However, the arbitrator is always subject to applicable mandatory laws which cannot be derogated. The case law is clear, that a mistake in the application of the law does not amount to a failure of the arbitrator to decide in accordance with the substantive law. Thus, when the parties agree that the arbitrator shall be bound by substantive law, and he mistakenly applied the law, his award will not be set aside. It is only in cases where the arbitrator was bound to apply the substantive law but ignored its duty to do so, that the award will be set aside. This narrow interpretation of Article 24(7) is explained by the need to respect the aims
and purposes of the arbitration process and to promote the use of arbitration by disputing parties. As stated by the Supreme Court:

"The clear objective of the law is to support the referral of disputes to arbitration, while empowering the arbitrator, on whom the parties agreed, to make a final decision. The grounds for setting aside an award were determined in view of this objective...

When the parties empowered the arbitrator to rule in accordance with the substantive law, they did so in order to oblige the arbitrator to see the law as a source upon which it will decide the dispute. They chose the arbitrator for this purpose, when counting on him and on his knowledge to decide in accordance with the law, while they subject themselves to his decision, even if he errs in applying the law."7

There substantive category relates to the content of the award itself. There are two grounds in this category, namely that the award is contrary to public policy and that there is a ground on which a court would have set aside a final, non-appealable judgment. These grounds are the only one where the court reviews the content of the award and has the power to set it aside. Thus, the supervisory role of the courts over the award is aimed in these grounds to ensure that the award conforms with the basic notions of the rule of law.

Public policy is does not have a single clear definition, but it has often been considered in reference to an unruly horse. It has been described as amoebic term, whereby "various events and situations will come to it. It runs throughout the legal system as a whole, and is with us everywhere." Public policy refers to the public at large and in this respect it cannot be viewed strictly. Public policy is not a formalistic term. It goes deep to the basic building blocks of the legal system itself.

The tendency of the court is to interpret the grounds for setting aside the award strictly, thereby aiming at confirming the award. As stated by the Supreme Court "the tendency of the courts is to honour the award as possible and to limit its intervention

7 LA 113/87 Ayalon Highways v. Shtang (1987)
8 Enderby Town Football Club Ltd. v. The Football Association [1971] 1 All E.R. 215, per Lord Denning "So unruly is the horse, it is said, that no judge should ever try to mount it, lest it run away with him. I disagree. With a good man in the saddle, the unruly horse can be kept in control. It can jump over obstacles. It can leap the fences put up by fictions and come down on the side of justice."
in the arbitrator's decision."\textsuperscript{10} It should be noted that a motion to set aside an award is not an appeal. As stated by the Supreme Court: \textsuperscript{11}

"A motion to set aside the award is not, thus, a replacement of an appeal on questions regarding the content of the award. Even when it is clear that a conclusion of the arbitrator's conclusions is mistaken, from a legal aspect or from an evidentiary aspect, it is not sufficient to form a ground for setting aside the award. An award may be set aside, only when the arbitral process is flawed from its base, or in circumstances where the parties' agreement has not been satisfied. The setting aside of an award due to its content, is only possible when the award is clearly contrary to public policy."

Thus, the court does not review an award like a court of appeal. For example, a claim that the arbitrator did not refer in the award to all the evidence or that he ruled in contradiction to the evidence that was before him, are grounds for an appeal, but not for setting aside the award.\textsuperscript{12} Thus, "a claim that the arbitrator did not consider factual and legal arguments which were raised during the proceedings, including the question of credibility of evidence, is a claim for an appeal, and is not suitable by its nature to the judicial control over the arbitration award set by the law."\textsuperscript{13}

The court's authority to set aside the award is discretionary. Even if any of the grounds for setting aside the award exist, the court has the authority to deny a motion for setting aside the award, if it is of the opinion that the applicant has not suffered a miscarriage of justice. Thus, the court examines the effect of the award which should be set aside, and if it finds that there was no miscarriage of justice, it will uphold the award and confirm it. Once confirmed, the award can be executed.

