Annexure B

Format for providing public comments to DIFCA on Consultation Paper No. 2 of 2026 – Proposed Amendments to the Arbitration Law (DIFC Law No. 1 of 2008)

Note 1: DIFCA reserves the right to publish, including on its website, any comments you provide. However, if you wish to remain anonymous, you must expressly request at the time of making comments that this should be the case.

Note 2: The mark-up in the Proposed Amendment column reflects the proposed revision to the Arbitration Law.

Name of individual / entity providing comments:	

Article No.	Proposed Amendment	Rationale	Comments on Proposed Amendment
1	**Title** This Law may be cited as the "Arbitration and Mediation Law of 2026".	A new Part 5 regarding Mediation is proposed given the growth internationally in Mediation and the recent establishment of the Mediation Service Centre by the DIFC Courts. The alternative is to enact a separate Mediation Law at the same time as the Proposed Amendments to the Arbitration Law. DIFCA invites comment on this point of form. The text of the proposed Part 5 is set out later in this table, and separate comments can be provided there regarding the substantive provisions relating to mediation.	
7	**Scope of application of Law**	Housekeeping amendments are made for good order to subsections (1) to (3).	

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	(1) This Law shall apply where the Seat of the Arbitration is the DIFC. (2) Articles 12A, 13, 14, 15, Part 4 and the Schedule of this Law shall also apply where the Seat of Arbitration is one other than the DIFC. (3) Articles 13, 14 and 15 shall also apply where no Seat has been designated or determined. (4) Part 5 applies irrespective of the basis upon which the Mediation is carried out, including agreement between the parties whether reached before or after a dispute has arisen, an obligation established by law, or a direction or suggestion of a Court, Arbitral Tribunal or competent governmental entity. (5) Articles 45-56 shall apply to Mediations where the parties agree or where the Mediation is conducted in the DIFC or where the dispute the subject of the Mediation is within the jurisdiction of the DIFC Courts. Article 57 shall apply to a Settlement Agreement arising out of a Mediation wherever conducted. (6) Subject to the above provisions, and unless the parties otherwise agree, the amendments to the Law made by the Amending Law shall apply only to: (a) Arbitration and Mediation proceedings that are commenced on or after the date specified in the enactment notice in respect of the Amending Law; and (b) arbitral Awards and Settlement Agreements (as defined in Part 5) made or issued after the date specified in the enactment notice in respect of the Amending Law.	Subsections (4) and (5) are inserted to address the scope of Part 5 on Mediation. Pursuant to the proposed Article 7(6), unless the parties agree otherwise, the Proposed Amendments shall apply only to: (1) Arbitrations and Mediations commenced after the date of enactment of the Proposed Amendments; and (2) Awards and mediation Settlement Agreements (defined in the proposed Article 56) issued after that date. The Proposed Amendments will not apply to ongoing arbitrations because procedural events may have occurred in the proceedings that are inconsistent with the updated Arbitration Law (for example an Arbitral Tribunal may have found it had no power to make a summary determination or a peremptory order). That inconsistency would lead to procedural confusion and inefficiency (as parties may seek to re-open decided issues), and potentially give rise to set aside grounds. The Proposed Amendments will not apply to Awards issued prior to enactment because that may result in a party losing a right of set aside where it has been more than 30 days since the Award (the proposed new time limit) but less than three months (the original time limit).	

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8	**Receipt of written communications** Unless otherwise agreed by the parties to a dispute: (a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at their place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it. The communication is deemed to have been received on the day it is so delivered; (b) subject to (c) below, any written communication that is delivered by electronic means shall be deemed to have been received on the date on which it is sent, provided that there is no evidence that any error occurred while sending it; and (c) if the electronic communication is sent after 6:00pm in the country of receipt, the delivery shall be deemed to have taken place on the following day.	Article 8 has been modernised to account for the prevalence of email communication in arbitration and also to bring it in line with FAL, Article 24(1)(b). Gender neutral language has been adopted in this provision and throughout the Arbitration Law.	
11	**Authority of the DIFC Court to perform functions of arbitration assistance and supervision** The functions referred to in Articles 19(3), 24(2), 34, 41, 42, 43, 43A and 44 of this Law shall be performed by the DIFC Court, while the functions referred to in Articles 14, 17(3), 17(4), 17(5), 20(1), 21(2), 23(3) and 39(5) shall be performed by the DIFC Court, subject to any process agreed between the parties in the Arbitration Agreement.	This is a housekeeping change to account for the proposed move of existing Article 42(4) to a new Article 43A.	
11A	**Power of DIFC Court to extend time for beginning arbitral proceedings**	This provision is derived from the English Arbitration Act 1996 ("**EAA96**"), Section 12.	

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	(1) Where an Arbitration Agreement to refer future disputes to arbitration provides that a claim shall be barred, or the claimant's right extinguished, unless the claimant takes within a time fixed by the agreement some step— (a) to begin arbitral proceedings, or (b) to begin other dispute resolution procedures which must be exhausted before arbitral proceedings can be begun, the DIFC Court may by order extend the time for taking that step. (2) Any party to the Arbitration Agreement may apply for such an order (upon notice to the other parties), but only after a claim has arisen and after exhausting any available arbitral process for obtaining an extension of time. (3) The DIFC Court may make an order if satisfied that— (a) the circumstances are such as were outside the reasonable contemplation of the parties when they agreed the provision in question, and that it would be just to extend the time, or (b) the conduct of one party makes it unjust to hold the other party to the strict terms of the provision in question. (4) The DIFC Court may extend the time for such period and on such terms as it thinks fit, and may do so whether or not the time previously fixed (by agreement or by a previous order) has expired. (5) An order under this Article shall be without prejudice to the date on which any claim or defence was raised for the purpose of applying any	DIFCA invites comment on whether the proposed Article 11A would be beneficial in the DIFC, noting that there are 'pros and cons' to the inclusion. The benefits of Article 11A are as follows: 1. Prevents parties abusing contractual time bars (although the force of this 'pro' may be queried in circumstances where DIFC law will govern a DIFC-seated Arbitration Agreement, and the DIFC Contract Law contemplates implied terms based on good faith and fair dealing (Article 57(c)) and includes an express duty for the parties to cooperate (Article 58), which arguably adequately addresses any potential abuse of time bars). 2. Provides flexibility if a contractual time bar expires for unforeseen reasons (e.g. a pandemic, the outbreak of conflict, natural disaster, sanctions). This is particularly useful for industries that use very short time limits in Arbitration Agreements (e.g. commodity trading). 3. The provision is of limited scope and will presumably be applied exceptionally by the Courts. Indeed, the Courts in England & Wales have construed Section 12 of the EAA96 narrowly and applied a high bar. The provision does not save negligent claimants. Potential downsides to the inclusion of Article 11A: 1. Arguably undermines party autonomy and the parties' Arbitration Agreement. 2. May impede recognition and enforcement of an Award outside the DIFC, noting that Article V(1)(c) of the New York Convention permits challenges on jurisdictional grounds and	

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	limitation periods or similar rule or provision of law.	Article V(1)(d) provides that recognition and enforcement may be refused where "*[t]he composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties...*". The risk to enforcement is admittedly on the minor end as the obvious rebuttal is that the choice of a DIFC Seat was agreed and that includes the application of Article 11A. 3. The provision permits recourse to the DIFC Court, and as a matter of general policy Court intervention should be minimised in a pro-arbitration jurisdiction. Regarding what is done in other jurisdictions, there is a similar provision in Hong Kong's arbitration law, which authorises the Arbitral Tribunal to extend the time for commencing proceedings, or alternatively the Court can exercise that power if the Arbitral Tribunal has not been constituted.[1] Outside of England and Hong Kong, other leading arbitration-friendly jurisdictions like Singapore, Australia, the ADGM, France and Switzerland do not have an equivalent provision.	
12(2) 12(9) 12(10)	**Definition and form of Arbitration Agreement** (1) An "Arbitration Agreement" is an agreement by the parties to submit to Arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An Arbitration Agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.	**Article 12(2)**: In the existing Arbitration Law, this issue is addressed briefly as part of Article 23(1), which relates to an Arbitral Tribunal's power to rule on its own jurisdiction. They are different issues and it is more appropriate that the issue is addressed here, in an article dealing expressly with the form of Arbitration Agreements. Article 12(2) is therefore proposed for inclusion and the original text in Article 23(1) will be deleted. The drafting of the proposed	

[1] Hong Kong Arbitration Ordinance (Cap. 609), Section 58.

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	(2) An Arbitration Agreement which forms or was intended to form part of another agreement shall be treated as a distinct agreement. It shall not be regarded as invalid, non-existent or ineffective solely because that other agreement is invalid, or did not come into existence or has become ineffective. (3) An Arbitration Agreement referring future disputes between the parties arising out of or in connection with: (a) a contract of employment within the meaning of the Employment Law 2019; or (b) a contract for the supply of goods or services, other than residential property, to a consumer made by a supplier who is a natural or legal person acting for purposes relating to their trade, business or profession, whether publicly owned or privately owned, cannot be enforced against the employee or consumer in respect of any such dispute except: (i) with their written consent given after the dispute in question has arisen; or (ii) where they have submitted to arbitration proceedings commenced under the Arbitration Agreement, whether in respect of that dispute or any other dispute; or (iii) where the DIFC Court has made an order disapplying this Article on the grounds that the DIFC Court is satisfied that it is not detrimental to the interests of the employee or consumer for the dispute in question to be referred to arbitration in pursuance of the Arbitration Agreement instead of being	provision draws from both Article 6(1) of the FAL and Section 7 of the EAA96. **Article 12(9)**: Asymmetrical dispute resolution clauses restrict one party to a single forum while permitting the other party to select from various jurisdictions and/or forms of dispute resolution (e.g. arbitration and litigation). Such clauses are commonly found in banking and insurance contracts internationally whereby the bank or insurer may sue anywhere it considers appropriate but the client or insured must proceed in a specific Court or before an Arbitral Tribunal. Such clauses are recognised and enforced in most common law jurisdictions including the DIFC. However, asymmetrical dispute resolution clauses have not been accepted in the 'onshore' UAE Courts, and the proposed amendment is directed to underpinning the existing practice in the DIFC. The wording draws from Article 14(6) of the ADGM Regulations. **Article 12(10)**: As part of the drafting process, concerns were expressed that Article 12(9) could be open to abuse and so Article 12(10) is directed to preventing a party from forcing its counterparty to arbitrate before an Arbitral Tribunal wholly composed of its appointee(s).	

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	determined by proceedings before a Court. For the purposes of this Article, "consumer" means "any natural or legal person who is acting for purposes which are outside their trade, business or profession". (4) An Arbitration Agreement shall be in writing, in accordance with the provisions of this Article 12. (5) An Arbitration Agreement is in writing if its content is recorded in any form, whether or not the Arbitration Agreement or contract has been concluded by conduct or by other means. (6) The requirement that an Arbitration Agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference; "electronic communication" means any communication that the parties make by means of data messages; "data message" means information generated, sent, received or stored by electronic, magnetic, optical or similar means. (7) Furthermore, an Arbitration Agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other. (8) The reference in a contract to any document containing an arbitration clause constitutes an Arbitration Agreement in writing, provided that the reference is such as to make that clause part of the contract. (9) An Arbitration Agreement giving any party a unilateral or asymmetrical right to refer a dispute either to an Arbitral Tribunal or a Court does not contravene this Law and shall not be rendered invalid for that reason.		

