

Kluwer Arbitration Blog

Joinder of Third Parties: A Welcome Novelty Under the UAE Federal Arbitration Law

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In June 2018, the long awaited [UAE Federal Arbitration Law \(Law No. 6 of 2018\)](#) entered into force, repealing the arbitration specific provisions (“UAE Arbitration Chapter”) contained in the [UAE Civil Procedure Code \(Law No. 11 of 1992\)](#). Whilst it is fair to say that the new UAE Federal Arbitration Law failed overall to meet the local arbitration community’s expectations by not resolving some of the salient issues of arbitration in the UAE, such as the issue of capacity to enter into an arbitration agreement or the recoverability of parties’ costs, it contains a number of new provisions, which notably enhance arbitration proceedings seated in the UAE. The provisions on joinder of third parties are one good example of improvements introduced by the UAE Federal Arbitration Law.

Arbitrators often may have to consider requests to “extend” the arbitration clause or “join” third parties. Many commercial contracts involve various stakeholders, which are not always signatories to the contract but either have an interest in the dispute or mutual claims arising out of the same fact pattern. In such circumstances, efficiency considerations play in favour of joining these third parties to the arbitration. This said, joinder of third parties raises challenging issues around consent to arbitrate. As all arbitration practitioners know, consent is the cornerstone of arbitration. How to reconcile the consensual nature of arbitration while maximising efficiency by binding related parties? While the precise answer and related legal arguments may differ from one legal system to another, joinder of third parties will commonly be based on either implied consent or disregard of the corporate personality.

What legal principles should an arbitrator sitting in the UAE apply when considering joinder of third parties? Arbitrators should bear in mind that the UAE Federal Arbitration Law maintains the requirement that an arbitration agreement be made in writing (Article 7.1) and signed by a person having capacity to do so (Article 4.1). Ultimately, the answer will largely depend on the pleadings and arguments put forward by the concerned parties before the arbitrator.

When considering whether or not joinder is procedurally possible in the first place, the arbitrator must take into account and respect the law of the seat or legal place of the arbitration and, if any, the procedural rules. In this context, one will note that the current version of the rules of the Dubai International Arbitration Centre (DIAC), one of the most prominent arbitral institutions in the UAE, do not address joinder of third parties. Prior to the adoption of the UAE Federal Arbitration Law, the UAE Arbitration Chapter did also not contain any provisions on joinder. Article 22 of the UAE Federal Arbitration Law now provides as follows:

“The Arbitral Tribunal may authorise the joinder or intervention of a third party into the arbitration dispute whether upon request of a party or upon request of the joining party, provided that he is a party to the Arbitration Agreement after giving all Parties including the third party the opportunity to hear their statements.”

Based on the foregoing provisions, an arbitrator sitting in the UAE in a DIAC arbitration is now empowered to order the joinder of third parties provided he or she is (i) satisfied that an arbitration agreement exists between the original parties and the third parties and (ii) provided he or she has granted the concerned parties an opportunity to be heard on the application for joinder. Importantly, Article 22 does not appear to require all concerned parties’ express consent to joinder, simply requiring that each concerned party be given an opportunity to be heard.

In a recent local DIAC arbitration case, in which I was personally involved, the claimant sought permission to apply for joinder of third parties. After considering the application for joinder, the arbitrator decided to allow service of the request for arbitration together with the application for joinder on the third parties by the DIAC. DIAC served the concerned entities while granting them 30 days to provide their answers. Despite having been duly served and given an opportunity to be heard, the concerned entities failed to respond. By a reasoned decision, the arbitrator granted the relief sought by the claimant in the application for joinder and agreed to formally join the third parties as respondents to the arbitration. The arbitrator noted that pursuant to the provisions of Article 22 of the UAE Federal Arbitration Law, third parties may be joined provided that the arbitrator was satisfied that an arbitration agreement exists between the claimant and the third parties. Based on the evidence on record, the arbitrator considered that the fact pattern of this particular case lent itself to disregard of the corporate form and to finding of apparent authority. More specifically, the arbitrator found that it was established on the record that:

- the agreement was signed by the HR manager of “X Group”, identified as “X Group”, a company organised and duly registered in Dubai, UAE, with a specific registered office in Dubai;
- although “X Group” advertised on its website the existence of a corporate entity named “X Group LLC”, the original respondent in the arbitration, it was established that such limited liability company did not exist; there rather appeared to be separate legal entities operating under the name “X Group”;
- on the website of the “X Group”, the concerned third parties were described as part of the “X Group”; the third parties advertised themselves as being part of the “X Group”;
- the claimant’s claim in the arbitration was for payment by the “X Group” of services rendered by the claimant for the benefit of the “X Group”;
- the HR manager corresponded with the claimant in his capacity as HR manager of the “X Group”; and
- the joining third parties shared the same address as set out for the “X Group” in the agreement.

Based on the foregoing, the arbitrator found it reasonable – in the absence of any evidence to the contrary – that the HR manager acted as the agent of the joining third party entities, having acted well within the usual range of authorities and/or powers when signing the agreement with the claimant in respect of the particular services and it stood to reason that as such the HR manager did have authority to give full effect to the agreement, including the arbitration agreement through his signature. In the prevailing circumstances, the arbitrator found that the HR manager signed the agreement in his apparent authority as HR manager of the third parties, which entities were therefore bound under the agreement, including the arbitration agreement.

It remains to be seen whether the unconventional approach adopted by the arbitrator, who – despite the absence of all concerned parties’ express consent – decided to grant the joinder in the particular circumstances of this case, will be sanctioned by the UAE courts in the event of a potential action for annulment of the award.

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