**Appeal on the Merits to an Arbitrator**

The Amendment to the Arbitration Law introduced in 2008, has enabled the parties to agree that the agreement shall be subject to appeal before an arbitrator or before the court. Article 21A sets out the conditions for an appeal before a second arbitral instance. The parties may agree that the award shall be appealed to an arbitrator. They may agree on the possibility of appeal when entering the arbitration agreement or afterwards. If the parties so agree, the arbitrator hearing the case has to

\textsuperscript{10} CA 823/87 Deniya Sikkus v. S.A. Ringel (1987)
\textsuperscript{11} LA 7205/01 Daniel Village v. Miterani (2002).
\textsuperscript{12} LA 6187/93 LHV v. Verker (1994).
\textsuperscript{13} LA 1129/00 Cohen v. Diamond Express Company (2000)
give reasons to the award. In addition, unless otherwise agreed by the parties, the provisions set forth in the Second Schedule of the Law apply in addition to those of the First Schedule, as long as the provisions of the First Schedule do not contradict those of the Second Schedule. The Second Schedule provides that the arbitration hearings shall be recorded in a protocol that reflects the arbitration proceedings and the parties’ contentions and arguments. The arbitrator sitting in the appeal may hold meetings in the presence of the parties and request written submissions. The default rule is that the arbitrator in the appeal may not hear witnesses. However, if the parties agree that he may do so, then he may hold evidentiary hearings. The arbitrator in the appeal has to state the reasons in the award.

As stated above, the parties are not allowed to agree to limit the grounds for setting aside the award. The exhaustive list of grounds in Article 24 cannot be subject to an agreement of the parties. However when the parties agree that the award will be subject to appeal before an arbitrator, the award could be set aside pursuant to one of two grounds only: the content of the award is contrary to public policy; or there is a ground on which a court would have set aside a final, non-appealable judgment. These two substantive grounds, which are at the core of the notion of the substantive rule of law, set in Article 24(9) and 24(10), could be brought in a motion to set aside the original award, if no appeal to the arbitrator is filed, or in a motion to set aside the award made in the appeal. Thus, it should be noted that when disputing parties agree that the award will be subject to appeal before an arbitrator, the court will not review any of the contractual or procedural grounds for setting aside the award. The court's review will be limited to ensuring conformity of the award with the basic notion of public policy.

**Appeal on the Merits to the Court**

Article 29B of the Arbitration Law, which was enacted in 2008, provides for the possibility of parties, who agree that the arbitrator shall be bound by substantive law, to agree that their award shall be appealed to the court. However, the appeal is not as of right but leave for appeal has to be granted by the court. The court may grant leave to appeal if it finds that there is a fundamental mistake in the application of the law which may cause miscarriage of justice. Thus, the appeal could be heard only with the leave of the court, provided that the two conditions specified appear. This leaves the court to hear appeals on awards in rare occasions. Simple mistakes of
law or mistakes that may not cause miscarriage of justice are not grounds for giving
leave to appeal. Parties that agree that the award shall be subject to appeal cannot
know in advance whether the court will hear the appeal. When entering an
arbitration agreement and agreeing that the award will be subject to appeal before
the court, the parties are not certain that such appeal shall be heard. When the
parties agree that the award shall be subject to appeal before the court, the
arbitration hearings have to be recorded in a protocol and the arbitrator has to give
reasons to the award. Thus, the Law requires basic procedural conditions in order to
be able to review the award.

It should be noted that Israeli courts refrain from granting leave to appeal on
arbitration awards. And to date, no major decision on the matter has been granted.
The courts’ general attitude towards arbitration awards is that their role should be
supportive of arbitration. Therefore, just like the courts interpret strictly the grounds
for setting aside the award, their tendency is to refuse granting leave for appeal on
the award.

1.3 COURT CONTROL OVER FOREIGN ARBITRAL AWARDS

Israel became a party to the New York Convention in 1959. However, it was
only in 1974 that the Convention became the law of the land. An amendment of the
Arbitration Law from 1974 adopted the Convention into the Law. Israel did not place
any reservation pursuant to Article 3 of the convention. Article 29A of the Law
provides that “an application for the confirmation or the setting aside of a foreign
award which is subject to an international convention to which Israel is a party, and
the convention lays down provisions as to the matter in question shall be filed and
heard in accordance with and subject to those provisions”. While the article refers to
an application for the “confirmation or the setting aside of a foreign award” it
actually concerns an application for the enforcement or refusal to enforce a foreign
award. In addition to the New York Convention, Israel is a party to the Washington
Convention of 1965.