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	(10) Any provision in an Arbitration Agreement that gives any party the unilateral right to determine the composition of the Arbitral Tribunal seated in the DIFC otherwise than in accordance with Chapter 3 of this Law shall be void.		
12A	**Law applicable to Arbitration Agreement** (1) The law applicable to an Arbitration Agreement is— (a) the law that the parties expressly agree applies to the Arbitration Agreement, or (b) where no such agreement is made, the law of the Seat of the Arbitration in question. (2) For the purposes of paragraph (1), agreement between the parties that a particular law applies to an agreement of which the Arbitration Agreement forms a part does not constitute express agreement that that law also applies to the Arbitration Agreement. (3) Paragraph (1) does not apply to an Arbitration Agreement derived from a standing offer to submit disputes to arbitration where the offer is contained in— (a) a treaty, or (b) legislation of a country or territory outside the United Arab Emirates. (4) In this section— "legislation" includes any provision of a legislative character;	There is no international consensus on the law applicable to the Arbitration Agreement where there is no party agreement. The English Supreme Court determined in *Enka v Chubb* [2020] UKSC 38 that where there was no express choice, it was the law of the matrix contract. That decision was reversed by the 2025 amendments to the EAA96, which at Section 6A now says that it is the law of the Seat. This probably reflects the majority international view. The rationale for the statutory approach in England is one of simplicity and certainty: the old common law test is complex and multi-stage and generated inefficient satellite litigation. Consistent with the English position, the DIFC Courts have found that the law applicable to the Arbitration Agreement where there is no party agreement is the law of the Seat[2], but this is not clearly stated under DIFC statute. It is thought sensible to expressly deal with the issue by adopting EAA96, Section 6A.	

[2] See for example *Oswin v Otila & Ondray* [2025] DIFC ARB 032 (16 September 2025), per H.E. Justice Sir Jeremy Cooke at [11]. See also Article 4 of the Statute of the Dubai International Arbitration Centre.

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	"treaty" includes any international agreement (and any protocol or annex to a treaty or international agreement).		
14	**Confidentiality** Unless otherwise agreed by the parties, all information relating to the arbitral proceedings shall be kept confidential, except where: (a) the DIFC Court orders otherwise; (b) the disclosure is made to protect or pursue a legal right of the party, including to recognise, enforce or challenge an Award in legal proceedings before a Court or Arbitral Tribunal in or outside the DIFC; (c) the disclosure is made to any government body, regulatory body, Court or Arbitral Tribunal and the party is obliged by law to make the disclosure; (d) the disclosure is required for a party to comply with its financial reporting obligations or the rules of any listing authority or securities exchange; (e) the disclosure is made to a professional adviser of any of the parties; (f) the disclosure is made to potential lenders, investors or third-party funders in connection with financing arrangements; or (g) the information to be disclosed is already public, save for where it has been made public in breach of this Law or other relevant confidentiality obligation.	The Arbitration Law is one of the few laws internationally that expressly imposes a duty of confidentiality. The DIFC approach reflects the fact that confidentiality of arbitration proceedings is one of the key benefits for international commercial parties. The blanket duty of confidentiality under the current Article 14 (excepted only where there is a DIFC Court order lifting confidentiality) has the benefit of simplicity. However, it has created practical problems in that, by the strict letter of the law, DIFC Court permission must be sought to lift confidentiality in the following scenarios: 1. Where an Award-creditor seeks recognition and enforcement of a DIFC-seated Award in a foreign jurisdiction, particularly if that jurisdiction has public proceedings. 2. Where a party seeks to deploy a DIFC-seated Award in subsequent related arbitral proceedings with additional or different parties. 3. Where a party must make disclosure related to an Arbitration pursuant to regulatory or legal obligation (e.g. DFSA regulated entities, publicly listed companies etcetera). That is inefficient and results in additional cost. It is also an example of Court intervention in the arbitral process, which should be minimised in a pro-arbitration jurisdiction as much as reasonably possible.	

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		DIFCA therefore proposes to amend the confidentiality regime to make it more flexible. The express confidentiality obligation is maintained, but common exceptions will be listed so that recourse to the Court is not required in every instance that Arbitration-related information is used outside the proceedings. Article 45 of the ADGM Regulations provides a useful reference point for the drafting of the proposed Article 14.	
15(2)	**Arbitration Agreement and interim measures by Court** (1) It is not incompatible with an Arbitration Agreement for a party to request, before or during arbitral proceedings, from a Court an interim measure of protection and for a Court to grant such measure. (2) The DIFC Court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their place is in the DIFC, as it has in relation to proceedings in the DIFC Court. The DIFC Court shall exercise such power in accordance with its own procedures.	Article 24(3) is proposed to be moved to Article 15(2). This is because Article 24 deals primarily with the powers of the Arbitral Tribunal rather than of the Court. Article 24(3) is more logically included under Article 15, which deals with Court power.	
17(1)	**Appointment of arbitrators** (1) No person shall be precluded by reason of their nationality from acting as an arbitrator, unless otherwise agreed by the parties. No person shall be precluded from acting as an arbitrator irrespective of the agreement of the parties on the grounds of gender or disability.	The existing Article 17(1) reflects the fact that in certain circumstances it may be legitimate to preclude candidates from appointment as arbitrators on the grounds of nationality. For example, many institutions will only appoint a presiding arbitrator who is of different nationality to that of the parties. Article 10(2) of the FAL sensibly outlaws discrimination on the grounds of gender and it is proposed that DIFC law does the same. It is also	

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		proposed to outlaw discrimination on the grounds of disability.	
Heading	**CHAPTER 4 – JURISDICTION AND POWERS OF ARBITRAL TRIBUNAL**	This is a housekeeping amendment inserted for clarity, Chapter 4 dealing with both power and jurisdiction.	
23(1)	**Competence of Arbitral Tribunal to rule on its jurisdiction** (1) The Arbitral Tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the Arbitration Agreement.	The deleted words in Article 23(1) are now more fully addressed in Article 12(2) above.	
24	**Interim measures** (1) The following provisions shall apply unless the parties have expressly agreed in writing that the Arbitral Tribunal shall not have power to order interim measures: (a) The Arbitral Tribunal may, at the request of a party, order any party to take such interim measures of protection as the Arbitral Tribunal may consider necessary in relation to an Arbitration. The Arbitral Tribunal may order any claiming or counterclaiming party to provide appropriate security in connection with such measure, including security for the legal or other costs of any other party by way of deposit or bank guarantee or in any other manner and upon such terms as the Arbitral Tribunal considers appropriate. (b) An interim measure is any temporary measure, whether in the form of an Award or in another form, made by the Arbitral Tribunal at any time prior to the issuance of the Award by which the dispute is to be	The changes to Article 24 are significant. There has been a change of international practice as embodied in several institutional rules whereby a party may now make an *ex parte* application to an Arbitral Tribunal. While some controversy remains on the issue, largely because of due process and enforcement concerns, the prevailing view internationally is that party autonomy should be respected and, where there is party-agreement (e.g. where the parties have agreed to institutional rules permitting such applications), an Arbitral Tribunal should be empowered to grant *ex parte* orders to protect the arbitral process. The former view that such matters should be left solely to the supervising Court is now outdated. The existing drafting of Article 24 arguably prohibits *ex parte* interim applications under DIFC law: Article 24(1)(a) requires that any application to the Arbitral Tribunal be copied to all other parties to the Arbitration. Similarly, Article 24(2) provides that, following the grant of an interim measure by the Arbitral Tribunal, an	

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	finally decided. For the purposes of this Article reference to an interim measure includes orders that a party: (i) maintain or restore the status quo pending determination of the dispute; (ii) provide a means of preserving assets out of which a subsequent Award may be satisfied or other means for securing or facilitating the enforcement of such an Award; (iii) take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to any party or to the arbitral process itself; or (iv) preserve evidence that may be relevant and material to the resolution of the dispute. (c) The party requesting an interim measure under any of paragraphs (b)(i), (ii) and (iii) of this Article shall satisfy the Arbitral Tribunal that: (i) harm which will not be adequately reparable by an award of damages is likely to result if the interim measure is not ordered and that harm will substantially outweigh the harm, if any, that is likely to result to the party opposing the interim measure if the measure is ordered; and (ii) there is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the	application to the DIFC Court to enforce that measure must be copied to all other parties. DIFCA proposes to make clear that there is no blanket prohibition on *ex parte* applications under DIFC law, and the parties are free to agree that such applications are permissible (whether by agreeing to institutional rules permitting such applications or otherwise). The contrary approach would infringe party autonomy and be inconsistent with international trends. Further amendment of Article 24(2) is proposed because, on the existing drafting, it is a precondition of an application for enforcement of an interim measure by the Court that the Arbitral Tribunal give written permission. This is procedurally inefficient and reflects an outdated view on interim measures. The correct balance in the light of modern practice is that a party may have recourse to the Courts unless the Arbitral Tribunal determines otherwise. DIFCA considered whether the amendments should go a step further and expressly permit *ex parte* applications, subject to various guardrails. For example, Articles 17B and following of the Model Law could be added, with appropriate amendments. However, after careful consideration DIFCA does not recommend that approach, which would be at odds with the majority of comparable jurisdictions (see further below). DIFCA considers that the proposed revisions strike the right balance. That is, the parties are free to agree that *ex parte* applications to the Arbitral Tribunal are permitted. In this way: 1. Party autonomy is respected, ensuring that the DIFC remains attractive to sophisticated commercial actors who value	

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	discretion of the Arbitral Tribunal in making any subsequent determination. (d) With regard to a request for an interim measure under paragraph (b)(iv) of this Article, the requirements in paragraph (c) of this Article shall apply only to the extent the Arbitral Tribunal considers appropriate. (e) The party requesting an interim measure may be liable for any costs and damages caused by the measure to any other party if the Arbitral Tribunal later determines that, in the circumstances, the measure should not have been granted. The Arbitral Tribunal may award such costs and damages at any point during the proceedings. (f) The Arbitral Tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the Arbitral Tribunal's own initiative. (2) Unless as otherwise directed by the Arbitral Tribunal, a party in whose favour an interim measure has been granted may request from the DIFC Court an order enforcing the Arbitral Tribunal's order or any part of it. Unless the Arbitral Tribunal at any time directs otherwise, the party making a request to the DIFC Court under this Article shall be entitled to recover in the Arbitration any legal costs and DIFC Court fees reasonably incurred thereby.	the freedom to tailor their dispute resolution process. 2. The Arbitral Tribunal is, where agreed, given the necessary tools to prevent frustration of the arbitral process, including, for example, the grant of an *ex parte* injunction. 3. The Arbitration Law is up-to-date on current trends regarding *ex parte* orders and retains its 'pro-arbitration' reputation. 4. The revised Arbitration Law is not overburdened with prescriptive complexity, leaving granular procedural safeguards to the relevant arbitral rules, the discretion of the Arbitral Tribunal and, ultimately, the DIFC Court. In this respect DIFCA is of the view that Articles 17B to 17G of the Model Law are not optimally drafted. Importantly, the revisions simply provide the parties with additional options. Nothing is removed. *Ex parte* applications can still be made to the DIFC Court under the proposed new Article 15(2) (Article 24(3) in the existing Law). This is appropriate in circumstances where the DIFC Court has established precedent for the grant of *ex parte* orders; judges are familiar with the process and the duty of full and frank disclosure; the DIFC Court has established urgency procedures such that it may be faster to obtain an enforceable *ex parte* order from the DIFC Court; and in some circumstances a DIFC Court *ex parte* order may be more effective than one issued by the Arbitral Tribunal (e.g. a DIFC Court injunction carries with it contempt protections).	

