

No need for a POA in UAE Arbitrations

by Sherif Hikal - s.hikal@tamimi.com -
Marwa El Mahdy - m.elmahdy@tamimi.com -

July – August 2013

In a recent judgment issued earlier this year, the Dubai Court of Cassation found that parties to an arbitration do not need to submit powers of attorney for their legal representatives. This is because the arbitrator is not bound by all the provisions of the UAE Civil Procedures Law (Federal Law No.5 of 1992), but only those found in the chapter relating to arbitration and these do not state that a power of attorney is needed.

Facts of the case

The claimants (two individuals) and the respondent (a real estate company) entered into a purchase agreement for 16 real estate units. They agreed on December 2007 as the completion date for the project. Due to the respondent's delay in handing over the units, the claimant initiated legal action before DIAC seeking the termination of the purchase agreement and a refund of the amount paid.

The arbitration tribunal rendered an award terminating the agreement and ordering the respondent to refund the amount paid for the purchase price with interest and arbitration costs. The claimants initiated legal action against the respondent before the Dubai Court of First Instance seeking ratification of the DIAC arbitral award.

The respondent filed a counterclaim before the Dubai Court of First Instance seeking to set aside the arbitral award on the grounds that the person who signed the arbitration deed (terms of reference) and who attended the arbitration proceedings on behalf of the respondent was not legally authorized.

Procedural History

The Dubai Court of First Instance ratified the arbitral award and dismissed the counterclaim. The respondent appealed to the Dubai Court of Appeal which upheld the lower court's decision. The respondent appealed to the Dubai Court of Cassation.

Court of Cassation

The respondent argued that the Court of Appeal erred in the application of the law and breached the principle of equality of arms by disregarding the respondent's plea in respect to the lack of legal capacity of the person who represented the respondent during the arbitration proceedings. The representative had not presented any documentation proving his entitlement to attend the arbitration proceedings on behalf of the respondent.

The Cassation Court rejected this and upheld the appealed judgment on the following basis:

1. Pursuant to Article 212 of the UAE Civil Procedures Law, the general rule is that arbitrators are not bound by the procedural rules followed by the UAE courts save for those provided in the arbitration chapter of the Civil Procedures Law (and any specific procedures agreed upon between the parties for the arbitrator to follow). The arbitrator must respect the principle of equality of arms by allowing each party to submit its pleas and memos and to ensure procedures

are followed in respect of notifying the parties to arbitration of the dates of the hearing scheduled for each party to furnish its evidence.

2. It is not essential that the parties to the arbitration attend the arbitration proceedings themselves. However it is enough that they authorize those who will attend on their behalf to submit the parties' pleas and memos. The representative does not need to be a lawyer nor is it necessary that the power of attorney be an official document. The authorization may be explicit or it may be implicit. Whether the representative is sufficiently authorised is an issue to be determined at the discretion of the court of substance (in this case the arbitration tribunal).
3. The grounds upon which a domestic arbitral award can be annulled are set out in article 216 of the Civil Procedures Law and may not be added to. they relate to irregularities either in the arbitration agreement or the arbitration proceedings These grounds allow for an award to be annulled if:
 - the award was issued by arbitrators appointed otherwise than in accordance with the law
 - the award was issued by some of the arbitrators without their being authorized to make an award in the absence of the others
 - the award was issued on the basis of an arbitration instrument that does not specify the subject matter of the dispute
 - the award was issued by a person not having capacity to make an arbitration agreement or an arbitrator not satisfying the requirements of the law;
 - there is a nullity in the award or a nullity in the proceedings having an effect on the award.
4. An application to set aside an arbitral award can only be based on irregularities in the procedures that affected the validity of the award and not the substantive merits of the arbitration award.
5. The First Instance judgment in its reasoning stated that the arbitrator in the award pointed out that the parties to the arbitration were summoned and representatives of both parties attended. The service of the process was therefore successful and the parties notified of the existence of the dispute between them. Even if one of the parties was absent from the arbitration proceedings this does not nullify them.

Accordingly, the appeal was dismissed and the award ratified.

Comment

This judgment shows the Dubai Court of Cassation being supportive of arbitration by removing one of the most common technical arguments used to annul awards – that a party's representative during the arbitration was not properly authorized.

Although submitting a power of attorney may not be strictly necessary, it is the best proof that a representative is authorised. It therefore remains good practice in the UAE for parties to submit powers of attorney for their representatives so as to remove any possible doubt. A tribunal can also order that powers of attorney be submitted using its powers under article 7.3 of the DIAC Rules.