There is little case law concerning the enforcement of foreign arbitral awards.
However, the courts strictly adhere to the provisions of the New York Convention
and do not interpret the grounds for refusal of enforcement widely.
One should mention the fact that the New York Convention did not adopt an international or transnational approach to the notion of public policy. It focuses on the public policy of the State where recognition and enforcement of the arbitration award are sought. Article V(2)(b) of the New York Convention refers explicitly to the public policy of the state where recognition or enforcement is sought. In this respect it was noted that:

"One of the objects of the New York Convention was to limit the control exercised by national courts when asked to enforce a foreign arbitral award to certain specific grounds enumerated in the Convention. This control should be limited as far as possible."14

III. THE UNITED ARAB EMIRATES

In order to understand the role that courts play at the post-award stage in the UAE, a brief introduction of the UAE legal system and arbitration laws will follow.

The UAE is a federation of seven emirates.15 Essentially it is a civil law jurisdiction influenced by French, Roman and Islamic laws. The Constitution of the UAE provides for a division of powers between the Federal government seated in Abu Dhabi and the governments of each of the Emirates. The Federal government is responsible for legislating the main aspects of the Federation and the governments of each Emirate are responsible for legislating matters which are not within the authority of the Federal government.

The constitution provides for a Federal Court system, but enables each Emirate to have its local court system. Some of the Emirates are part of the Federal court system (Ajman, Fujairah, Sharjah and Umm Al Quwain), while Dubai, RAK and Abu Dhabi have separate court systems that are independent from the Federal courts. Being a civil law jurisdiction, the UAE does not follow the principle of binding precedents. Therefore the decisions of the Federal Supreme Court (located in Abu Dhabi) or of the Courts of Cassation of Abu Dhabi, Dubai and RAK have a mere persuasive value.

The Federal law has supremacy over the legislation of every Emirate. Article 7 of the

15 Abu Dhabi, Ajman, Dubai, Fujairah, Ras Al Khaimah, Sharjah and Umm Al Quwain
Constitution provides that the Islamic Shari’ah shall be a principal source of legislation in the Union. Additionally where the law does not provide for an answer, the courts have to apply a solution provided by some Shari’a schools.\textsuperscript{16}

Article 3 of the UAE Civil Code provides a list of matters which are deemed included in the term public order: "public order shall be deemed to include matters relating to personal status such as marriage, inheritance and lineage, and matters relating to sovereignty, freedom of trade, the circulation of wealth, rules of private ownership and other rules and foundation upon which society is based, in such a manner as not to conflict with the definitive provisions and fundamental principles of the Islamic Shari'ah."

Along the Federal and local court system, a financial free zone was established in 2004 in Dubai, called the DIFC. The DIFC has its set of legislation which apply to commerce within the DIFC. There is also an independent court system for civil cases. The courts rule of procedure are modelled on the English Civil Procedure Rules and the cases are heard following the common law model. Judgments granted by DIFC courts are enforceable within the DIFC and in Dubai.

There are two sets of arbitration legislation in the UAE. Within the UAE the Civil Procedure Code, Federal Law No. 11 of 1992 ("CPC") is the regulatory framework for arbitration. Articles 203-218, and 235, 236 and 238 apply to both domestic arbitration and enforcement of domestic and foreign arbitral awards. Within the DIFC the Arbitration law is largely modeled on the UNCITRAL Model Law.

**THE AWARD**

The arbitrator has to render his award in accordance with the provisions of the Civil Procedure Code, after hearing their arguments and enabling them to

\textsuperscript{16} Article 1 of the UAE Civil Code, 1987 provides: "The legislative provisions shall apply to all matters dealt with by those provisions in the letter and in spirit. There shall be no innovative reasoning in the case of provisions of definitive import. If the judge finds no provision in this Law, he has to pass judgment according to the Islamic Shari'ah. Provided that he must have regard to the choice of the most appropriate solution from the schools of Imam Malik and Imam Ahmad bin Hanbal, and if none is found there, then from the schools of Imam Al-Shafi’I and Imam Abu Hanifa as most befits. If the judge does not find the solution there, then he must render judgment in accordance with custom, but provided that the custom is not in conflict with public order or morals, and if a custom is particular to a given emirate, then his judgment will apply to that emirate.