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		As regards the broader practice across the common law world, DIFCA notes that Hong Kong has expressly adopted the *ex parte* preliminary order regime under the Model Law (Articles 17B-17G), whereas Singapore, England, Australia and the ADGM have not: 1. The Singapore International Arbitration Act 1994 contains no express provision regarding the grant of *ex parte* orders. Relevantly, the 2025 SIAC Rules permit a party to seek a 'protective preliminary order' from an Emergency Arbitrator on an *ex parte* basis. This applies only to requests to an Emergency Arbitrator and not more broadly to an Arbitral Tribunal in the main arbitration proceedings. 2. In England, parties are not expressly permitted to make an *ex parte* application to the Arbitral Tribunal for interim relief, but seemingly this could be achieved if the parties were to agree.[3] The Courts retain power to grant *ex parte* orders in cases of urgency. 3. In Australia, the *ex parte* orders regime in the Model Law has expressly been excluded by Section 18B of the International Arbitration Act 1974 (Cth). 4. Article 28(1) of the ADGM Regulations requires applications for interim measures to be on notice. Notice is also required for an application to the ADGM Court to enforce an interim order (Article 30(1)).	
24A	**Security for costs**	Consistent with modern arbitration practice in leading common law jurisdictions, DIFCA	

[3] Articles 38(1) and 39(1) of the EAA96 allow the parties to agree on the Arbitral Tribunal's powers.

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	Unless otherwise agreed by the parties, the Arbitral Tribunal shall have the power to order a claimant to provide security for the costs of the Arbitration. This power shall not be exercised on the ground that the claimant is (a) an individual ordinarily resident outside the DIFC, or (b) a corporation or association incorporated or formed other than in the DIFC, or whose central management and control is exercised outside the DIFC.	proposes to expressly authorise an Arbitral Tribunal to order a claimant to provide security for costs of the Arbitration (and not just in respect of an interim application, as provided for in Article 24). The standard common law rule that the losing party pays the winning party's costs can be an effective tool for discouraging weak claims, and also ensures that an innocent defendant receives at least some compensation for their legal fees. However, those benefits can be defeated where a claimant has no means to pay the costs Award, is funded by a third party, or engages in asset dissipation. Security for costs is a well-established and widely used tool to prevent this from occurring. The rules of most arbitral institutions based in common law jurisdictions[4] and most of the national laws of those jurisdictions[5], expressly provide that arbitrators may order security for costs. The DIFC should follow suit. The claimant's residence/domicile outside the DIFC should not be a relevant consideration in international arbitration. Clearly any discrimination against foreign claimants would be incompatible with the DIFC's status as an international financial centre and an arbitration-friendly jurisdiction. As set out in the CIArb Guideline on Applications for Security for Costs[6]: "*Arbitrators should not order security for costs solely on the ground that the claiming party has a foreign residence, i.e. different from the country of the place of the arbitration. The restriction against requiring security from a party purely because they are resident in a foreign jurisdiction*	

[4] LCIA Arbitration Rules 2020, Article 25.2; HKIAC Administered Arbitration Rules 2024, Article 24; SIAC Rules 2025, Rule 48; ACICA Arbitration Rules 2021, Article 37.2(e). See also the DIAC Arbitration Rules 2022, Appendix II, Article 1.2(g).

[5] EAA96, Section 38(3); Hong Kong Arbitration Ordinance (Cap. 609), Section 56(1)(a); Singapore International Arbitration Act 1994, Section 12(1)(a); Australian International Arbitration Act 1974, Section 23K; ADGM Regulations, Article 29.

[6] Chartered Institute of Arbitrators, 'International Arbitration Practice Guideline: Applications for Security for Costs', 29 November 2016, page 9 (https://www.ciarb.org/media/epgj4eb2/5-security-for-costs-2015.pdf).

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		is expressly stated in many national laws and international treaties which forbid discrimination against foreign parties. Moreover, discrimination on the grounds of foreign residence would be contrary to the fundamental principles of international arbitration which enables parties from different jurisdictions to choose where their disputes should be resolved". The proposed restriction reflects the approach under the arbitration laws of the ADGM, England, Singapore, Hong Kong and Australia.[7] The choice has been made not to expressly address security for costs applications by a claimant in respect of a counterclaiming respondent. This is because such a regime would be complicated and overly prescriptive. For example, it is not easy to determine when a counterclaim is a defence (for example, set off or abatement) or a free-standing cross-claim. Also, different criteria will apply according to the applicable law. This is a matter best left to institutional rules and the Arbitral Tribunal's broad procedural discretion.	
24B	**Consolidation** (1) The parties are free to agree on the procedure for: (a) arbitral proceedings to be consolidated with other arbitral proceedings; or (b) concurrent hearings to be held. (2) Unless the parties agree to confer such power on the Arbitral Tribunal, the Arbitral Tribunal shall have no power to order consolidation of proceedings or concurrent hearings.	This amendment again is directed to bringing the Arbitration Law in line with current practice. Generally, consolidation saves time and cost by avoiding a multitude of related proceedings and is consistent with the 'one-stop-shop' approach to international arbitration. Consolidation also prevents conflicting decisions. Consolidation is expressly dealt with in the arbitration laws of England, the ADGM, Australia and Hong Kong[8], but not Singapore.	

[7] ADGM Regulations, Article 29; EAA96, Section 38(3); Singapore International Arbitration Act 1994, Section 12(4); Hong Kong Arbitration Ordinance (Cap. 609), Section 56(2); Australian International Arbitration Act 1974, Section 23K.

[8] EAA96, Section 35; ADGM Regulations, Article 38; Australian International Arbitration Act 1974, Section 24; Hong Kong Arbitration Ordinance (Cap. 609), Schedule 2, Section 2 (although note that parties must 'opt in' to this provision).

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	(3) Any consolidation order made under this Article shall be without prejudice to the date on which any claim or defence was raised for the purpose of applying any limitation periods or similar rule or provision of law.	The rules of leading arbitral institutions also provide for consolidation.[9] The drafting of Article 24B draws from Article 38 of the ADGM Regulations, which closely mirrors Section 35 of the EAA96. DIFCA considered reversing the default position expressed in Article 24B(2). That is, rather than the Arbitral Tribunal having no power to order consolidation unless the parties agree, the Arbitral Tribunal would by default have a power to order consolidation, unless the parties agreed otherwise. This approach would support arbitral efficiency. However, there are potential downsides. If consolidation was ordered by the Arbitral Tribunal in circumstances where: (1) there is no express party agreement granting the Arbitral Tribunal the power to consolidate, and (2) a party opposes the exercise of the power, it may create problems for recognition and enforcement of an award under the New York Convention, which requires under Article V(1)(d) that the composition of the Arbitral Tribunal and the arbitral procedure are in accordance with the parties' agreement. We are also of the view that party autonomy should be prioritised over the potential efficiency gains of the alternative drafting of Article 24B(2).	
24C	**Joinder of additional parties** (1) The parties are free to agree on the procedure for joining an additional party to an Arbitration, provided always that the party to be joined is	Joinder, like consolidation, is a powerful efficiency measure that works to prevent a multiplicity of proceedings and conflicting awards/judgments and is consistent with the 'one-stop-shop' approach to international arbitration. It also encourages procedural	

[9] LCIA Arbitration Rules 2020, Article 22A; SIAC Rules 2025, Rule 16; ICC Arbitration Rules 2021, Article 10; DIAC Arbitration Rules 2022, Article 8; ACICA Arbitration Rules 2021, Article 16; HKIAC Administered Arbitration Rules 2024, Article 28.

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	party to the Arbitration Agreement or has consented to joinder. (2) Absent such agreement, a party to the arbitral proceedings may request <u>that</u> a third party be joined to the Arbitration, provided that: a. the party to be joined is a party to the Arbitration Agreement; or b. the party to be joined has agreed to the joinder in writing. (3) If the Arbitral Tribunal has not been constituted, the request in subsection (2) shall be made to the arbitral institution administering the Arbitration or, where there is no such institution, <u>to</u> the DIFC Court. (4) Following the constitution of the Arbitral Tribunal, the request in subsection (2) shall be made to the Arbitral Tribunal. (5) The <u>arbitral institution</u>, DIFC Court or Arbitral Tribunal, as <u>the case may be</u>, shall give all parties, including the party or parties to be joined, <u>an</u> opportunity to be heard on the joinder request, and may allow the joinder request only if it is satisfied that: a. <u>Where the application is made before the Arbitral Tribunal has been constituted</u> i. joinder is appropriate in all the circumstances; and ii. joinder will not cause undue prejudice to any of those parties; and b. <u>Where the application is made after the Arbitral Tribunal has been constituted</u>	fairness by allowing joinder of a third party whose interests may be impacted by an Arbitration, or whose participation is otherwise necessary for the proper determination of a claim. While the arbitration laws in England, Singapore, Hong Kong and Australia do not expressly provide for joinder, the ADGM Regulations and the rules of leading arbitral institutions permit joinder, reflecting current practice.[10] This amendment is directed to bringing the Arbitration Law in line with that prevailing practice and ensuring that (save where the parties agree otherwise) all DIFC-seated Arbitrations benefit from an express joinder regime. The proposed Article 24C(6) is modelled on Article 9.3 of the DIAC Rules 2022. In circumstances where an arbitral institution joins a third party to proceedings prior to constitution of the Arbitral Tribunal, the Arbitral Tribunal retains competence to rule on its own jurisdiction, once constituted (and in effect overrule the institution).	

[10] ICC Arbitration Rules 2021, Article 7; DIAC Arbitration Rules 2022, Article 9; LCIA Arbitration Rules 2020, Article 22.1(x); SIAC Rules 2025, Rule 18; HKIAC Administered Arbitration Rules 2024, Article 27; ACICA Arbitration Rules 2021, Article 17.

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	i. joinder is appropriate in all the circumstances; ii. joinder will not cause undue prejudice to any of those parties; and iii. the party or parties to be joined have expressly agreed to the current constitution of the Arbitral Tribunal and waived any right to nominate an arbitrator. (6) The decision to permit joinder of any party shall be without prejudice to the Arbitral Tribunal's competence to rule on its own jurisdiction.		
24D	**Award on summary basis** (1) Unless the parties otherwise agree, the Arbitral Tribunal may, on an application made by a party to the arbitral proceedings (upon notice to the other parties), make an award on a summary basis in relation to a claim, or a particular issue arising in a claim, if the Arbitral Tribunal considers that— (a) a party has no real prospect of succeeding on the claim or issue, or (b) a party has no real prospect of succeeding in the defence of the claim or issue, (in this paragraph "claim" includes a counterclaim). (2) Before exercising its power under paragraph (1) of this Article, the Arbitral Tribunal must afford the parties a reasonable opportunity to make representations to the Arbitral Tribunal.	This is a progressive provision that permits the early determination of meritless claims and defences, as is commonplace in litigation (generally called summary or immediate judgment). Summary determination can result in significant time and cost savings. Lengthy proceedings may be avoided entirely; summary determination of particular issues works to focus the remainder of the dispute; and a previously steadfast party may reconsider their position upon an adverse summary determination of a specific issue, encouraging settlement. As a general policy standpoint, the Arbitration Law should encourage Arbitral Tribunals to conduct the proceedings as efficiently as possible (while ensuring procedural fairness), and should equip them with the tools to do so. Summary determination is one such tool. Arbitral Tribunals in DIFC-seated proceedings may already have an implicit power to use summary disposal. However, in circumstances	

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		where Arbitral Tribunals are obliged to give each party a reasonable opportunity to present their case (as reflected in the proposed amendment to Article 25 of the Arbitration Law), and a failure of due process is a ground of set aside under the Arbitration Law and the New York Convention, there is in practice a reluctance to use summary disposal (and to take a robust procedural position more generally). It is expected that expressly authorising the use of summary disposal will: (1) prevent challenges to the Award(s) as the parties will be taken to have agreed to Article 24D by choosing a DIFC seat; and (2) encourage arbitrators to adopt the procedure in an appropriate case, with attendant time and cost savings. Article 24D is reflective of current trends in international arbitration. While summary disposal is not expressly addressed in the arbitration laws of Singapore, Hong Kong or Australia, it is permitted in England & Wales and the ADGM.[11] The drafting of Article 24D is based on the new Section 39A of the EAA96. That provision was introduced as part of the 2025 reforms to the EAA96, on the recommendation of the UK Law Commission following an extensive review and consultation process.[12] Further, many institutional rules contain similar procedures for "*early dismissal*" or "*early determination*" of claims and issues which are "*manifestly without merit*".[13] The LCIA observed that, in light of the express authorization of summary disposal under the amended EAA96, together with the early determination provisions	

[11] ADGM Regulations, Article 42.

