



## ARTICLE 257 OF THE UAE PENAL CODE REPEALED

### A WELCOME CHANGE IN THE UAE'S ARBITRATION LANDSCAPE

In April 2017, we wrote about the unintended consequences of an amendment to Article 257 of the UAE's Penal Code (Law No. 3 of 1987) that caused serious concern amongst arbitration professionals working in the UAE.

A long-expected amendment has now been issued, on 23 September 2018, in the form of UAE Federal Law No. 24 of 2018 (the Amending Law), repealing the earlier version of Article 257.

# “We anticipate that the reluctance to accept arbitral and expert appointments for UAE-seated arbitrations will recede. Those who had concerns as to continuing or accepting new sole arbitrator or expert appointments should feel more at ease with the new Amending Law.”

## What has happened?

The previous draft of Article 257 exposed arbitrators and experts (amongst others) to criminal sanctions for failing to perform their duties. This triggered a number of withdrawals by arbitrators appointed in on-going proceedings and a wider reluctance amongst both arbitrators and experts to accept new appointments after its introduction.

The Amending Law seeks to change this. While there are a number of unofficial translations in circulation, HFW's Arabic litigation team endorse the following translation of the relevant provisions of the Amending Law:

*“Any person who, while acting in the capacity of an **expert, translator or investigator** appointed by a judicial authority in a civil or criminal case, or appointed by an administrative authority, confirms a matter contrary to what is true and misrepresents that matter while knowing the truth about it, shall be sentenced to imprisonment for a minimum term of a year and a maximum term of five years.*

*The punishment shall be temporary imprisonment if the mentioned*

*individuals were assigned to a mandate in relation to a felony.*

*The above individuals shall be prohibited from undertaking the assignments commissioned to them again and the provisions of Article 255 of this Law shall apply to them” (emphasis added).*

## Why is this important?

For arbitrators, the Amending Law removes their exposure to criminal liability under the UAE's Penal Code for a failure (or perceived failure) to act with “objectivity and integrity” – both somewhat ambiguous terms – when acting in UAE-seated arbitral appointments. This was a significant barrier to arbitrators accepting appointments and, as we noted in April 2017<sup>1</sup>, it is likely both to:

- restore the UAE as the “seat of choice” for regional arbitration; and
- streamline the arbitration process by removing the need for additional due diligence and procedures for parties and arbitrators alike.

More broadly, the Amending Law brings the UAE closer in line with international best practice in arbitration.

## What happens next?

For experts, translators and investigators, criminal liability remains, but in respect of knowingly making a false statement. This type of liability is not unusual in the region but does provide greater certainty as to the relevant required standards of conduct than the provisions of the earlier Article 257.

Similarly, the Amending Law does not completely absolve arbitrators of criticism or liability. For example, arbitrators will remain subject to the duties enshrined in the recently-introduced UAE Federal Arbitration Law (Law No 6 of 2018<sup>2</sup>) (the UAE Arbitration Law).