Article 2 of the Civil Code provides: "the rules and principles of Islamic jurisprudence (fiqh) shall be relied upon in the understanding, construction and interpretation of these provisions."
present their case. As the CPC aims at respecting the parties' freedom to tailor their dispute to their needs the parties are free to agree on the procedure to be followed by the arbitrator. The tension between the parties' agreement on the one hand and the provisions of the law is reflected in Article 212 of the CPC:

1. The arbitrator shall issue his award without being bound by any procedures other than those stipulated in this Chapter and those pertaining to calling of the parties, hearing of their pleas and enabling them to submit their documents. Notwithstanding the foregoing, the parties to the dispute may agree on certain procedures to be followed by the arbitrator.

2. The arbitrator's award shall be in conformity with the provisions of the law unless the arbitrator was authorized to reconcile the dispute, in which event he shall not be bound to comply with such rules except in matters which concern public order.

Thus, the law is based on the premises that the parties have the freedom to decide how their dispute will be resolved, however their freedom is not absolute. It is constrained by the applicable law. It should be noted that unless otherwise agreed by the parties, the arbitrator has to decide the case in accordance with the substantive law. However, the parties are free to agree that the arbitrator will rule as an amiable compositeur. When acting so, the arbitrator is not exempt from applying those rule which concern public order.

Article 212.4 provides for various formalistic conditions that an award has to comply with: the award has to be issued within the UAE, it shall be granted by majority, made in writing and in the case of a dissenting vote, the dissenting opinion shall be attached to the award. The award has to contain a copy of the arbitration agreement, a summary of the parties' statements, the documents, the grounds and the context of the award, and the award shall state the date and place it was granted and signed by the arbitrators. In order to be enforced a domestic award has to be ratified in accordance with article 215.

### 2.1 Court Control over Domestic Awards

The courts perform a supervisory role over the arbitration award. Article 214 of the CPC provides that when a motion to confirm the award is filed to the court,
the court may remit the award to the arbitrator for considering issues which were omitted or for clarifying the award, in case that its enforcement is not possible. This rule follows the basic principle of respect of the parties' agreement to refer their dispute to arbitration. Moreover, the idea of both finality and efficiency is reflected in this provision.

Setting aside the award
The courts have jurisdiction to set aside the award on specific grounds listed in Article 216(1) of the CPC: (a) the award was issued without, or was based on invalid terms of reference or an agreement which has expired by time prescription, or if the arbitrator has exceeded his limits under the terms of reference. (b) if the award was issued by arbitrators who were not appointed in accordance with the law, or by only a number of the arbitrators who were not authorized to issue the award in the absence of the others, or if it was based on terms of reference in which the dispute was not specified, or if it was issued by a person who is not competent to act as an arbitrator or by an arbitrator who does not satisfy the legal requirements. (c) if the award of the arbitrators or the arbitration proceedings become void and such voidness affected the award.

It should be noted that the court's control over the award is mainly based on two notions of rule of law – contractual and procedural. The contractual grounds are those which relate to the parties' agreement to arbitrate, while the procedural grounds refer to matters relating to the arbitral process.

The courts are not empowered to review the award on the merits. The CPC does not list as ground for setting aside any mistake of law, and it does not provide for an appeal mechanism over the award. In this respect, the objective to safeguard the efficiency and finality of the award is apparent.