[12] UK Law Commission, 'Review of the Arbitration Act 1996: Final report and Bill', 5 September 2023, paragraphs 6.24, 6.34 and 6.51 (https://cdn.websitebuilder.service.justice.gov.uk/uploads/sites/54/2025/12/Arbitration-final-report-with-cover.pdf).

[13] LCIA Arbitration Rules 2020, Article 22.1(viii); SIAC Rules 2025, Rule 47; HKIAC Administered Arbitration Rules 2024, Article 43.

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		under the LCIA Arbitration Rules 2020, "*[l]ooking ahead … it is possible that there may be a positive uptick in applications given the stronger footing for tribunals to make awards on a summary basis*".[14]	
24E	**Provisional Awards** (1) Unless the parties otherwise agree, the Arbitral Tribunal shall have power to award on a provisional basis any relief which it would have power to grant in a final Award. (2) This includes, for instance, making— (a) a provisional Award for the payment of money or the disposition of property as between the parties, or (b) a provisional Award for an interim payment on account of the costs of the Arbitration. (3) Any such provisional Award shall be subject to the Arbitral Tribunal's final adjudication; and the Arbitral Tribunal's final Award, on the merits or as to costs, shall take account of any such provisional Award.	The proposed provision is based on section 39 of the EAA96. Provisional Awards are an established feature of English arbitration law and have no identifiable downside (equally they are an established feature of common law litigation). Provisional Awards provide flexibility and are conducive to doing justice between the parties. For example, where liability is admitted but quantum is disputed, some money can be ordered to be paid to the claimant at an early stage, preventing prejudice and denial of justice. Section 39 of the EAA96 refers to 'provisional orders'. There is a question as to whether a 'provisional order' is an Award or merely a procedural order, which has an impact on enforceability. Under DIFC law, it is established that only Awards and not orders of an Arbitral Tribunal are enforceable under Part 4 of the Arbitration Law.[15] To prevent the issue that has arisen in England from arising in the DIFC, and to ensure that a provisional Award issued under Article 24E is enforceable under Part 4 of the DIFC Arbitration Law, Article 24E refers to provisional 'Awards' (rather than 'orders'). The definition of Award in Schedule 1 is also proposed to be amended to include a provisional Award.	

[14] LCIA, 'The English Arbitration Act 2025' (https://www.lcia.org/the-english-arbitration-act-2025.aspx).

[15] *Muhallam v Muhaf* [2022] DIFC ARB 021 (19 September 2023); *Neal v Nadir* [2024] DIFC CA 001 (22 March 2024).

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		Section 39(1) of the EAA96 provides that "*The parties are free to agree that the tribunal shall have power to order on a provisional basis any relief which it would have power to grant in a final award*". DIFCA considers that the benefits of a provisional order regime are compelling, and the proposed Article 24E should therefore be expressed to apply by default, unless the parties agree otherwise. This is reflected in Article 24E(1).	
24F	**Peremptory orders** (1) The parties are free to agree on the powers of the Arbitral Tribunal in case of a party's failure to do something necessary for the proper and expeditious conduct of the Arbitration. (2) Unless otherwise agreed by the parties, the following provisions apply. (3) If without showing sufficient cause a party fails to comply with any order or directions of the Arbitral Tribunal, the Arbitral Tribunal may make a peremptory order to the same effect, prescribing such time for compliance with it as the Arbitral Tribunal considers appropriate. (4) If a claimant fails to comply with a peremptory order of the Arbitral Tribunal to provide security for costs, the Arbitral Tribunal may make an Award dismissing their claim. (5) If a party fails to comply with any other kind of peremptory order of the Arbitral Tribunal, then, without prejudice to paragraph (6) of this Article, the Arbitral Tribunal may do any of the following— (a) direct that the party in default shall not be entitled to rely upon any allegation or	Peremptory orders are an important contribution to the effectiveness of orders made by the Arbitral Tribunal and have been an established feature of English procedure since 1996. Article 24F follows, in general, the approach in Sections 41 and 42 of the EAA96. This is a much-needed provision that aligns with the general policy objective identified above: Arbitral Tribunals should be encouraged to conduct proceedings as efficiently as possible and take a robust procedural position where appropriate without fear of their Award being challenged. Arbitral Tribunals are routinely criticised as lacking the means to enforce compliance with their orders. Some arbitrators are also cautious of taking a procedurally aggressive position against a recalcitrant party due to the risk of set-aside on due process grounds. As a response to this, there has been a rise in parties engaging in undesirable procedural tactics (e.g. deliberately trying to cause delay or manipulating the procedure to lay the groundwork for an eventual set-aside claim). Article 24F works to counter that practice. It allows the Arbitral Tribunal to impose serious consequences if a party fails to comply with a peremptory order, giving 'teeth' to orders of the Arbitral Tribunal.	

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	material which was the subject matter of the order; (b) draw such adverse inferences from the act of non-compliance as the circumstances justify; (c) proceed to an Award on the basis of such materials as have been properly provided to it; (d) make such order as it thinks fit as to the payment of costs of the Arbitration incurred in consequence of the non-compliance. (6) The DIFC Court may make an order requiring a party to comply with a peremptory order made by the Arbitral Tribunal or Emergency Arbitrator. (7) An application to the DIFC Court for an order under paragraph (6) of this Article may be made— (a) by the Arbitral Tribunal or Emergency Arbitrator (on notice to the parties); (b) by a party to the arbitral proceedings with the permission of the Arbitral Tribunal or Emergency Arbitrator (and on notice to the other parties); or (c) by a party where the parties have agreed that the powers of the DIFC Court under this section shall be available. (8) The DIFC Court may not act unless it is satisfied that the applicant has exhausted any available arbitral process in respect of failure to comply with the Arbitral Tribunal's or Emergency Arbitrator's order.	Further, and importantly, recourse can also be had to the DIFC Court, such that a party may be subject to contempt proceedings if it continues to breach the peremptory order. It is intended that Article 24F will encourage a DIFC-seated Arbitral Tribunal to take a more robust procedural approach in the face of a recalcitrant party, as the Arbitral Tribunal will have a specific regime to follow, and the risk of set-aside is minimised by the statutory permission. Regarding Article 24F(4) specifically, this fills a lacuna in DIFC statutory law, which has caused uncertainty about an Arbitral Tribunal's power to dismiss a case in full because of non-provision of security for costs. Regarding the approach in comparative jurisdictions, the Hong Kong legislation is broadly similar. The Arbitration Ordinance (Cap. 609) authorises Arbitral Tribunals to issue peremptory orders in situations of party non-compliance (although security for costs applications are carved out of the peremptory orders regime) (Section 53). Separately, with the leave of the Court, orders and directions of an Arbitral Tribunal are enforceable in the same manner as orders and directions of the Court (Section 61). There is no provision for peremptory orders in the arbitration laws of Australia, Singapore and the ADGM. However, in Australia, an application can be made to a court where there is a "failure to assist" the Arbitral Tribunal (Section 23A, International Arbitration Act 1974).	

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24G	**Emergency Arbitrators** (1) This Article applies where— (a) the parties have agreed to the application of rules that provide for the appointment of an Emergency Arbitrator, and (b) an Emergency Arbitrator has been appointed pursuant to those rules. (2) Unless otherwise agreed by the parties, if without showing sufficient cause a party fails to comply with any order or directions of the Emergency Arbitrator, the Emergency Arbitrator may make a peremptory order to the same effect, prescribing such time for compliance with it as the Emergency Arbitrator considers appropriate.	This provision is based on Section 41A of the EAA96, which was added as part of the 2025 amendments. Emergency Arbitrators are a well-established and growing feature of international arbitration. They help to preserve the integrity of proceedings and safeguard the eventual enforcement of Awards by determining urgent applications for interim relief in the period after a request for arbitration has been filed but before the Arbitral Tribunal has been constituted. For example, Emergency Arbitrators can issue interim orders for the preservation of evidence or to prevent the dissipation of assets. The appointment of an Emergency Arbitrator is an alternative to the parties seeking urgent interim relief from a Court. Various jurisdictions have Emergency Arbitrator regimes in their national law.[16] Further, the rules of the major arbitral institutions prescribe methods for appointing Emergency Arbitrators.[17] However, there is uncertainty in many jurisdictions as to the enforceability of the orders of Emergency Arbitrators. This problem is solved in the EAA96, Section 41A by permitting the Emergency Arbitrator to make a peremptory order which may then be enforced by an order of the Court. This is a simple and effective solution and the DIFC should follow suit.	
25	**Equal treatment of parties** The parties shall be treated with equality and each party shall be given a reasonable opportunity of presenting their case.	The modern international consensus is that parties should be given a reasonable opportunity to present their cases and the language of 'full opportunity' from Article 18 of the Model Law is outdated. For example, the FAL refers to "*an adequate and sufficient opportunity*" and the	

[16] EAA96, Section 41A; Hong Kong Arbitration Ordinance (Cap. 609), Part 3A. In the ADGM Regulations, Schedule 1, and the Singapore International Arbitration Act 1994, Section 2(1), 'arbitral tribunal' is defined to include an emergency arbitrator.

[17] DIAC Arbitration Rules 2022, Appendix 2, Article 2; LCIA Arbitration Rules 2020, Article 9B; SIAC Rules 2025, Rule 12 and Schedule 1; HKIAC Administered Arbitration Rules 2024, Schedule 4; ICC Arbitration Rules 2021, Article 29 and Appendix V; ACICA Arbitration Rules 2021, Schedule 1.

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		EAA96 refers to "*a reasonable opportunity of putting his case and dealing with that of his opponent*".[18] This also aligns with the direction of contemporary institutional rules (e.g. DIAC, ICC, LCIA, HKIAC and SIAC), which emphasise fairness together with efficiency and proportionality, and do not use the language of "*full opportunity*". In practice, leading Model Law jurisdictions have consistently interpreted Article 18 of the Model Law as requiring only a reasonable and fair opportunity, not unlimited procedural latitude. Courts recognise that Arbitral Tribunals must retain discretion to manage procedure efficiently, for example by limiting submissions, evidence, or hearing time, provided no party is materially prevented from presenting its case. The 'reasonable opportunity' formulation therefore reflects the actual standard applied in modern arbitration practice. Further, the statement that a party shall be given a "*full opportunity*" to present its case has permitted parties to make unmeritorious challenges to Awards where an Arbitral Tribunal has sought to impose some discipline on the sequence or length of submissions. Relatedly, replacing the absolute language of "*full opportunity*" helps mitigate the phenomenon of 'due process paranoia' whereby Arbitral Tribunals feel compelled to allow excessive procedural latitude out of concern that an Award might otherwise be challenged. The proposed wording thus preserves fundamental fairness while better supporting efficient and well-managed arbitral proceedings. As flagged above, arbitrators in DIFC-seated Arbitrations should be encouraged to take a robust procedural approach,	

[18] FAL, Article 26; EAA96, Section 33(1)(a).

