

Kluwer Arbitration Blog

UAE Court Annuls Award and Stresses Strict Compliance with Law

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The UAE law on arbitration is contained in a dozen provisions in the UAE Civil Procedures Law. Whilst the law is not long, the provisions can often be overlooked by tribunal's and counsel. Unfortunately the local courts usually take a strict view as to compliance, as illustrated in a recent decision by the Dubai Court of Appeal in Case No. 371-203 dated 14 May 2014.

The facts of the case

The Claimant had entered into a sale and purchase agreement for a plot of land at a purchase price of AED 20 million spread over 14 instalments. The Claimant paid all the instalments on time but the Respondent defaulted in its obligations to provide infrastructure and procure permits, as alleged by the Claimant. As a result, construction of the Claimant's project was not feasible.

The Respondent also contravened the law by selling the plot to the Claimant whilst it was mortgaged, without notifying the bank of the sale or the Claimant of the mortgage.

In accordance with the arbitration clause in the agreement the Claimant commenced proceedings before the Dubai International Arbitration Centre. An award was rendered by the Tribunal in the Claimant's favour, with one arbitrator dissenting.

The Claimant filed enforcement proceedings before the Dubai courts. Al Tamimi & Co. represented the Respondent who sought by way of a cross-application to annul the award.

The First Instance Court annulled the award. The judgment was appealed to the Court of Appeal who upheld the annulment due to three reasons:

- (1) the lack of authority of one of the contract signatories to bind a public joint stock company to arbitration
- (2) the tribunal's failure to sign both the reasoning and the dispositive sections of the award
- (3) the dissenting arbitrator's refusal to sign the award.

Authority to sign an arbitration clause

Under UAE law (specifically Articles 58 and 203(4) of the Civil Procedures Law) a person who

signs an arbitration agreement on behalf of a company must have specific authority to do so. The only exception is in relation to LLCs, whose General Managers are deemed to have the required authority.

In this case the Respondent was a public joint-stock company. The signatory for the Respondent was authorized to sell on behalf of the company but was not authorized to agree an arbitration clause.

The Court of Appeal held that “the conclusion of an arbitration agreement outside the scope of a power of attorney results in relative nullity [i.e. the award is annulled without considering the substance of the award]”. The Court of Appeal explained that the authority to sign an arbitration clause on behalf of a public joint-stock company belongs to its Board of Directors if so authorized in its Articles of Association or else subject to the approval of the General Assembly (as per Article 103 of Law No.8 of 1984).

The Court emphasized that an “arbitration clause implies an agreement to forego proceedings in the UAE courts and the security afforded through litigation”.

Signature of the award

Arbitral awards in the UAE have to be signed (Article 212(7) of the Civil Procedures Law). The Court explained that arbitral awards contain both a section setting out the reasoning for the decision and a section setting out the decision itself (the dispositive or operative part). Arbitrators must sign both the reasoning and the dispositive section of the award or it will be deemed invalid.

An exception to the above rule is when the reasoning of the award, or parts of it, is found on the same page setting out the dispositive section. In this situation the signature will be deemed to cover both the reasoning and the dispositive section, fulfilling the legislator’s objective of requiring the tribunal’s signature on the award.

In this case the reasoning of the award was not signed, only the dispositive section. This was a further reason for annulling the award.

Dissenting arbitrator

The award was signed only by two of the arbitrators. The third arbitrator did not sign but instead issued a dissenting award. Article 212(5) of the Civil Procedures Law states that if one or more arbitrators refuse to sign the award then this shall be stated in the award.

The Court held that although there was a dissenting award, the main award did not explain why there was a missing signature. This was a further reason for annulling award.

Conclusion

What is notable about this case is that each of the issues relied on by the Court to annul the award could have been avoided if the parties and the Tribunal had taken more care to review the local arbitration law and comply with it.[1]

Although not touched upon by the Court in this case, other key requirements are as follows:

1. The award must contain a reference to the arbitral agreement. Best practice is for either a copy of

the arbitration agreement to be attached, or for the Tribunal to have it written in full in the body of the award.

2. Unless agreed otherwise by the parties, the award must be in Arabic (Article 212(6), civil Procedure Law).
3. The award must provide a summary of the parties' case and evidence.
4. The award must be reasoned.
5. The award must set out the place and date of its issuance (Article 212(5)).
6. The award must be issued in the UAE, otherwise it will be considered foreign and the rules laid down with respect to awards issued in a foreign country shall apply (Article 212(4)).

Parties should always check prior to executing an agreement that the signatories have the requisite authority to bind their respective companies to arbitration, and after an arbitral award is rendered the parties should immediately have it reviewed by a UAE lawyer so that, if possible, any flaws can be identified and the Tribunal approached to rectify them (assuming the applicable rules allow such a period, which many do).

**Robert Karrar-Lewsley assisted with the preparation of this*

[1] The Court of Appeal's judgement is final since the Claimant failed to appeal before the Court of Cassation

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