However, when public policy is raised, the courts will review the content of the award, and they may do so ex officio.¹⁷

of the award in light of law, in the case that the arbitrator exceeded his jurisdiction by deciding a matter relating to public order. The court held that public order reflect the basic and fundamental interests of society, and as such forms the basis for societal, political, economic and ethical rules. In this case the Dubai Court of Cassation held that the arbitrator exceeded his jurisdiction by ruling on a matter relating to public order, and as such his award should be annulled (In this case the arbitrator held that a sale purchase agreement was invalid on the ground that the property was not registered in the Real Estate Register of the Emirate of Dubai as required by law. The court of Cassation held that this matter relates to public order in light of Article 3 of the UAE Civil Procedure Code which implies that provisions regarding individual ownership and the circulation of wealth are rules and principles upon which the society is based. As such, any dispute relating to these matters fall within the sole jurisdiction of the courts and cannot be referred to arbitration.

Likewise the Dubai Court of Cassation, Petition No. 180 of 2011 issued on 12 February 2012,19 held that matters regarding the Interim Real Estate Register in the Emirate of Dubai cannot be subject to an agreement, and as such cannot be referred to arbitration as matter of public order.

Enforcement of foreign arbitral award.
The UAE are signatories of the NYC since 2006. The legal basis for recognition and enforcement of foreign arbitral awards is provided in Article 238, which provides that international conventions that have become enforceable in the UAE shall apply to disputes concerning among other foreign arbitral awards, as domestic law.
The precedence of the provisions of the NYC has been reaffirmed by a decision of the Dubai Court of Cassation which held that the CPC's procedural requirement for enforcing arbitral award apply to domestic arbitral awards only.20

In a decision by the Dubai Court of Cassation, the Court refused to enforce an ICC arbitration award rendered in favor of a French company against the

government of the Republic of Sudan. The court denied enforcement of the award on the ground that under Article 235 of the Civil Procedure Code it lacked jurisdiction over the Republic of Sudan. The Court held that international jurisdiction is a matter of public policy and refused to enforce the award under the New York Convention: "international competency of courts is for public order." 21

With respect to the enforcement of foreign arbitration award in Petition No. 132 issued on 22 February 2012 the Dubai Court of Cassation, 22 ruled on a motion to enforce an award rendered in London under the DIFC-LCIA arbitration rules. The Court acknowledged the accession of the UAE to the New York Convention by Federal Decree No. 43 of 2006. The court held that its jurisdiction is limited to ensuring that the award does not contravene with Federal decree NO. 43 of 2006 under which the UAE acceded to the NY Convention, and that its role is limited to ensuring compliance of the award with the requirement listed in Article V of the NYC. The court rejected the argument that a party may apply to set aside the award in accordance with article 216 of the CPC.

Article 238 provides that international conventions that have become enforceable in the UAE shall apply to disputes concerning among other foreign arbitral awards, as domestic law. The court held that the UAE courts have no jurisdiction to set aside foreign arbitral awards. In this respect, there was a claim that the award is contrary to the Islamic shari'a and as such to public policy because it awards usurious interest. The court held that the prohibition on agreeing on usurious interest is limited to dealings between individual and is not extended to corporate entities, such as in the case at hand.

In Abu Dhabi Court of Cassation No. 679 of 2010 (16 June 2011) 23 the Court of Cassation held that the NYC has become mandatory law of the emirate and that it prevails over the provisions of the Civil Procedural Code.

21 Dubai Court of Cassation, 18 August 2012, La compagnie francaise d'entreprise S.A. v. Republic of Sudan.
However, in some instances the UAE courts did not apply the NYC conventions, but rather the CPC when considering motions to enforce foreign arbitration awards.

### 2.2 Court Control over Domestic Awards in the DIFC

Articles 42 and 43 of the DIFC Arbitration Law provide for the legal framework for recognition and enforcement domestic or international awards. The Grounds for setting aside the award are set in Article 44 of the Law. These grounds are in line with the grounds for refusal to recognize or enforce foreign arbitral awards under the New York Convention.

### IV. Conclusion

The role that courts play at the post-award stage reflects the tension between finality and efficiency on the one hand and the basic notion that the arbitrator has do to justice. Without control mechanisms, arbitration will not be able to exist as parties will refrain from agreeing to it. When control mechanisms are too extensive, and the objectives of finality and efficiency are not apparent, parties may opt for another dispute resolution mechanism. Thus, a balanced approach to post award remedies would provide an optimal solution to this tension.