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		without fear of set aside. This change assists that. Separately, DIFCA considered whether, for consistency with the proposed change to Article 25, a separate amendment was required to the due process set aside ground in Article 41(2)(a)(ii) of the Arbitration Law (e.g. "*the party making the application was…reasonably unable to present their case*"). However, on balance that is considered to be unnecessary. Article 41(2)(a)(ii) will be implicitly qualified by the new Article 25.	
28A	**Disclosure of a Third Party Funding Agreement** (1) Prior to the constitution of the Arbitral Tribunal, a party who has entered into a Third Party Funding Agreement must disclose that fact to all other parties and to any arbitral institution administering the Arbitration together with details of the identity of the funder, and whether or not the funder has committed to an adverse costs liability. (2) After the constitution of the Arbitral Tribunal, the parties shall not enter into a Third Party Funding Agreement if the consequence of that agreement will or may give rise to a conflict of interest between the third party funder and any member of the Arbitral Tribunal. A party entering into such an agreement shall make the same disclosure to all other parties, to any arbitral institution administering the Arbitration and the Arbitral Tribunal, as required by paragraph (1) of this Article. (3) Written notice under paragraph (1) of this Article must be given: (a) where the Third Party Funding Agreement was entered into before or upon the	Third party funding is a controversial topic and there are arguments for and against permitting it in arbitration. On the one hand, third party funding can alleviate the significant financial burden of pursuing a claim. It enhances access to justice and helps to level the playing field for impecunious claimants. It can also be a useful tool for well-resourced litigants to manage risk and avoid diverting capital from core business functions. On the other hand, the involvement of a third party funder can be problematic in arbitrations, which are fundamentally between contracting parties and subject to confidentiality. Undisclosed conflicts of interest may give rise to set-aside risk (for example, a conflict would arise where an arbitrator has a financial interest in the funder). Additionally, there are concerns that third party funding may facilitate frivolous claims, which gave rise to the historic common law prohibitions on champerty and maintenance. There are also risks around costs recovery from an impecunious claimant who is funded, particularly given the third party funder is not party to the Arbitration.	

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	commencement of the arbitral proceedings, immediately upon their commencement; or (b) where the Third Party Funding Agreement was entered into after the commencement of the arbitral proceedings, within seven (7) days of the date of the Third Party Funding Agreement. If the notification was made prior to the constitution of the Arbitral Tribunal, the notice under paragraph (1) of this Article must be given to any member of the Arbitral Tribunal immediately following their nomination or appointment. (4) Unless otherwise agreed by the parties, the Arbitral Tribunal may, after consulting with the parties, order the disclosure of other details of the Third Party Funding Agreement. (5) Unless otherwise agreed by the parties, the Arbitral Tribunal may take into account the existence and terms of any Third Party Funding Agreement when apportioning the costs of the Arbitration between the parties.	Nonetheless, third party funding is increasingly used in international arbitration. The arbitration laws of several common law jurisdictions include provisions regarding third party funding and related disclosure obligations.[19] Additionally, the institutional rules of many of the major arbitral institutions address third party funding, reflecting current arbitration practice.[20] Relatedly, third party funding is permitted in the context of the DIFC Courts.[21] On balance, the positives outlined above outweigh the negatives, and in keeping with the international trend, third party funding should be permitted under the Arbitration Law, subject to important guardrails. First, Article 28A(2) prohibits third party funding post-constitution of the Arbitral Tribunal where it would create a conflict of interest for a member of the Arbitral Tribunal. Second, Article 28A imposes disclosure obligations on the funded party. Internationally, where third party funding is permitted, disclosure of the funding is increasingly favoured. As set out in CIArb's 2025 Guideline on Third-Party Funding: "*It is highly recommended to disclose funding as early as possible. This is required or strongly encouraged in the rules or guidance notes from various arbitral institutions. By disclosing that a case is being funded and the identity of the funder, it allows parties, counsel, and arbitrators specify any conflict that could be relevant and thereby protect the award from being challenged subsequently due to non-disclosure of funding or*	

[19] Hong Kong Arbitration Ordinance (Cap. 609), Part 10A; ADGM Regulations, Article 37.

[20] ICC Arbitration Rules 2021, Article 11.7; DIAC Arbitration Rules 2022, Article 22; SIAC Rules 2025, Rule 38; HKIAC Administered Arbitration Rules 2024, Article 44; ACICA Arbitration Rules 2021, Article 54.

[21] Practice Direction No. 2 of 2017 on Third Party Funding in the DIFC Courts.

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		non-disclosure by parties, counsel, and arbitrators of relationships or contact with the funder."[22] This approach also allows the costs recovery risk flagged above to be ameliorated, as Arbitral Tribunals can make appropriate orders for security for costs. The drafting of Article 28A follows, in general, that of the DIAC Arbitration Rules (Article 22), which are the Rules most likely to be considered by the DIFC Court, and the ADGM Regulations (Article 37). One deviation is the proposed Article 28A(5), which is open-textured and allows for the development of principles concerning the award of third party funding costs to a successful claimant. Claims for the costs of third party funding will likely become more common in light of the increasing use of such funding. Allowing a claimant to recover those costs is consistent with the DIFC's pro-arbitration stance and the broad costs discretion of the Arbitral Tribunal. In England, it is established that an Arbitral Tribunal can award the costs of third party funding as part of its general power to award the costs of the Arbitration.[23]	
31(2)	**Hearings and written proceedings** … (2) Unless otherwise agreed by the parties, hearings may take place remotely by electronic means.	This is an obvious modernisation and aligns with other arbitration laws (e.g. FAL, Article 28.3).	

[22] Chartered Institute of Arbitrators, 'Guideline on Third-Party Funding', 11 September 2025, paragraph 11.1 (https://www.ciarb.org/media/xbbegf1e/guidelines-on-third-party-funding_-published-final.pdf).

[23] In *Essar Oilfield Services Ltd v Norscot Rig Management Pvt Ltd* [2016] EWHC 2361 (Comm), the Court gave a broad interpretation to the phrase "*the legal or other costs of the parties*" in Section 59(1)(c) of the EAA96, so that "*other costs*" encompassed third party funding costs.

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32A	**Party and Party Representative conduct** (1) Parties and their representatives ("**Party Representatives**") shall not: (a) knowingly or recklessly make a false statement to the Arbitral Tribunal; or (b) knowingly conceal or destroy documents that are likely to be relevant to the issues in dispute in the Arbitration or which the Arbitral Tribunal has ordered to be produced; or (c) engage in activities intended to obstruct, delay or jeopardise the integrity of the arbitral proceedings or the finality and enforceability of any Award. (2) If the Arbitral Tribunal, after giving the relevant party or Party Representative an opportunity to make representations, finds that a party or Party Representative has contravened subsection (1), the Arbitral Tribunal may impose any sanction that the Arbitral Tribunal considers necessary to preserve the fairness and integrity of the proceedings. (3) The Arbitral Tribunal is in all cases entitled to consider the conduct of the parties and the Party Representatives when making any decision allocating the costs of the Arbitration between the parties.	Article 32A(1) imposes an obligation on parties and their representatives not to engage in specified types of poor conduct, and, for the avoidance of doubt, Article 32A(2) confirms that where Article 32A(1) is breached, the Arbitral Tribunal is empowered to issue any sanction necessary to preserve the fairness and integrity of the proceedings. Article 32A(3) confirms that the Arbitral Tribunal's broad costs discretion is not limited by the Article. It is desirable to have this general conduct and sanction regime, both because it will discourage poor conduct by parties and their legal representatives, and because it aligns with the policy objective identified above: Arbitral Tribunals should be encouraged to conduct proceedings as efficiently as possible and take a robust procedural position in respect of recalcitrant or dishonest parties. Article 32A provides an Arbitral Tribunal with a legislative basis to do so. Article 32A is in part modelled on Article 44 of the ADGM Regulations (see also Section 40 of the EAA96). However, Article 44 was felt to be overly prescriptive, and in what appears to be an inadvertent error given the title refers to party conduct, applies only to Party Representative conduct (save for subsection (4)). The proposed Article 32A has been significantly shortened, made more generalist in nature, and made to apply to parties as well as Party Representatives, there being no reason in principle why parties (including self-represented parties) should not be covered by the conduct and sanction regime.	
37A	**Remedies** (1) The parties are free to agree on the powers exercisable by the Arbitral Tribunal.	In the absence of express agreement (by adopting institutional rules or otherwise) there is fertile ground for dispute as to whether an Arbitral	

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	(2) Unless otherwise agreed by the parties, the Arbitral Tribunal shall have the power to grant any remedy permitted under the applicable law. (3) Unless otherwise agreed by the parties, and subject to any contrary provision of any applicable law, the Arbitral Tribunal's powers to award remedies shall include the following: (a) the power to make a declaration as to any matter to be determined in the proceedings; (b) the power to order the payment of a sum of money, in any currency; and (c) the same powers as the DIFC Court— (i) to order a party to do or refrain from doing anything; (ii) to order specific performance of a contract (other than a contract relating to land); and (iii) to order the rectification, setting aside or cancellation of a deed or other document.	Tribunal is empowered to award certain remedies. For example, in common law jurisdictions questions have arisen as to whether an Arbitral Tribunal possesses the same remedial powers as Courts. This is particularly the case in relation to equitable remedies, such as specific performance, injunctions and rectification. This results in inefficiency as significant time and cost is spent arguing the scope of the Arbitral Tribunal's powers. Leading arbitration jurisdictions address this concern in different ways. The EAA96, Section 48 and the ADGM Regulations, Article 51, have essentially the same wording as the proposed Article 37A. In Hong Kong, Section 70(1) of the Arbitration Ordinance (Cap. 609) is less prescriptive, stating that an Arbitral Tribunal may "*award any remedy or relief that could have been ordered by the Court if the dispute had been the subject of civil proceedings in the Court*". Article 70(2) states: "*Unless otherwise agreed by the parties, the arbitral tribunal has the same power as the Court to order specific performance of any contract, other than a contract relating to land or any interest in land*". Article 12(5) of the Singapore International Arbitration Act 1994 similarly provides that "*an arbitral tribunal … may award any remedy or relief that could have been ordered by the General Division of the High Court if the dispute had been the subject of civil proceedings in the General Division of the High Court*", but does not list any specific remedies. Australia does not expressly empower an Arbitral Tribunal with the same remedial powers as the Courts, nor list any remedies in its arbitration statute. DIFCA prefers the approach of the ADGM and England. Reference to Court remedial powers	