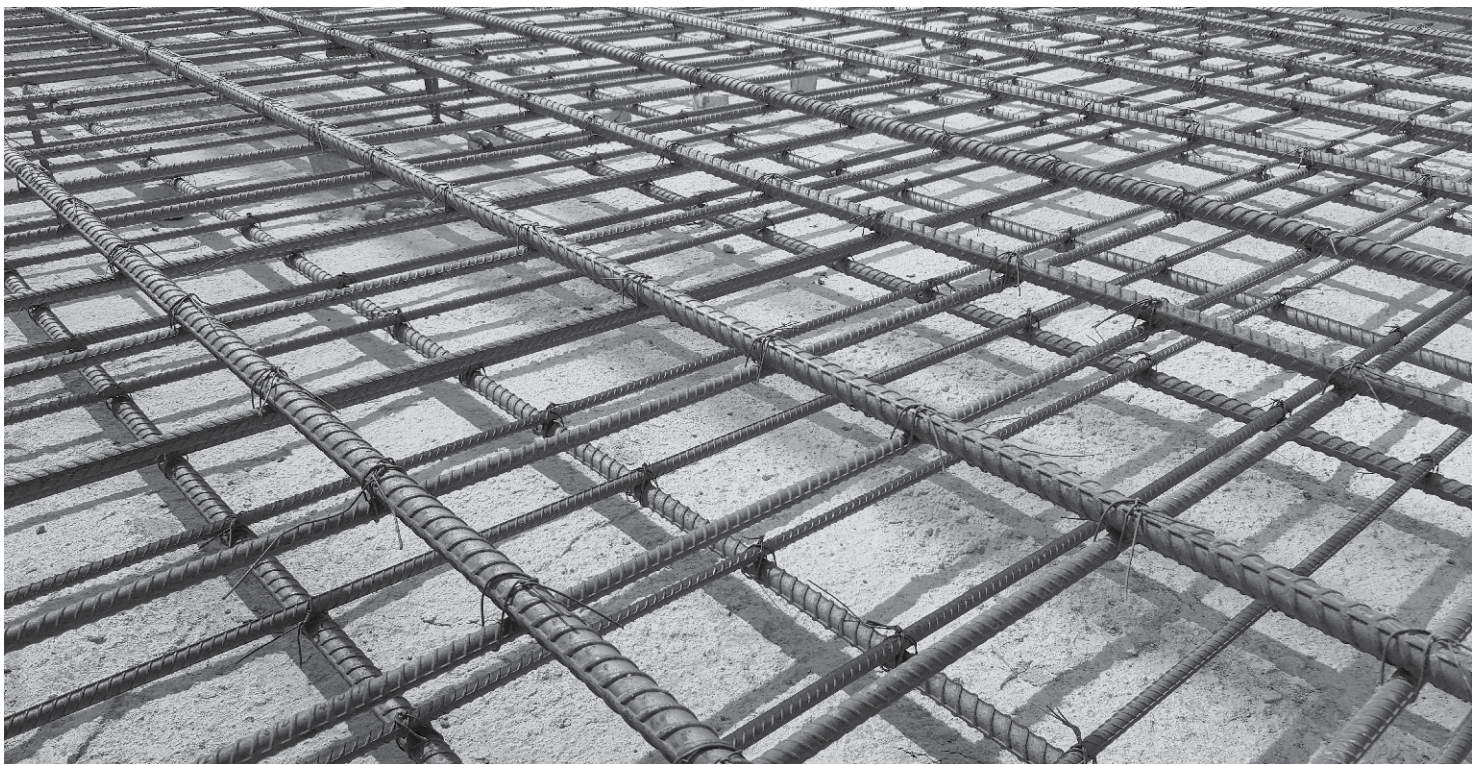
Article 14 of the UAE Arbitration Law states that an arbitrator's appointment can be challenged if “*circumstances exist that give rise to a justifiable doubt as to his impartiality or independence*”. Article 58 of the UAE Arbitration Law also paves the way for a code of professional conduct for arbitrators to be introduced, which may impose additional standards of conduct.

It is worth noting that the Amending Law also amends the provisions of Articles 236, 234 and 237 of the UAE Penal Code in respect of arbitrators,

1. <http://www.hfw.com/Article-257-of-the-UAE-Penal-Code-April-2017>

2. <http://www.hfw.com/The-UAEs-Federal-Arbitration-Law-Good-things-come-to-those-who-wait-April-2018>





experts and investigators, including these roles in the definition of “public servant”.

Articles 234 and 237 address acts of bribery and impose criminal liability on public servants accepting bribes (which are broadly defined), which can extend to imprisonment.

These provisions are potentially significant and, while criminal liability for acts of bribery is not unusual, arbitration professionals would do well to remember them when conducting arbitrations.

Finally, of course, experts and other professionals may have their own professional standards to satisfy, which should also inform their conduct.

### **How will this affect arbitration in the UAE?**

We anticipate that the reluctance to accept arbitral and expert appointments for UAE-seated arbitrations will recede. Those who had concerns as to continuing or accepting new sole arbitrator or expert appointments should feel more at ease with the new Amending Law.

For parties, it should become easier to find suitably qualified and willing candidates for those roles. As a result, any delays experienced by parties seeking to constitute a tribunal or engage experts as a result of the previous Article 257 should now cease.

In tandem with these changes, the relatively recent introduction of the UAE Arbitration Law should also encourage parties entering into new contracts once again to consider the UAE as the region’s premier seat for arbitration in the event of a dispute – particularly given the removal of the need to sign any award in the UAE in order for it to be deemed a valid award, amongst other positive changes in the UAE’s onshore arbitration landscape.

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