

Quick Guide to Key Court Arbitration Trends

Capacity, Conditions Precedent and Signature of Arbitration Awards



Issue of Capacity

In the UAE, the destiny for enforcement of an arbitration award has always been heavily dependent on whether the person who signed the arbitration clause had the specific Power of Attorney to do so.

Now, UAE Courts are taking a more positive approach when dealing with issues of capacity, starting to reject challenges against the enforcement of arbitration awards by relying on general concepts of law, such as good faith.



Case Study

The Dubai Court of Cassation issued a judgment and confirmed that a party cannot challenge the validity of an arbitration clause if the defect to the validity of the clause is attributable to that party's own making.

The court also confirmed that issues of capacity to enter in to an arbitration agreement is not regarded as a matter of public policy.

While matters of capacity have always been regarded as a matter of public order in the UAE, UAE courts exercised the discretion to nullify or set aside an arbitration award on the basis of lack of capacity and they had the discretion to do that on their own motion.



Key Takeaways

- Ensure that you are dealing with a party who has a Special Power of Attorney or has special authority to bind the company in to an arbitration.
- Request for the company to issue its Articles of Association or to produce a copy of its Trade License.
- Request for the company to issue a Shareholders Resolution identifying the party who is authorized to enter into arbitration on behalf of its company.



Conditions Precedent

UAE courts emphasize the importance of complying with notice requirements and pre-dispute settlement negotiations before commencing arbitrations.

A new development introduced under the Federal Arbitration Law confirms that a party would be considered to have waived its right to challenge the arbitration award in circumstances where that party did not raise its challenge during the arbitration proceedings and by the time of filing its statement of defense.



Case Study

In a very recent judgment issued by the Dubai Court of Cassation, the Court nullified an arbitration award that was issued in a construction dispute on the basis that the Claimant failed to escalate the dispute to the engineer before commencing arbitration.

The Claimant's position was that the Respondent is not entitled to challenge the arbitration award because it failed to raise its challenge during the arbitration proceedings and is therefore considered to have waived its right to do so. The Court rejected the Claimant's position and actually considered that the arbitration proceedings have been pre-maturely filed and on that basis it nullified the arbitration award.



Key Takeaway

- Ensure that you strictly comply and adhere to clear notice requirements that are stipulated in your contract before commencing arbitration to reduce any form of challenges or risks of having arbitration award nullified at the enforcement stage.



Signature of Arbitration Awards

Under Article 41 of the Federal Arbitration Law, an arbitration award needs to be signed by the arbitrators. The Dubai Court of Cassation has clarified this position, confirming that an arbitrator would be required to sign each and every page of the final award and this is basically considered as a matter of public policy.



Case Study

The court took a positive approach in a recent judgment not to nullify the arbitration award but remanding it back to the Court of Appeal in order to suspend the nullification proceedings and allow the Tribunal to rectify this procedural formality. By doing that, it has actually applied a newly introduced procedure under the Federal Arbitration Law, which allows Tribunals to deal with any procedural formalities instead of exposing the arbitration award to a complete nullification.



Key Takeaway

- Keep an eye on case law developments and understand how UAE courts apply arbitration procedures in order to minimize the risks of having your award nullified at the enforcement stage on grounds of procedural irregularities.

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