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		adds unnecessary complexity and it is better to keep the provision general, referring instead to remedies permitted under the applicable law. Further, a (non-exhaustive) list of specifically permitted remedies adds helpful clarity. The intention of an express remedies provision is to prevent 'sideshow' disputes about the remedial powers of a DIFC-seated Arbitral Tribunal, both during the arbitral proceedings and after as part of set aside and/or recognition and enforcement proceedings. There is no apparent downside in expressly clarifying the remedial powers of a DIFC-seated Arbitral Tribunal. Importantly, party autonomy to set the scope of remedial powers has been preserved.	
37B	**Awards on different issues** (1) Unless otherwise agreed by the parties, the Arbitral Tribunal may make more than one Award at different times on different aspects of the matters to be determined. (2) The Arbitral Tribunal may, in particular, make an Award relating— (a) to an issue affecting the whole claim, or (b) to a part only of the claims or cross-claims submitted to it for decision. If the Arbitral Tribunal does so, it shall specify in its Award the issue, or the claim or part of a claim, which is the subject matter of the Award.	This provision codifies common practice in arbitration and confirms the Arbitral Tribunal's power to make awards on different issues under DIFC law. The drafting mirrors that of Section 47 of the EAA96 and Section 19A of the Singapore International Arbitration Act 1994. The equivalent of Article 37B(1) is also found in Article 54 of the ADGM Regulations and Section 71 of the Hong Kong Arbitration Ordinance (Cap. 609). Expressly permitting an Arbitral Tribunal to make Awards on separate issues, for example by determining a critical legal question as a preliminary issue, or separating liability from quantum, is consistent with best (and common) practice in modern arbitration. The proposed Article 37B has several benefits, including: 1. Procedural efficiency. Bifurcation and/or preliminary determinations can cause the	

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		dismissal of a case at an early stage (e.g. where a claimant loses on jurisdiction or liability); focus the proceedings moving forward; and/or encourage settlement. This leads to reduced time and cost. 2. Encourage Arbitral Tribunals to take a more proactive approach to procedure and not fall victim to 'due process paranoia' in circumstances where one party resists the bifurcation/preliminary determination. 3. Prevent meritless set aside challenges on the basis that the Arbitral Tribunal acted in a procedurally improper manner in issuing a partial Award. 4. By expressly labelling the incremental decision an 'Award', the proposed amendment ensures that the partial Award will have the same finality and enforceability as a final Award. There is no material downside to the proposed amendment. In theory, bifurcating proceedings and issuing multiple Awards could create multiple overlapping set aside proceedings. However, that does not outweigh the benefits above in circumstances where: (1) partial Awards are common practice in any event; (2) the time limit for bringing set aside proceedings in Article 41(3) has been proposed to be reduced to 30 days, such that any set aside against a partial Award will be more speedily determined; and (3) Arbitral Tribunals are not required to stay the proceedings pending a set aside challenge in respect of a partial Award.	
38	**Form and contents of Award** (1) The Award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral	These are relatively minor but nevertheless helpful clarifications to the existing Arbitration	

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	proceedings with more than one arbitrator, the signatures of the majority of all members of the Arbitral Tribunal shall suffice, provided that the reason for any omitted signature is stated. (2) The Award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the Award is an Award on agreed terms under Article 37. (3) The Award shall state its date and the Seat of the Arbitration as determined in accordance with Article 27(1). The Award shall be deemed to have been made at the Seat of the Arbitration. (4) After the Award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this Article shall be delivered to each party. (5) The Arbitral Tribunal shall fix the costs of the Arbitration in its Award. The term "costs" includes: (a) The fees of the Arbitral Tribunal, which are to be stated separately as to each arbitrator. <u>Unless the parties have agreed the fees of the Arbitral Tribunal or that the fees will be fixed by a third party or arbitral institution, any party to the Arbitration may apply (on notice to the other parties) to the DIFC Court to determine the recoverable fees of the Arbitral Tribunal;</u> (b) The properly incurred travel and other expenses incurred by the arbitrators; (c) The costs of expert advice and of other assistance required by the Arbitral Tribunal;	Law where issues have arisen in the past. Further detail regarding each amendment is as follows. The word "only" is deleted in Article 38(5) so as not to constrain the Arbitral Tribunal's broad costs discretion and allow the DIFC Court and Arbitral Tribunals to develop principles flexibly over time. In particular, the deletion aligns with the proposed Article 28A(5), which allows for the development of principles concerning the award of the costs of third party funding to a successful claimant. The original definition dates from a time when third party funding was not a general issue. In Article 38(5)(a), the DIFC Court is given the power to fix the recoverable costs of the Arbitral Tribunal where the parties have not otherwise agreed the costs or that the costs will be fixed by an arbitral institution. This is in response to cases of arbitrators charging unreasonable fees in *ad hoc* Arbitrations. Additional examples of arbitration costs have been added to Article 38(5)(e) to reflect common practice. Article 38(6) provides that if an Arbitral Tribunal does not fix the costs of the Arbitration in its Award, a party can apply to the Arbitral Tribunal for a further Award on costs, and the Arbitral Tribunal must issue one. DIFCA considered whether to instead allow a party to apply to the DIFC Court to fix the costs of the arbitration (rather than the Arbitral Tribunal). The approach of comparable jurisdictions[24] is split as to which body an application to determine costs should be made where an Arbitral Tribunal has failed to address costs in the Award: Australia and the	

[24] EAA96, Sections 63 to 64; Hong Kong Arbitration Ordinance (Cap. 609), Sections 74 to 78; Singapore International Arbitration Act 1994, Section 21; Australian International Arbitration Act 1974, Section 27; ADGM Regulations, Articles 55 to 56.

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	(d) The travel and other expenses of witnesses to the extent such expenses are approved by the Arbitral Tribunal; (e) Such other costs as are necessary for the conduct of the Arbitration, including those for meeting rooms, evidence presentation, bundle services, interpreters and transcription services; (f) The costs for legal representation and assistance of the successful party if such costs were claimed during the Arbitration, and only to the extent that the Arbitral Tribunal determines that the amount of such costs is reasonable; (g) Any fees and expenses of any arbitral institution or appointing authority. (6) If the Arbitral Tribunal does not fix the costs of the Arbitration in its Award, a party to the arbitral proceedings may, within 15 days of receiving the Award, apply to the Arbitral Tribunal for a further Award on costs. After giving the parties a reasonable opportunity to make representations, the Arbitral Tribunal shall make a further Award on costs. (7) The Award shall be deemed to have been rendered at the Seat of Arbitration even if it is signed by the members of the Arbitral Tribunal outside the Seat of Arbitration and regardless of the method whereby it is signed, whether it is signed by the members of the Arbitral Tribunal in person, it is sent to be signed by each arbitrator separately or it is signed by electronic means, unless otherwise agreed by the parties. (8) Unless otherwise agreed by the parties, the date of issuance of the Award shall be the date on which the Award is signed by the sole arbitrator.	ADGM provide that the application should be made to the Arbitral Tribunal, and mandate the Arbitral Tribunal to determine costs. Hong Kong and England & Wales provide for the application to be made to the Court. Singapore does not address this point expressly. DIFCA's preference is to adopt the approach in Australia and the ADGM for the following reasons: 1. Permitting recourse to the DIFC Court to determine costs will create satellite disputes, which is inefficient and potentially costly (particularly as assessment of costs in common law courts is traditionally more intensive and detailed than in international arbitration). 2. In a pro-arbitration jurisdiction, Court intervention should be as limited as reasonably possible. 3. The Court-assessor will not be familiar with the arbitral proceedings. Significant work will be required for the Court-assessor to obtain a sufficient understanding of the proceedings to fairly determine the costs of the Arbitration. Article 38(7) is directed to the outdated practice in the UAE that arbitrators had to be physically present in the jurisdiction to sign the Award. The drafting is based on FAL, Article 41(6). Article 38(8) is self-explanatory. The drafting is based on FAL, Article 41(7).	

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	If there is more than one arbitrator, the date of the Award shall be the date of the last signature by a member of the Arbitral Tribunal.		
38A	**Interest** (1) The parties are free to agree on the powers of the Arbitral Tribunal as regards the award of interest. (2) Unless otherwise agreed by the parties the following provisions apply subject to the applicable law. (3) The Arbitral Tribunal may award simple or compound interest from such dates, at such rates and with such rests as it considers meets the justice of the case— (a) on the whole or part of any amount awarded by the Arbitral Tribunal, in respect of any period up to the date of the Award; (b) on the whole or part of any amount claimed in the Arbitration and outstanding at the commencement of the arbitral proceedings but paid before the Award was made, in respect of any period up to the date of payment. (4) The Arbitral Tribunal may award simple or compound interest from the date of the Award (or any later date) until payment, at such rates and with such rests as it considers meets the justice of the case, on the outstanding amount of any Award (including any award of interest under paragraph (3) and any Award as to costs). (5) References in this Article to an amount awarded by the Arbitral Tribunal include an amount	This is a necessary provision intended to align the DIFC with the approach in England & Wales and resolve any uncertainty as to a DIFC-seated Arbitral Tribunal's power to award simple and compound interest, subject to the applicable law and party agreement. The drafting largely mirrors Section 49 of the EAA96 and Article 52 of the ADGM Regulations. The award of interest is a complex issue in GCC states. Compound interest is generally not permitted, hence the saving of the applicable law in subsection (2). The drafting is 'applicable law' and not 'substantive law' because in theory the award of interest may be governed by the substantive law, the law of the Seat or another law agreed by the parties. There is no reason why an Arbitral Tribunal seated in the DIFC, under an applicable law that allows compound interest to be awarded, should not be permitted to award compound interest, especially if the Award is to be enforced in a jurisdiction where there is no prohibition. The saving in paragraph (6) relates to, for example, express provision in the parties' agreement as to interest, which is common in banking documents.	

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	payable in consequence of a declaratory award by the Arbitral Tribunal. (6) The above provisions do not affect any other power of the Arbitral Tribunal to award interest.		
38B	**Extension of time for making Award** (1) Where the time for making an Award is limited by or in pursuance of the Arbitration Agreement, then, unless otherwise agreed by the parties, the DIFC Court may by order extend that time in accordance with the following provisions. (2) An application for an order under this Article may be made— (a) by the Arbitral Tribunal (upon notice to the parties), or (b) by any party to the proceedings (upon notice to the Arbitral Tribunal and the other parties), but only after exhausting any available arbitral process for obtaining an extension of time. (3) The DIFC Court may only make an order if satisfied that a substantial injustice would otherwise be done. (4) The DIFC Court may extend the time for such period and on such terms as it thinks fit, and may do so whether or not the time previously fixed, by or under the agreement or by a previous order, has expired.	This provision allows the DIFC Court to extend the time for making an Award in circumstances where the time limit set by or pursuant to the Arbitration Agreement has expired or will expire prior to issuance of the Award. Divergent approaches are taken on this issue in comparable jurisdictions. The proposed Article 38B largely mirrors the drafting of Section 50 of the EAA96. Similar provision is also provided for in Section 72 of the Hong Kong Arbitration Ordinance (Cap. 609). Singapore, Australia and the ADGM have no equivalent. The 'upside' of the proposed provision is that it operates as a 'safety valve': if the Arbitration Agreement or agreed institutional rules impose a deadline for the Award, the provision can prevent the finality and enforceability of the Award from being unfairly impacted by the expiry of that time. This may be the case where one party is acting tactically to cause delay or the administering institution makes a mistake or is not conscientious. Importantly, the Court will only step in where all arbitral procedures have been exhausted and there will be substantial injustice otherwise. The potential 'downsides' to the proposed provision are as follows: 1. Permits Court intervention, which should be minimised in a pro-arbitration jurisdiction as far as reasonably possible.	

