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Are Witnesses Still Required to Take an Oath in UAE-Seated Arbitrations?

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There has been a requirement in the United Arab Emirates (“UAE”) for witnesses to take an oath when giving their testimony in arbitration proceedings. Awards that relied on testimonies of witnesses who had not taken an oath were subject to nullification. There is currently uncertainty over whether witnesses are still required to take an oath in UAE-seated arbitrations. This blog post examines recent court decisions on this topic with the aim of shedding light on where UAE courts stand on this issue at present.

Legislation: Past and Present

The requirement for taking an oath was set out in [Article 211 of the Federal Civil Procedures Law No. 11/1992 \(“CPL“\)](#). Article 211 of the CPL stated that arbitrators should administer an oath to witnesses. Article 216 of the CPL stipulated that an award can be annulled in the case of any procedural irregularity that impacts the award. Based on these two articles, awards that relied on testimonies of fact or expert witnesses who had not taken an oath were subject to annulment. If only part of the award had relied on the witness testimony, a partial annulment has been ordered by the UAE courts. As outlined in [another blog post](#), many such court decisions stated the mandatory nature of the oath and its consequences for the award. For example, in Appeal No. 322 of 2004, the Dubai Court of Cassation (“COC“) explained that the requirement set out under Article 211 of the CPL is of a mandatory nature as it ensures the accuracy of the testimonies made. Similarly, in case No. 503 of 2003, the COC confirmed the mandatory nature of taking an oath and the potential invalidity of the arbitral proceedings in case of non-observance of the said requirement. The decision explains that the oath is needed in order to ensure the accuracy of the testimonies as it would make the witnesses reluctant to give false testimony.

Articles 211 and 216 were repealed with the issuance of the [Federal Arbitration Law No. 6 of 2018 \(“UAE Arbitration Law“\)](#). The UAE Arbitration Law does not include any provision akin to Article 211 of the CPL. As far as witnesses are concerned, Article 33(7) provides that witnesses, including experts, should testify in line with the laws of the country, unless the parties agree otherwise. As a result, there is currently no express requirement for administering an oath on witnesses.

The question of whether witnesses are required to take an oath remains ambiguous to date. While

the express requirement for the taking of an oath is no longer imposed by the UAE Arbitration Law, its mandatory nature over past decades may drive the courts to continue applying it. In fact, when the UAE Arbitration Law was issued, [some commentators](#) expected that courts would continue to require witnesses to take an oath.

Recent Court Decisions

At present, not enough court decisions have been issued on this topic. Only two decisions have been reported so far. The latest one is [Dubai Court of Cassation No. 1406/2023 \(Commercial\)](#). In this case, an award had been rendered in arbitral proceedings conducted under the [Dubai International Arbitration Centre \(“DIAC”\) Rules 2007](#) awarding the claimant fifteen million dirhams in addition to arbitration and legal costs (“Award”).

The respondent filed an application for the annulment of the Award before the Dubai Court of Appeal (“COA”) ([Dubai Court of Appeal No. 6/2023 \(arbitral award annulment\)](#)), raising a number of challenges which included the non-administration of an oath to the tribunal-appointed expert and the fact witnesses. The COA annulled the Award on the basis that the DIAC Rules 2007 require, in Article 29(7), that witnesses take an oath prior to providing their testimony. Article 29(7) states that “[t]he Tribunal shall require witnesses to swear an oath before the Tribunal before giving evidence in accordance with any mandatory provisions of the applicable procedural law.” [According to the COA](#), non-compliance with Article 29(7) rendered the Award invalid as the Award relied on the testimony of witnesses and the findings of an expert who had not taken an oath.

The claimant challenged the decision of the COA before the COC arguing that the DIAC Rules 2007 do not require a tribunal-appointed expert to take an oath. The claimant also argued that the respondent had not, during the arbitral proceedings, raised a challenge or a concern in relation to the expert not taking an oath. In its decision, the COC cited Article 30(1) of the DIAC Rules 2007, which is the relevant provision, and stated that “[t]he Tribunal may, after consultation with the parties, appoint one or more independent experts to report to it on specific issues designated by the Tribunal. A copy of the expert’s terms of reference, established by the Tribunal, having regard to any observations of the parties, shall be communicated to the parties. Any such expert shall be required to sign an appropriate confidentiality undertaking.” The COC explained that if the tribunal exercised its powers to appoint an expert, the latter is not required to take an oath. The COC also mentioned that the respondent could not raise a challenge at this stage as it had not objected to the non-administration of an oath during the arbitral proceedings. The COC concluded that the non-taking of an oath did not invalidate either the work performed by the expert or the Award which was based on the expert’s findings. As a result, the COC reversed the decision of the COA and upheld the Award.

It is clear from the above that the DIAC Rules 2007 draw a distinction between witnesses and tribunal-appointed experts. Article 29 entitled “Witnesses,” amongst which Article 29(7) referred to above, addresses matters related to witnesses and requires that they take an oath (although Article 29(7) does not specifically mention expert witnesses, Article 29(2) makes it clear that Article 29 covers both categories). While Article 30 entitled “Experts Appointed by the Tribunal” addresses the manner in which tribunal-appointed experts should perform their tasks, it does not require the administration of an oath as outlined above. Accordingly, the DIAC Rules 2007 require

an oath to be administered to expert witnesses that a party calls to testify, but not to tribunal-appointed experts. This distinction has been respected by the COC in the above-cited case, which is very commendable.

In another recent case, the COC has also respected the institutional rules. In [Dubai Court of Cassation No. 96/2022 \(Civil\)](#), the COC annulled the award rendered in proceedings governed by the DIAC Rules 2007 because the witnesses had not taken an oath. In its decision, the COC starts its analysis by quoting Article 29 of the DIAC Rules, which requires that witnesses take an oath. It then explained that how the oath to be administered is left to the mandatory laws of the country, namely the evidence laws. Although [some commentators](#) read this case as the courts' deciding that taking the oath is a requirement, the reasoning of the COC indicates that the COC annulled the award because the applicable institutional rules had not been followed. While these rules require the administration of an oath, that requirement was not met.

Final Remarks

It may be a little early to conclude that the taking of an oath in evidentiary hearings is no longer a requirement under UAE law. This is because the two COC decisions are so far the only ones dealing with this question and none of them state in explicit terms that administering an oath on witnesses is no longer a requirement in the UAE. However, it is the author's view that these two decisions demonstrate that the UAE courts respect the arbitration rules the parties have agreed to. If such rules impose a requirement for the administration of an oath and this requirement has not been followed, then the UAE courts would annul the award. Otherwise, there would be no annulment on the ground that the witness had not taken an oath. This direction is welcome as it eliminates a formality that seems to have been transposed from domestic litigation procedures into the arbitration world. Arbitration is expected to be free from unnecessary formalities and rigid procedures. It should certainly not replicate litigation.

Additionally, how witnesses are to be heard in arbitration proceedings should be decided by the tribunal, which can, in consultation with the parties, assess the need for administering an oath. Many arbitration-friendly jurisdictions around the world do not impose such a requirement and are of the view that an arbitrator does not have the power to administer an oath.

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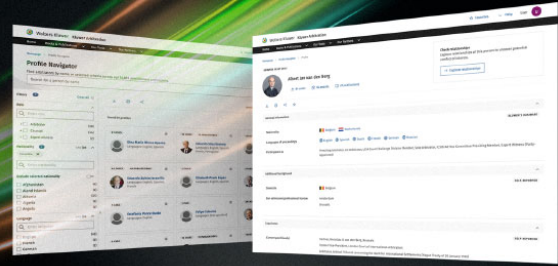
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