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		2. May lead to satellite litigation before the DIFC Court, causing delay and additional cost. 3. Cuts across party autonomy: if the parties have agreed to a time-limit, they should arguably be held to it, and the DIFC Court should not be able to step in. On balance, DIFCA considers that this is an important safeguard and should be included in the amended Arbitration Law. Most institutional rules provide time limits within which an Award must be made. If an Award is made out of time that may provide grounds for challenge. The overwhelming majority of institutions are assiduous in reminding Arbitral Tribunals to seek extensions of the time limits where necessary, but mistakes can be made and some institutions are less competently administered. Equally, in an *ad hoc* Arbitration, the parties and Arbitral Tribunal may inadvertently neglect a time limit for the Award. It is important that the Court be empowered to save an Award in such circumstances. Both this Article and Article 24F(7)(a) permit the Arbitral Tribunal to make an application to the DIFC Court. The intention is not to have the Arbitral Tribunal file a standard arbitration claim and pay the filing fee. The DIFC Court will need to issue rules or a practice direction, or develop an internal policy, establishing the procedure for this specific eventuality.	
41(3)	**Application for setting aside as exclusive recourse against arbitral Award** … (3) An application for setting aside may not be made after 30 days have elapsed from the date on	The Arbitration Law (reflecting Article 34(3) of the Model Law) currently provides for a time limit of three months within which to challenge an Award. Singapore, Hong Kong, Australia and the ADGM also have a three-month time limit.	

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	which the party making that application had received the Award, or such longer period as the parties to the Arbitration have agreed in writing, or, if a request had been made under Article 40, from the date on which that request had been disposed of by the Arbitral Tribunal.	This is generally regarded as a hangover from a more leisurely age and there is no compelling justification to maintain it in the amended Arbitration Law. More recent arbitration laws have shorter periods within which to challenge an Award: the EAA96 (Section 70(3)) provides for a time limit of 28 days, and the FAL 30 days (Article 54(2)). By way of further comparison, appeals from first instance judgments in the DIFC Court must be made within 21 days. The three-month time limit is also problematic as it works to elongate set aside proceedings, and the domestic courts in certain jurisdictions in the GCC region (and elsewhere) are hesitant to enforce Awards that are under challenge. This leads to recalcitrant award-debtors bringing unmeritorious set aside claims at the end of the three-month window and causing as much delay as possible. The DIFC is avowedly a pro-arbitration jurisdiction and DIFC law is intended to support the finality and enforceability of Awards. Shortening the window to bring set-aside proceedings in respect of DIFC-seated Awards furthers this intention.	
42	**Recognition and enforcement of Awards** (1) An arbitral Award, irrespective of the State or jurisdiction in which it was made, shall be recognised as binding within the DIFC and, upon application in writing to the DIFC Court, shall be enforced subject to the provisions of this Article and of Articles 43, 43A and 44. For the avoidance of doubt, where the UAE has entered into an applicable treaty for the mutual enforcement of judgments,	See the rationale for new Article 43A.	

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	orders or Awards the DIFC Court shall comply with the terms of such treaty. (2) The party relying on an Award or applying for its enforcement shall supply the original Award or a duly certified copy thereof and the original Arbitration Agreement referred to in Article 12 or a duly certified copy thereof. If the Award or the agreement is not made in English, the DIFC Court may request the party to supply a duly certified translation thereof. (3) For the purposes of the recognition or enforcement of any Award within the DIFC, an original Award or an original Arbitration Agreement shall be duly certified if it is a copy that is certified in the manner required by the laws of the jurisdiction in the place of arbitration or elsewhere. A translation shall be duly certified if it has been certified as correct by an official or sworn translator in the place of arbitration or elsewhere.		
43A	**Enforcement** Awards issued by the DIFC Court may be enforced within the DIFC in the manner prescribed in this Law and any rules of Court made for this purpose. Awards recognised by the DIFC Court may be enforced outside the DIFC in accordance with the Courts Law and recognition under this Law includes ratification for the purposes of the Courts Law.	Article 42(4) is proposed to be moved to a new Article 43A as a housekeeping change and to align with the fact that recognition has a standalone section in Article 43. Reference to the Judicial Authority Law has been replaced by reference to the Courts Law.	
44(2)	(2) If an application for the setting aside or suspension of an Award has been made to a Court referred to in paragraph (1)(a)(v) of this Article, the DIFC Court may, if it considers it proper, adjourn its decision on the recognition or enforcement of the Award, and may also, on the application of the party seeking	This is a minor amendment intended to clarify which proceeding of the DIFC Court is to be adjourned. Article 44(2) is based on Article 36(2) of the Model Law, which is itself based on Article VI of the New York Convention. An interpretative issue has arisen because the Model Law drafting has not been transposed in	

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	recognition or enforcement of the Award, order the other party to provide appropriate security.	full in the Arbitration Law. Article 36(2) of the Model Law is as follows, with the missing words shown in bold and underline: "*(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)(a)(v) of this article, the court* ***where recognition or enforcement is sought*** *may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security*". The lack of the bolded text has created uncertainty whether the "decision" being referred to in Article 44(2), and thus the proceedings to be stayed, are the recognition proceedings, an application to refuse recognition under Article 44, or the set aside proceedings under Article 41. The proposed amendment clarifies the position in line with the Model Law and the New York Convention. Attention is also drawn to Section 103(5) of the EAA96 which has similar drafting.	
44(3)	(3) Any party seeking recourse against an arbitral Award made in the Seat of the DIFC shall not be permitted to make an application under paragraph (1)(a) of this Article if it has (a) failed to make an application to set aside the Award in accordance with Article 41(3) of this Law; or (b) made such an application, and the application has been finally dismissed by the DIFC Court.	Article 44(3) is intended to prevent a party to an Award from subsequently challenging recognition and enforcement when it has failed to apply to set aside the Award in time, or its set aside claim has failed. In this respect it is noted that the grounds to set aside and the grounds to refuse recognition and enforcement are substantially identical. The existing drafting is unclear and should be clarified. For example, it arguably prevents a party who "*has made*" a *pending* set aside claim under Article 41 from opposing recognition and enforcement, if such proceedings occur in	

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		parallel to the set aside. That is not the intended function of Article 44(3). The amendment is also consistent with the DIFC's pro-arbitration and pro-enforcement approach. A party to an Award must apply within 30 days to set aside the Award. If it fails to do so, it cannot then oppose recognition and enforcement on grounds it should have raised in a set aside, and must be taken to have waived any such objection. Equally, a party cannot re-run arguments in opposing recognition and enforcement that have been dismissed in the context of a set aside claim, or run new arguments which should have been made in the dismissed set aside proceedings.	
Part 5	**PART 5: MEDIATION** **45. Application of this Part** (1) Parties are free to agree, by reference to a set of rules or otherwise, on the manner in which a Mediation is to be conducted. The provisions of this Part shall apply to the extent that they are not inconsistent with the agreement of the parties. (2) This Part does not apply to mediations: (a) to resolve a dispute arising from transactions engaged in by one of the parties (a consumer) for personal, family or household purposes; and (b) relating to family, inheritance or employment law. **46. Commencement of Mediation proceedings**	A new Part 5 regarding Mediation is proposed given the growth internationally in Mediation and the recent establishment of the Mediation Service Centre by the DIFC Courts. The proposed Part is derived from the *UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (2018) (2021 rev)* and the *Singapore Convention on Mediation*[25] (which it is understood the UAE is considering accession to). DIFCA considers that this provides a strong, internationally accepted foundation for the DIFC's first Mediation Law. Comment is invited on the substantive contents of the proposed Part 5. DIFCA also considered whether to include in Part 5 or elsewhere an Article equivalent to Section 17 of the Singapore International Arbitration Act	

[25] Also known as the United Nations Convention on International Settlement Agreements Resulting from Mediation.

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	(1) Mediation proceedings in respect of a dispute that has arisen commence on the day on which the parties to that dispute agree to engage in Mediation proceedings. (2) If a party that invited another party to mediate does not receive an acceptance of the invitation within 30 days from the day on which the invitation was sent, or within such other period of time as specified in the invitation, the party may elect to treat this as a rejection of the invitation to mediate. **47. Number and appointment of mediators** (1) There shall be one mediator, unless the parties agree that there shall be two or more mediators. (2) The parties shall endeavour to reach agreement on a mediator or mediators, unless a different procedure for their appointment has been agreed upon. (3) Parties may seek the assistance of an institution or person in connection with the appointment of mediators, including the Mediation Centre established pursuant to Article 13 of the Courts Law. In particular: (a) a party may request such an institution or person to recommend suitable persons to act as mediator; or (b) the parties may agree that the appointment of one or more mediators be made directly by such an institution or person. (4) In recommending or appointing individuals to act as mediator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial mediator and, where appropriate, shall take into account the advisability of appointing a	1994 and Article 33 of the Hong Kong Arbitration Ordinance (Cap. 609). Those provisions are very similar and provide for an 'arb-med-arb' process, whereby the Arbitration is paused so that a Mediation can occur, with the arbitrator acting as mediator. If the Mediation fails, the Arbitration resumes. However, DIFCA is ultimately of the view that an 'arb-med-arb' regime should not be included in the Arbitration and Mediation Law (in this respect it is noted that Australia, England & Wales and the ADGM do not have an arb-med-arb regime). This is primarily because legislating for arb-med-arb is unnecessary and overly prescriptive. This is a matter that is better left for party agreement and institutional rules. More broadly, there are legitimate concerns about encouraging a 'mixing' of the arbitrator and mediator roles. Mixing Arbitration and Mediation creates perceived bias risks – it is extremely difficult for an arbitrator to ignore information obtained as mediator, if an Arbitration then follows. This can in turn lead to challenges to the Award. The arb-med-arb regime can also result in reduced candour in the Mediation, precisely so the parties can protect their Arbitration position. In that sense, arb-med-arb can have limited utility and work only to increase cost and delay. In response to the above problem, arbitral institutions (e.g. SIAC and SIMC) have established a protocol for arb-med-arb where the arbitrators and mediators are typically different individuals. This structure ensures that information shared during Mediation does not influence the arbitrator if the case proceeds to a final Award. That is a sensible solution, but it is a matter that can be left to party agreement and	

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	mediator of a nationality other than the nationalities of the parties. (5) When a person is approached in connection with their possible appointment as mediator, they shall disclose any circumstances likely to give rise to justifiable doubts as to their impartiality or independence. A mediator, from the time of their appointment and throughout the Mediation proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them. **48. DIFC Courts Mediation Centre** (1) The DIFC Courts Mediation Centre, established pursuant to Article 13 of the Courts Law (the "**Mediation Centre**"), shall be available to administer Mediations conducted pursuant to this Part, to assist in the appointment of mediators, and to approve settlement agreements for the purposes of Article 30(B)(4) of the Courts Law. (2) Where the DIFC Court directs or suggests that parties engage in Mediation, the parties shall be free to conduct such Mediation through the Mediation Centre or through any other mediation service of their choosing. Where the parties elect to conduct Mediation through the Mediation Centre, the operational framework and procedures established by the President pursuant to Article 13 of the Courts Law shall apply, subject to any agreement of the parties. (3) Nothing in this Part shall be construed as limiting the powers of the Mediation Centre as determined by the President pursuant to Article 13 of the Courts Law. **49. Conduct of Mediation** (1) Failing agreement on the manner in which the Mediation is to be conducted, the mediator may	institutional rules and need not be covered by the Arbitration and Mediation Law.	

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	conduct the Mediation proceedings in such a manner as the mediator considers appropriate, taking into account the circumstances of the case, any wishes that the parties may express and the need for a speedy settlement of the dispute. (2) In any case, in conducting the proceedings, the mediator shall seek to maintain fair treatment of the parties and, in so doing, shall take into account the circumstances of the case. (3) The mediator may, at any stage of the Mediation proceedings, make proposals for a settlement of the dispute. **50. Communication between mediator and parties** The mediator may meet or communicate with the parties together or with each of them separately. **51. Disclosure of information** When the mediator receives information concerning the dispute from a party, the mediator may disclose the substance of that information to any other party to the Mediation. However, when a party gives any information to the mediator, subject to a specific condition that it be kept confidential, that information shall not be disclosed to any other party to the Mediation. **52. Confidentiality** Unless otherwise agreed by the parties, all information relating to the Mediation proceedings shall be kept confidential, except where disclosure is required under the law or for the purposes of implementation or enforcement of a Settlement Agreement. **53. Admissibility of evidence in other proceedings** (1) A party to the Mediation proceedings, the mediator and any third person, including those		

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	involved in the administration of the Mediation proceedings, shall not in arbitral, judicial or similar proceedings rely on, introduce as evidence or give testimony or evidence regarding any of the following: (a) an invitation by a party to engage in Mediation proceedings or the fact that a party was willing to participate in Mediation proceedings; (b) views expressed or suggestions made by a party in the Mediation in respect of a possible settlement of the dispute; (c) statements or admissions made by a party in the course of the Mediation proceedings; (d) proposals made by the mediator; (e) the fact that a party had indicated its willingness to accept a proposal for settlement made by the mediator; or (f) a document prepared solely for purposes of the Mediation proceedings. (2) Paragraph 1 of this Article applies irrespective of the form of the information or evidence referred to therein. (3) The disclosure of the information referred to in paragraph 1 of this Article shall not be ordered by an Arbitral Tribunal, Court or other competent governmental authority and, if such information is offered as evidence in contravention of paragraph 1 of this Article, that evidence shall be treated as inadmissible. Nevertheless, such information may be disclosed or admitted in evidence: (a) to the extent required under the law;		

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	(b) where all parties to the Mediation consent; or (c) for the purposes of implementation or enforcement of a Settlement Agreement. (4) The provisions of paragraphs 1, 2 and 3 of this Article apply whether or not the arbitral, judicial or similar proceedings relate to the dispute that is or was the subject matter of the Mediation proceedings. (5) Subject to the limitations of paragraph 1 of this Article, evidence that is otherwise admissible in arbitral or judicial or similar proceedings does not become inadmissible as a consequence of having been used in a Mediation. **54. Termination of Mediation proceedings** The Mediation proceedings are terminated: (a) By the conclusion of a Settlement Agreement by the parties, on the date of the agreement; (b) By a declaration of the mediator, after consultation with the parties, to the effect that further efforts at Mediation are no longer justified, on the date of the declaration; (c) By a declaration of the parties addressed to the mediator to the effect that the Mediation proceedings are terminated, on the date of the declaration; or (d) By a declaration of a party to the other party or parties and the mediator, if appointed, to the effect that the Mediation proceedings are terminated, on the date of the declaration.		

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	55. Mediator acting as arbitrator Unless otherwise agreed by the parties, the mediator shall not act as an arbitrator in respect of a dispute that was or is the subject of the Mediation proceedings or in respect of another dispute that has arisen from the same contract or legal relationship or any related contract or legal relationship. **56. Resort to arbitral or judicial proceedings** Where the parties have agreed to mediate and have expressly undertaken not to initiate during a specified period of time or until a specified event has occurred arbitral or judicial proceedings with respect to an existing or future dispute, such an undertaking shall be given effect by the Arbitral Tribunal or the DIFC Court until the terms of the undertaking have been complied with, except to the extent necessary for a party, in its opinion, to preserve its rights. Initiation of such proceedings is not of itself to be regarded as a waiver of the agreement to mediate or as a termination of the Mediation proceedings. **57. Binding and enforceable nature of Settlement Agreements** (1) If the parties conclude an agreement settling a dispute, that settlement agreement is binding and enforceable ("**Settlement Agreement**"). (2) A party relying on a Settlement Agreement shall supply to the DIFC Court: (a) the Settlement Agreement signed by the parties; (b) evidence that the Settlement Agreement resulted from Mediation, such as: (i) the mediator's signature on the Settlement Agreement;		

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	(ii) a document signed by the mediator indicating that the Mediation was carried out; (iii) an attestation by the institution that administered the Mediation; or (iv) in the absence of (i), (ii) or (iii), any other evidence acceptable to the DIFC Court. (3) The requirement that a Settlement Agreement shall be signed by the parties or, where applicable, the mediator is met in relation to an electronic communication if: (a) a method is used to identify the parties or the mediator and to indicate the parties' or mediator's intention in respect of the information contained in the electronic communication; and (b) the method used is either: (i) as reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or (ii) proved in fact to have fulfilled the functions described in subparagraph (a) above, by itself or together with further evidence. (4) If the Settlement Agreement is not in the English language the DIFC Court may request a translation thereof.		

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	(5) The DIFC Court may require any necessary document in order to verify that the requirements of this Part have been complied with. (6) The DIFC Court may refuse to grant relief at the request of the party against whom the relief is sought only if that party furnishes to the competent authority proof that: (a) a party to the Settlement Agreement was under some incapacity; (b) the Settlement Agreement sought to be relied upon: (i) is null and void, inoperative or incapable of being performed under the law to which the parties have validly subjected it or, failing any indication thereon, under the applicable law; (ii) is not binding, or is not final, according to its terms; or (iii) has been subsequently modified; (c) the obligations in the Settlement Agreement: (i) have been performed; or (ii) are not clear or comprehensible; (d) granting relief would be contrary to the terms of the Settlement Agreement; (e) there was a serious breach by the mediator of standards applicable to the mediator or the Mediation without which breach that party would not have entered into the Settlement Agreement; or		

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	(f) there was a failure by the mediator to disclose to the parties circumstances that raise justifiable doubts as to the mediator's impartiality or independence and such failure to disclose had a material impact or undue influence on a party without which failure that party would not have entered into the Settlement Agreement. (7) The DIFC Court may also refuse to grant relief if it finds that: (a) granting relief would be contrary to the public policy of the United Arab Emirates; or (b) the subject matter of the dispute is not capable of settlement by Mediation under DIFC law. (8) If an application or a claim relating to a Settlement Agreement has been made to a Court, an Arbitral Tribunal or any other competent authority which may affect the relief being sought under this Article, the DIFC Court may, if it considers it proper, adjourn the decision and may also, on the request of a party, order the other party to give suitable security. (9) The DIFC Court has jurisdiction to recognise and enforce a Settlement Agreement reached as a result of a Mediation irrespective of where the Mediation was conducted and irrespective of whether or not the dispute the subject of the Mediation was a dispute falling within the jurisdiction of the DIFC Court. If the DIFC Court recognises a Settlement Agreement pursuant to this Article, it has the same powers to enforce the terms of that agreement as it would have if those terms were a judgment of the DIFC Court.		

<table>
<tr><th>Article No.</th><th>Proposed Amendment</th><th>Rationale</th><th>Comments on Proposed Amendment</th></tr>
<tr><td></td><td>(10) Where the DIFC Court recognises a Settlement Agreement pursuant to this Article, such Settlement Agreement shall constitute an Enforcement Writ within the meaning of Article 30(B)(4) or (5) of the Courts Law (as applicable), and the provisions of Articles 29 to 34 of the Courts Law shall apply to its enforcement accordingly.</td><td></td><td></td></tr>
<tr><td>Schedule 1</td><td><table>
<tr><th>Term</th><th>Definition</th></tr>
<tr><td>Amending Law</td><td>Arbitration and Mediation Law, DIFC Law No. 1 of 2026.</td></tr>
<tr><td>Arbitration</td><td>an arbitration for the resolution of disputes conducted pursuant to an Arbitration Agreement, as defined at Article 12 of this Law.</td></tr>
<tr><td>Arbitral Tribunal</td><td>a sole arbitrator or a panel of arbitrators.</td></tr>
<tr><td>Award</td><td>a decision of the Arbitral Tribunal on the substance of the dispute and includes any interim, partial, summary or provisional award.</td></tr>
<tr><td>Chief Justice</td><td>the Chief Justice of the DIFC Court.</td></tr>
<tr><td>Court</td><td>shall mean any competent Court of any State or jurisdiction, including the DIFC Court where applicable.</td></tr>
<tr><td>Courts Law</td><td>Dubai Law No. (2) of 2025, Concerning Dubai International Financial Centre Courts.</td></tr>
<tr><td>DIFC</td><td>the Dubai International Financial Centre.</td></tr>
<tr><td>DIFC Court</td><td>the Court of the Dubai International Finance Centre, as established by Dubai law.</td></tr>
<tr><td>DIFC Law</td><td>is law made by the Ruler (including, by way of example, the Law), as applicable in the DIFC.</td></tr>
<tr><td>Emergency Arbitrator</td><td>an individual appointed as mentioned in Article 24G.</td></tr>
<tr><td>Judge</td><td>a Judge of the DIFC Court.</td></tr>
<tr><td>Law</td><td>the Arbitration and Mediation Law 2026.</td></tr>
<tr><td>Mediation</td><td>a process, whether referred to by the expression mediation, conciliation or an expression of similar import, whereby parties request a third person or persons to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other</td></tr>
</table></td><td>Various definitions are proposed for inclusion in Schedule 1.

The most significant is the definition of “Award”. The proposed definition includes the various types of awards that may occur under the updated Arbitration Law, in order to remove any doubt and assist with enforceability (noting that under DIFC law only awards and not orders are enforceable). The drafting is modelled off the Singapore International Arbitration Act 1994.

Peremptory orders or the orders of an Emergency Arbitrator (which can be converted to peremptory orders) have not been included in the definition, as those already have an express Court-enforceability regime.

DIFCA also considered whether the definition of Arbitral Tribunal should be amended to include Emergency Arbitrators, as follows:

a sole arbitrator or a panel of arbitrators, and includes an Emergency Arbitrator appointed pursuant to the rules of arbitration agreed to by the parties.

We note that this has been done in the ADGM, Singapore and the proposed new Saudi Arbitration Law. However, on balance this is not necessary and would create interpretative confusion.</td><td></td></tr>
</table>

Article No.	Proposed Amendment	Rationale	Comments on Proposed Amendment
	<table><tr><td></td><td>legal relationship. The mediator does not have the authority to impose upon the parties a solution to the dispute.</td></tr><tr><td>Party</td><td>a party to an Arbitration Agreement and includes any person claiming through or under a party to the Arbitration Agreement.</td></tr><tr><td>Ruler</td><td>the Ruler of the Emirate of Dubai.</td></tr><tr><td>Seat</td><td>the juridical seat which indicates the procedural law chosen by the parties to govern their Arbitration as designated in Article 27 of this Law.</td></tr><tr><td>Third Party Funding Agreement</td><td>An agreement for the provision of financial support by a person (whether an individual or body corporate), other than a legal practitioner for a party, who is not a party to the legal proceedings, whereby such person provides funding or other financial assistance to the party for the purposes of conducting the proceedings in exchange for a share of any proceeds or any other economic benefit linked to the outcome of the proceedings.</td></tr></table>	Following the consultation process, the Arbitration Law will be updated to ensure that terms that are proposed to be defined are capitalised consistently.	

Further comments
Q: Are there any other issues, not included in the Proposed Amendments, which warrant attention on this topic? If so, what are they, and why, and how should they be addressed?
A: